



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

FIRST SECTION

CASE OF CANKOÇAK v. TURKEY

(Applications nos. 25182/94 and 26956/95)

JUDGMENT

STRASBOURG

20 February 2001

FINAL

20/05/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of CANKOÇAK v. Turkey,

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

Mrs E. PALM, *President*,
Mr L. FERRARI BRAVO,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEŒ,
Mr B. ZUPANČIČ,
Mr T. PANȦIRU,
Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 April 2000 and 30 January 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 25182/94 and 26956/95) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, now living in France, Mr Murat Cankoçak ("the applicant"), on 18 August 1994 and 2 February 1995 respectively.

2. The applicant was represented by Mr Şenal Sarihan, a lawyer practising in Ankara (Turkey). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings.

3. The applications were joined by the Commission in its partial decision on the admissibility of the applicant's complaints, dated 4 October 1995.

4. The joined applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applicant alleged, in particular, that the criminal charges against him were not determined within a reasonable time, as required by Article 6 § 1 of the Convention.

6. The joined applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

7. By a decision of 4 April 2000, the Chamber declared the applicant's complaint regarding the length of the criminal proceedings admissible.

8. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

9. On 24 November 1978 the applicant was arrested by the police for being in possession of a firearm. He was taken into custody at the Ankara Security Directorate and accused of having taken part in an armed attack on a bank.

10. On 5 December 1978 a magistrate ordered the applicant's provisional detention.

11. Subsequently, the public prosecutor attached to the Ankara Martial Law Court charged the applicant with being an accessory to the crime of murder and with having taken part in an armed robbery of a bank and having fired shots into a café. According to the prosecutor, the offences were committed as part of a terrorist campaign aimed at overthrowing the constitutional order, a campaign conducted by an illegal organisation, *Dev-Yol* (Devrimci Yol - the Revolutionary Way).

12. In its judgment of 26 September 1979 the Ankara Martial Law Court found the applicant guilty as charged. Although the applicant could have faced the death penalty for the offences at issue, the court commuted this to life imprisonment.

13. The applicant and the prosecutor appealed to the Court of Cassation.

14. In its decision of 20 August 1980 the Military Court of Cassation quashed the lower court's judgment on the ground that the facts of the case had not been properly established.

15. On 28 April 1986 the applicant was released on parole.

16. In its judgment of 3 July 1986 the Ankara Martial Law Court complied partially with the Court of Cassation's decision of 20 August 1980 and sentenced the applicant to a term of imprisonment of fifteen years on the accessory to murder charge as well as on the charge of membership of an armed gang.

17. The applicant and the prosecutor lodged an appeal against the judgment. The prosecutor sought the applicant's conviction in respect of the armed robbery charge and his acquittal in respect of the accessory to murder charge.

18. On 23 December 1987 the Military Court of Cassation confirmed the applicant's conviction on the murder charge and quashed the judgment of the Ankara Martial Law Court insofar as it acquitted the applicant of the armed robbery charge.

19. The public prosecutor attached to the Military Court of Cassation sought the rectification of the judgment of 23 December 1987 and requested that the initial charges be lifted and that the charge against the applicant be categorised as one of active membership of an armed gang.

20. In its decision of 22 September 1988, the Military Court of Cassation quashed the applicant's conviction for being an accessory to the crime of murder but considered that he was guilty of armed robbery. The court remitted the case file to the Ankara Martial Law Court.

21. On 27 February 1990 the Ankara Martial Law Court issued a new arrest warrant against the applicant.

22. On 18 November 1993 the Ankara Martial Law Court sentenced the applicant to a period of imprisonment of three years and two months for membership of an armed gang and acquitted him of the remaining charges.

23. By a judgment dated 22 December 1993 and notified to the applicant's lawyer on 3 August 1994, the Military Court of Cassation declared that the criminal proceedings against the applicant were now time-barred.

THE LAW

I ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained that the criminal charges brought against him were not determined within a reasonable time, in breach of Article 6 § 1 of the Convention which provides, as relevant:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into consideration

25. The Court notes that it has not been disputed by the parties that the proceedings began on 24 November 1978, the date of the applicant's arrest, and ended on 3 August 1994, the date on which the applicant's lawyer was notified of the final decision of the Military Court of Cassation. They thus lasted more than fifteen years and eight months. The Court recalls that in its admissibility decision of 4 April 2000 it observed that it can only consider the period of almost seven years and six months that elapsed after 22 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention. Notwithstanding, it concluded that it must take into account the fact that by

the critical date the proceedings had already lasted approximately eight years and two months.

