



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ÇETİNKAYA v. TURKEY (no. 2)

(Application no. 17860/07)

JUDGMENT

STRASBOURG

25 January 2011

FINAL

25/04/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Çetinkaya v. Turkey (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 4 January 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 17860/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Suat Çetinkaya (“the applicant”), on 10 April 2007.

2. The applicant was represented by Mr A. Kansu, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 27 August 2009 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1967 and lives in İzmir.

5. On 8 July 1999 the İzmir Public Prosecutor issued an indictment against the applicant, charging him with a violation of the Associations Law.

6. On 19 November 2003 the İzmir Criminal Court sentenced him to a fine.

7. On 9 March 2006 the Court of Cassation quashed the judgment of 19 November 2003.

8. On 28 November 2006 the İzmir Criminal Court decided to discontinue the proceedings against the applicant, holding that the prosecution was time-barred.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

9. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. The Government contested that argument.

10. The period to be taken into consideration began on 8 July 1999 when the indictment was issued against the applicant and ended on 28 November 2006 when the İzmir Assize Court decided to discontinue the proceedings against him. It thus lasted seven years and four months before two levels of jurisdiction.

11. The Government put forward various preliminary objections concerning non-exhaustion of domestic remedies and asked the Court to dismiss the complaints under Article 6 § 1 of the Convention, as required by Article 35 § 1 of the Convention.

12. The Court notes that it has already examined similar submissions made by the respondent Government in *Daneshpayeh v. Turkey* (no. 21086/04, §§ 35-38, 16 July 2009). The Government have not submitted any arguments which could lead the Court to reach a different conclusion in the instant case. Consequently, the Court rejects the Government's preliminary objections.

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

14. As regards the merits, the Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and of the relevant authorities (*Daneshpayeh*, cited above, § 26).

15. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (*Daneshpayeh*, cited above).

16. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having

regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant complained under Articles 6, 10, 11 and 13 of the Convention that he had been denied a fair trial on account of the fact that the written opinion of the Chief Public Prosecutor at the Court of Cassation had never been served on him and of the decision to discontinue the proceedings, as he had thereby been deprived of a trial at which he could have been acquitted. The Court considers it appropriate to examine these complaints from the standpoint of Article 6 of the Convention alone.

18. The Court notes that the proceedings against the applicant were discontinued as the prosecution of the offences had become time-barred. Consequently, the applicant was not convicted and cannot claim to be a victim of the alleged violation of Article 6 of the Convention (*Er v. Turkey* (dec.), no. 21377/04, 18 November 2008). The Court further notes that Article 6 does not give a right to a particular outcome, including an acquittal (*Withey v. the United Kingdom* (dec.), no. 59493/00, 26 August 2003).

19. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

21. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage and EUR 7,000 in respect of non-pecuniary damage.

22. The Government contested these claims.

23. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the relevant claim. However, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,600 under that head.

B. Costs and expenses

24. The applicant also claimed EUR 2,500 for the legal fees and EUR 4 for the costs and expenses incurred before the Court. In support of his claims, he submitted invoices for postal expenses and a legal fee agreement but he failed to prove that he actually incurred the amounts concluded in the agreement.

25. The Government contested these claims.

26. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs and expenses.

C. Default interest

27. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declared* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Held* that there had been a violation of Article 6 § 1 of the Convention;
3. *Held*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismissed* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President