



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

SECOND SECTION

CASE OF ÇELİK (BOZKURT) v. TURKEY

(Application no. 34388/05)

JUDGMENT

STRASBOURG

12 April 2011

FINAL

12/07/2011

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

In the case of Çelik (Bozkurt) v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

David Thór Björgvinsson,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 22 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 34388/05) 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, Ms Nezahat Nurcan Çelik (Bozkurt) (“the applicant”), on 16 September 2005.

2. The applicant was represented by Mr Devrim Çayan Çetik, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that her dismissal from her post as a teacher, for an offence which she had not committed, had been in breach of her right to the presumption of innocence.

4. On 27 May 2009 the President of the Second Section 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 (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Istanbul.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 15 June 2000 the applicant was charged with the offence of membership of Hizbullah, a proscribed organisation in Turkey.

8. While the criminal proceedings against the applicant were continuing before the Diyarbakır State Security Court, Law no. 4616 entered into force on 22 December 2000. Law no. 4616 provides for the suspension of criminal proceedings in respect of certain offences committed before 23 April 1999, without reaching a definitive finding as to guilt.

9. On 13 March 2001 the Diyarbakır State Security Court considered that there was no evidence to show that the applicant had been a member of the illegal organisation or that she had carried out “any activities on behalf of the illegal organisation in an active and continuous manner”. According to the Diyarbakır State Security Court, the applicant's activities “had remained within the scope of the offence of aiding and abetting the illegal organisation”, which was one of the offences in respect of which Law No. 4616 was applicable. The Diyarbakır State Security Court thus suspended the criminal proceedings against the applicant.

10. In the meantime, on 4 October 2000, that is before the criminal proceedings were suspended, the applicant was dismissed from her post as a primary school teacher because the Ministry of Education considered that the evidence in the possession of the prosecuting authorities showed that she was a member of the illegal organisation.

11. The applicant challenged her dismissal by bringing a case against the Ministry of Education before the Diyarbakır Administrative Court on 3 November 2000.

12. On 7 March 2002 the Diyarbakır Administrative Court rejected the applicant's request for the Ministry's decision dismissing her from her post to be quashed. In its decision the Diyarbakır Administrative Court referred to the Diyarbakır State Security Court's above-mentioned decision of 13 March 2001, and held that the dismissal of the applicant “whose criminal activities were deemed in the criminal proceedings to constitute the offence of aiding and abetting” had been lawful.

13. The appeal lodged by the applicant against the Administrative Court decision was dismissed by the Supreme Administrative Court on 12 November 2004. The Supreme Court decision was notified to the applicant on 16 March 2005.

14. On various subsequent dates the applicant made job applications to the education authorities. One of the applications she made, on 13 February 2008, was rejected by the local education authority in Istanbul on the basis of the Diyarbakır State Security Court decision of 13 March 2001.

15. According to an official document dated 22 February 2008, the applicant has no criminal record.

II. RELEVANT DOMESTIC LAW

16. Law No. 4616, in so far as relevant, provides as follows:

“4. In respect of offences committed before 23 April 1999 which are punishable by a maximum prison sentence of ten years:

- where no criminal investigation has been commenced or no indictment has been filed, institution of prosecution shall be suspended;

- where the criminal prosecution has reached the final stages but no definitive finding on the merits has been adopted or where a definitive finding on the merits has not yet become final, adoption of a definitive finding on the merits shall be suspended.

If the person concerned is detained on remand, he or she shall be released. Documents and evidence concerning such offences shall be kept until the statute of limitations has been reached.

In cases where an offence of the same kind or an offence which is punishable by a more severe prison sentence has been committed before the statute of limitations has been reached, a new prosecution shall be brought in respect of the previous offence which was the subject matter of the suspension or the suspended proceedings shall be resumed. If no offences of the same kind or an offence which is punishable by a more severe prison sentence has been committed before the statute of limitations has been reached, no public prosecutions may be brought against those who benefited from the suspension and the suspended proceedings shall be permanently terminated.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained under Article 6 of the Convention that her right to a fair trial had been breached on account of, *inter alia*, her dismissal, which was decided while the criminal proceedings against her were still pending and which contravened the principle of the presumption of innocence.

