



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

SECOND SECTION

CASE OF TEZCAN UZUNHASANOĞLU v. TURKEY

(Application no. 35070/97)

JUDGMENT

STRASBOURG

20 April 2004

FINAL

20/07/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tezcan Uzunhasanoğlu v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr R. TÜRMEK,

Mr C. BİRSAN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 20 May 2003 and on 23 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 35070/97) 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, Ms Ayşe Tezcan Uzunhasanoğlu (“the applicant”), on 23 January 1997.

2. The applicant was represented by Mr K.T. Sürek, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicant alleged, in particular, that she had been denied a fair hearing on account of the presence of a military judge on the bench of the Istanbul State Security Court which tried and convicted her. She further complained that the Court of Cassation had based its decision on witness statements taken at the police station, which the witnesses subsequently repudiated as having been made under duress. The applicant finally contended that the Court of Cassation had not respected the principles of an adversarial procedure or respect for equality of arms and had not held a hearing.

4. The application was 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 application was allocated to the Second 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.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. By a decision of 20 May 2003, the Court declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1963 and lives in Istanbul.

10. On 30 May 1992 the applicant was taken into police custody on suspicion of aiding and abetting an illegal organisation, the Devrimci-Sol (*Revolutionary-Left*).

11. On 3 June 1992 the public prosecutor at the Istanbul State Security Court filed an indictment with the latter charging the applicant, under Article 169 of the Criminal Code and Articles 4 and 5 of the Prevention of Terrorism Act, with aiding and abetting members of an illegal armed organisation.

12. On 7 September 1993 the Istanbul State Security Court acquitted the applicant of the charges against her for lack of evidence.

13. On 23 December 1993 the Court of Cassation quashed the judgment of the Istanbul State Security Court. The court noted that the applicant had been in charge of communications among members of the Devrimci-Sol and that she had allowed them to organise meetings in her house. It further held that the first instance court had failed to take into account the applicant's confessions and the statements given by witnesses against her at the police station.

14. On 12 April 1994 the Istanbul State Security Court delivered a judgment identical to the first one. The court noted that the applicant had refuted the confession statements she made in police custody and that the two witnesses had rejected their statements as they had allegedly been made under duress at the police station. The court reiterated that there was insufficient evidence to convict the applicant. It ruled that the applicant should be acquitted.

15. On 3 October 1994 the Plenary Chamber of the Court of Cassation (*Yargıtay Ceza Genel Kurulu*) quashed the Istanbul State Security Court's

judgment on the ground that there was sufficient evidence to convict the applicant. The case was referred once again to the Istanbul State Security Court.

16. On 18 December 1995 the Istanbul State Security Court found the applicant guilty as charged and sentenced her to three years and nine months' imprisonment and debarred her from holding public office for three years. The applicant appealed. Furthermore, she requested a hearing before the Court of Cassation.

17. On 9 July 1996 the Court of Cassation dismissed the applicant's request for a hearing holding that the request had been introduced out of time. Moreover, it upheld the judgment of the Istanbul State Security Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The Court refers to the overview of the domestic law derived from previous submissions in other cases, in particular *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002) and *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complains under Article 6 § 1 of the Convention that she was denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Istanbul State Security Court which tried and convicted her. She further submits under the same heading that the Court of Cassation had based its decision on witness statements taken at the police station, which the witnesses subsequently rejected as having been made under duress. The applicant finally contends under Article 6 § 1 and Article 6 § 3 (c) and (d) that the Court of Cassation did not respect the principles of an adversarial procedure or respect for equality of arms and did not hold a hearing.

20. As to the applicant's complaint concerning the composition of the Istanbul State Security Court, the Court notes that it has examined similar grievances in the past and has found a violation of Article 6 § 1 (see, among many other authorities, *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

21. The Court sees no reason to reach a different conclusion in the instant case. It is reasonable that the applicant who was prosecuted in a State Security Court for aiding and abetting an illegal organisation should have

been apprehensive about being tried by a bench which included a regular army officer and member of the Military Legal Service. On that account, she could legitimately fear that the Istanbul State Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to the State Security Court's lack of independence and impartiality can be regarded as objectively justified (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1573, § 72 *in fine*).

22. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

23. Having regard to its finding that the applicant's right to a fair hearing by an independent and impartial tribunal has been infringed, the Court considers that it is unnecessary to examine the applicant's other complaints under Article 6 §§ 1 and 3 (c) and (d) (see *Incal*, cited above, § 74, and *Çiraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII, § 45).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed a total of 40,000 euros (EUR) for pecuniary and non-pecuniary damage.

26. The Government contested the applicant's claim. They maintained that the sums claimed were excessive and unjustified.

27. Regarding the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of the proceedings before the State Security Court might have been had the violation of the Convention not occurred (see *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, § 85). Moreover, the applicant's claim in respect of pecuniary damage has not been substantiated by any evidence whatsoever. It therefore makes no award under this head.

28. With regard to non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Çiraklar*, cited above, § 49).

29. Where the Court finds that an applicant has been convicted by a tribunal which is not independent and impartial within the meaning of Article 6 § 1, it considers that, in principle, the most appropriate form of relief would be to ensure that the applicant is granted in due course a retrial by an independent and impartial tribunal (see *Gençel*, cited above, § 27).

B. Costs and expenses

30. The applicant claimed a total of EUR 5,000 for costs and expenses incurred in the proceedings before the domestic authorities and before the Strasbourg institutions.

31. The Government contested the applicant's claim. They further submitted that the claim in respect of costs and expenses had not been duly documented.

32. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, as a recent authority, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

33. Making its own estimate based on the information available, the Court awards the applicant EUR 3,000 in respect of costs and expenses.

C. Default interest

34. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint relating to the independence and impartiality of the Istanbul State Security Court;
2. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage alleged;
4. *Holds*
 - (a) 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, EUR 3,000 (three thousand euros) in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of payment, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 20 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY
Deputy Registrar

J. P. COSTA
President