26. A question arises as to the Court's jurisdiction *ratione temporis* in respect of the application at issue in view of the entry into force of Protocol No. 11 to the Convention. The Court notes in this connection that on 1 November 1998, by operation of that Protocol, applications such as the instant one pending before the Commission (see paragraph 4 above) which have not been declared admissible fell to be examined by the Court in accordance with the provisions of the Protocol. Given that the object of Article 5 § 2 of the Protocol is to provide for the examination of former Commission cases as part of a transitional arrangement, the former Court no longer being in existence, the Court's jurisdiction *ratione temporis* is determined by the date of the respondent State's acceptance of the right of individual petition. Accordingly, the considerations which led the former Court in its Mitap and Müftüoğlu v. Turkey judgment of 25 March 1996 (*Reports of Judgments and Decisions* 1996-II, pp. 410-411, §§ 26-28) to determine its jurisdiction *ratione temporis* in respect of the complaints raised in that case as of 22 January 1990, the date of the respondent State's acceptance of its jurisdiction, cannot be invoked to confine its jurisdiction to facts or events occurring since that date.

The Court notes that this conclusion has not been disputed.

B. Reasonableness of the length of the proceedings

27. With reference to the principles set out in its established case-law in this area, the Court will assess the reasonableness of the impugned period in light of the complexity of the case, the applicant's conduct and that of the competent authorities (see, among many other authorities, the above-mentioned Mitap and Müftüoğlu judgment, p. 411, § 32).

28. The Government stated that the nature of the charges against the applicant rendered the proceedings complex. This factor explained the time taken to conclude the proceedings. The Government stressed in this connection that the applicant was charged along with seven other co-accused with attempting to overthrow the constitutional order by force. They pointed out that eighty-four other accused also stood trial at the same time in this connection. The authorities needed time to establish the scope and activities of the terrorist network of which the accused were alleged to be members. The Government further stressed that the delay in the proceedings impugned by the applicant could not be attributed to the domestic courts, none of which could be accused of being either negligent or slow in processing the case.

29. The applicant contended that he was initially charged with a firearms offence. However the police, using torture methods to extract confessions from him, added further and unfounded charges which had the effect of

complicating the proceedings, in particular the decision to try him along with many other accused with whom he had no connection.

30. In the applicant's submission, he was in no manner responsible for the delay in the determination of the charges against him. This must be attributed to the authorities. In this connection, the applicant maintained that the domestic courts were to be faulted for their failure to process the case with due diligence as evidenced by the fact that the proceedings were punctuated by frequent, unexplained and unjustified periods of delay.

31. The Court observes that it is not required to pronounce on the applicant's claim that he was wrongly tried together with a large number of other defendants and that the authorities relied to this end on statements which were obtained from him under torture. It notes that these allegations along with a number of other complaints in respect of the fairness of the criminal proceedings were declared inadmissible by the Commission in its partial decision adopted on 4 October 1995 (see paragraph 3 above).

32. On that understanding the Court can accept that the case mounted against the applicant and the large number of other defendants was complex. That being said, it cannot but note that the proceedings lasted almost fifteen years and eight months of which seven years and six months are within the scope of the Court's consideration (see paragraph 25 above). This is an excessively long period which cannot be justified with reference to considerations of complexity. Furthermore, the respondent Government have not sought to attribute any of the delay to the applicant's conduct of the case. In the Court's opinion the length of the proceedings can only be explained by the failure of the domestic courts to deal with the case diligently. It observes in this connection that it took the Ankara Martial Law Court almost five years to reach a verdict following the Military Court of Cassation's decision of 22 September 1988 to remit the case back to it (see paragraph 20 above). No convincing justification for this inordinate delay has been offered by the respondent Government.

33. In conclusion, the length of the criminal proceedings in issue contravened Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed the sum of 200,000 French francs (FRF) by way of compensation for pecuniary and non-pecuniary damage. He referred in this connection to the unjustified length of the criminal proceedings and to his claims, *inter alia*, that he was arbitrarily detained, falsely accused, tortured, held in solitary detention for a very considerable period and forced to leave Turkey.

36. The Government did not make any comments on the applicant's claim.

37. The Court reiterates that it can only award reparation in respect of its finding that there has been a violation of the Convention as regards the unreasonable length of the criminal proceedings and make its calculation accordingly.

38. Having regard to the particular circumstances of the case, it considers that the applicant sustained considerable non-pecuniary damage. It awards him FRF 100,000.

B. Costs and expenses

39. The applicant claimed that the sum of 25,000 Turkish Liras (TRL) was paid by way of lawyer's fees for the purposes of the domestic proceedings at the material time. As to the Convention proceedings, the applicant, with reference to a breakdown of the work conducted on his case by his Luxembourg-based lawyer, claimed the sum of 57,904 Luxembourg francs (LUF).

40. The Government did not make any observations under this head of claim either.

41. Deciding on an equitable basis the Court awards the applicant the sum of FRF 10,000.

C. Default interest

42. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 2.74% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;
2. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
 - (a) 100,000 (one hundred thousand) French francs in respect of non-pecuniary damage;
 - (b) 10,000 (ten thousand) French francs in respect of costs and expenses, together with any value-added tax that may be chargeable;
 - (c) that simple interest at an annual rate of 2.74% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 20 February 2001 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President