18. The Court considers that this complaint can be examined from the standpoint of Article 6 § 2 of the Convention, which reads as follows:

“...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

...”

19. The Government contested that argument.

A. Admissibility

20. The Government argued that the applicant had failed to comply with the requirement to exhaust domestic remedies, because she had not asked for a rectification of the Diyarbakır Administrative Court decision.

21. The Government also submitted that the applicant had failed to respect the six-month time-limit because she had not introduced her application with the Court within six months of the adoption by the Supreme Administrative Court of its decision of 12 November 2004.

22. The applicant maintained that the remedy referred to by the Government could not be regarded as effective because the grounds on which a rectification request could be based were very specific and only offered a prospect of success if the first-instance court's decision clearly contravened the applicable procedure and legislation. The applicant also submitted that she had introduced her application with the Court within six months of the date the Supreme Administrative Court decision had been communicated to her.

23. Concerning the Government's arguments about the rectification procedure, the Court reiterates that it has already examined and rejected similar objections in previous cases (see, in particular, *Dağtekin and Others v. Turkey*, no. 70516/01, § 22, 13 December 2007, and *Gök and Others v. Turkey*, nos. 71867/01, 71869/01, 73319/01 and 74858/01, §§ 47-48, 27 July 2006). It finds no particular circumstances in the present application which would require it to depart from that conclusion. Consequently, it rejects this part of the Government's objection.

24. As to the Government's second objection, the Court reiterates that the six-month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies, and that, where an applicant is entitled to be served automatically with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see, *inter alia*, *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V). The Court notes that the final decision of the Supreme Administrative Court adopted on 12 November 2004 was notified to the applicant on 16 March 2005. The Court therefore considers that the application lodged on 16 September 2005 complied with the six-month time-limit under Article 35 § 1 of the Convention. It thus dismisses the Government's objection.

25. 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.

B. Merits

26. The applicant complained that her dismissal had been unfair and that the refusal of the administrative courts to reinstate her in her post had been in breach of her right to the presumption of innocence. She also submitted that her repeated attempts to find employment as a teacher were still being blocked by the authorities, who were claiming that their refusals were based “on the offence she had committed”. In support of this latter submission the applicant referred to the documents summarised above (see paragraphs 14-15).

27. The Government were of the opinion that the Diyarbakır Administrative Court decision was based on the Diyarbakır State Security Court decision of 13 March 2001, according to which it had been conclusively established that the crime of aiding and abetting the illegal organisation of Hizbullah had been committed. The determination of the applicant's guilt had been taken into account by the Diyarbakır Administrative Court, notwithstanding that the criminal proceedings against the applicant were suspended.

28. The Government also considered that the Diyarbakır Administrative Court had also considered a report, prepared by an inspector for primary education on 29 August 2000, recommending the termination of the applicant's employment. The decision reached by the administrative court was thus in conformity with the domestic legislation and the case-law of the Court. The applicant's right to the presumption of innocence had thus not been breached.

29. The Court reiterates that the presumption of innocence is infringed if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty. While the principle of the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial required by paragraph 1 of that Article, it is not merely a procedural safeguard in criminal proceedings. Its scope is more extensive and requires that no representative of the State or a public authority should declare a person guilty of an offence before their guilt has been established by a “court” (see *Mouillet v. France (no. 2)* (dec.), no. 27521/04, ECHR 2007-X).

30. The Court has already held that while an acquittal in respect of criminal liability ought to be maintained in subsequent compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same facts on the basis of a less strict

burden of proof (see, *mutatis mutandis*, *X v. Austria*, no. 9295/81, Commission decision of 6 October 1992, Decisions and Reports (D.R.) 30, p. 227, and *M.C. v. the United Kingdom*, no. 11882/85, decision of 7 October 1987, D.R. 54, p. 162). In Turkey, as is the case in a significant number of Contracting States, an acquittal (see *Y v. Norway*, no. 56568/00, § 41, ECHR 2003-II (extracts)) or suspension of criminal proceedings does not preclude the establishment of civil liability in relation to the same facts.

31. However, if the national decision on compensation contains a statement imputing criminal liability to the plaintiff, this could raise an issue falling within the ambit of Article 6 § 2 of the Convention (*ibid*, § 42).

32. The Court considers the same considerations to be applicable to the administrative proceedings in the present application. Thus, if a decision of an administrative court contains a statement imputing criminal liability to the plaintiff, this may raise an issue falling within the ambit of Article 6 § 2 of the Convention.

33. Turning to the facts of the present application, the Court observes at the outset that the conclusion reached by the Diyarbakır State Security Court, namely that the applicant's activities “had remained within the scope of the offence of aiding and abetting an illegal organisation” does not amount to a finding of guilt, taking into account the suspension of the criminal proceedings without any formal decision having been taken. The Court considers that the purpose of that qualification by the Diyarbakır State Security Court was to assess whether, on the basis of the case file before it, the offence for which the applicant was being tried fell within the scope of offences to which Law no. 4616 was applicable. Indeed, the wording of Law no. 4616 is unequivocal, in that it requires criminal courts to suspend criminal proceedings in respect of certain offences without reaching a definitive conclusion as to the defendant's guilt. The Court's foregoing considerations are further supported by the fact that, according to the document submitted to the Court by the applicant, she has no criminal record. In view of the foregoing, the Court does not share the Government's opinion that it had been conclusively established that the crime of aiding and abetting the illegal organisation of Hizbullah had been committed.

34. The Court reiterates that the scope of Article 6 § 2 is not limited to criminal proceedings which are pending, but may extend to judicial decisions taken after the proceedings end or following an acquittal, in so far as the issues raised in these cases are a consequence of and concomitant to the criminal proceedings concerned, in which the applicant was the “accused” (see *Moulet*, cited above, and the cases cited therein). The Court considers that the language used by the Administrative Court in rejecting the applicant's case created a “link” between the criminal case and the administrative proceedings, which justifies the extension of the scope of Article 6 § 2 to cover the latter (see *Y.*, cited above, § 47; see also, *mutatis*

mutandis, Moullet, cited above). It follows that Article 6 § 2 is applicable in the present case.

35. Having regard to the same wording employed by the Administrative Court and the fact that it did not make a fresh assessment of the facts, the Court finds that that court went beyond its task of examining the lawfulness of the decision dismissing the applicant from her teaching post, and in essence found her guilty of aiding and abetting an illegal organisation when, in fact, no such conclusion had been reached by any criminal court.

36. Finally, the Court cannot but observe that, when rejecting the applicant's repeated job applications the education authorities continued to rely on the Diyarbakır State Security Court decision suspending the criminal proceedings. The Court considers that reliance to be incompatible with Article 6 § 2 of the Convention, which requires that no representative of the State or a public authority should declare a person guilty of an offence before their guilt has been established by a "court" (see *Moullet*, cited above).

37. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's right to the presumption of innocence has been breached.

There has accordingly been a violation of Article 6 § 2 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Relying on Article 7 of the Convention, the applicant complained that her dismissal had had no legal basis. Finally, the applicant alleged under Articles 9 and 14 of the Convention that she had been dismissed on account of her religious beliefs and Kurdish ethnic origin.

39. In the light of all the material in its possession, the Court finds that these submissions by the applicant do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 120,000 euros (EUR) in respect of pecuniary damage, based on her loss of earnings as a result of the termination of her contract of employment. She also claimed EUR 120,000 in respect of non-pecuniary damage on account of her suffering stemming from her dismissal.

42. The Government considered the claims unsubstantiated and excessive, and invited the Court not to make any award.

43. The Court considers that it cannot speculate as to what the outcome of the proceedings would have been had the Diyarbakır Administrative Court not disregarded the applicant's right to the presumption of innocence. It therefore considers that no award can be made in respect of the applicant's claims for pecuniary damage.

44. On the other hand, the Court considers that the applicant must have suffered a degree of distress as a result of that court's finding, and awards her EUR 7,200 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant did not make a claim for any costs and expenses.

C. Default interest

46. 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. *Declares* the complaint concerning the applicant's right to the presumption of innocence admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President