



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

THIRD SECTION

CASE OF YANIKOĞLU v. TURKEY

(Application no. 46284/99)

JUDGMENT

STRASBOURG

14 October 2004

FINAL

14/01/2005

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 Yanıkoğlu v. Turkey,

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

Mr G. RESS, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr B. ZUPANČIČ,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mrs A. GYULUMYAN, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 23 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 46284/99) 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 Ufuk Yanıkoğlu (“the applicant”), on 16 January 1999.

2. The applicant was represented by Mr K. Bayraktar, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 31 January 2002 the Court declared the application partly inadmissible and decided to communicate the remaining complaints to the Government. Under the provisions of Article 29 § 3 of the Convention, on 7 November 2002 the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant, who was born in 1971, lives in Ankara.

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

6. On 12 November 1991 the applicant was arrested and placed in police custody by police officers from the Ankara Security Directorate on suspicion of his involvement in the activities of an illegal organisation,

namely the TDKP/GKB (*Turkish Revolutionary Communist Party / Young Communist Union*).

7. On 19 November 1991 the applicant gave a statement to the police, allegedly under duress and confessed that he had been involved in certain illegal activities organised by the TDKP/GKB.

8. On 25 November 1991 the public prosecutor at the Ankara State Security Court questioned the applicant in relation to his involvement in the TDKP/GKB. The applicant denied the content of his written statement of 19 November 1991 and alleged that it had been taken under duress.

9. On 26 November 1991 the applicant was brought before a single judge of the Ankara State Security Court, who after taking his statement ordered his release.

10. On 30 December 1991 the public prosecutor at the Ankara State Security Court filed an indictment against the applicant and fourteen other defendants, accusing them of membership of an illegal organisation. The prosecution requested that the applicant be convicted and sentenced pursuant to Article 7 § 1 of the Prevention of Terrorism Act.

11. On 13 April 1993 the Ankara State Security Court, composed of three judges including a military judge, convicted the applicant as charged. The court held that there was sufficient and satisfactory evidence to disclose that he had committed the alleged offences. It accordingly sentenced him to three years' imprisonment. Both the applicant and the public prosecutor appealed.

12. On 8 February 1994 the Court of Cassation quashed the judgment of the first instance court on the ground that the applicant should have been convicted under Article 168 § 2 of the Criminal Code on account of his membership to an illegal organisation.

13. On 16 March 1994 the Ankara State Security Court, to which the case had been remitted, held its first hearing and asked the accused persons to submit their final observations. On 27 May 1994 the applicant submitted his final observations and denied the charges against him. The court held thirty-three more hearings after this date, in search of one of the accused persons, who was on the run.

14. On 27 November 1997 the Ankara State Security Court applied the decision of the Court of Cassation and sentenced the applicant to twelve years and six months' imprisonment under Article 168 § 2 of the Criminal Code.

15. On 17 September 1998 the Court of Cassation dismissed the applicant's request for appeal.

II. RELEVANT DOMESTIC LAW

16. A full description of the domestic law may be found in *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant alleged in particular that he had been denied a fair hearing on account of the presence of a military judge on the bench of the Ankara State Security Court which tried and convicted him. He further complained that the national courts had based their decisions on his police statement which had been taken under duress. Finally, he argued that the criminal proceedings against him had not been concluded within a reasonable time. In this respect he invoked Article 6 §§ 1 and 3 of the Convention.

A. Admissibility

18. The Government argued under Article 35 of the Convention that the applicant's complaint in respect of the independence and impartiality of the Ankara State Security Court must be rejected for failure to comply with the six-month rule. In this respect, they maintained that as the applicant was complaining of the lack of independence and impartiality of the Ankara State Security Court, he should have lodged his application with the Court within six months of the date on which that court rendered its judgment, namely 27 November 1997.

19. The Court reiterates that it has already examined in several cases similar preliminary objections of the Government in respect of the non-compliance with the six months' rule and has rejected them (see *Özdemir v. Turkey*, no. 59659/00, § 29, 6 February 2003 and *Doğan and Keser v. Turkey*, nos. 50193/99 and 50197/99, § 17, 24 June 2004). The Court finds no particular circumstances in the instance case, which would require it to depart from its findings in the above-mentioned cases.

20. Accordingly, the Court rejects the Government's preliminary objection.

21. In the light of its established case law (see, amongst many authorities, *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII), and in view of the materials submitted to it, the Court considers that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that the remainder of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

B. Merits

1. Independence and impartiality of the State Security Court

22. The Government maintained that the state security courts had been established by law to deal with threats to the security and integrity of the State. They submitted that in the instant case there was no basis to find that the applicant could have any legitimate doubt about the independence of the Ankara State Security Court. The Government further referred to the constitutional amendment of 1999 whereby military judges could no longer sit on state security courts.

23. The Court notes that it has examined similar cases in the past and has concluded that there was a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir*, cited above, §§ 35-36).

24. The Court sees no reason to reach a different conclusion in this case. It is understandable that the applicant who was prosecuted in a State Security Court for being a member of 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, he could legitimately fear that the Ankara 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 fear 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* 1998-IV, p. 1573, § 72 *in fine*).

25. In the light of the foregoing the Court finds that there has been a violation of Article 6 § 1 of the Convention in this respect.

2. Fairness of the proceedings

26. 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 remaining complaints under Article 6 § 3 of the Convention (see *Çıraklar*, cited above, § 45).

3. Length of the criminal proceedings

27. The Government denied the applicant's allegation. They argued that the case was of a complex nature and that the national courts had to organise a trial involving fifteen defendants, all of whose involvement with the TDKP/GKB had to be established. They further maintained that no negligence or delay could be imputed to the judicial authorities.

28. The Court observes that the proceedings began on 12 November 1991 with the applicant's arrest and ended on 11 September 1998 with the

decision of the Court of Cassation, upholding the applicant's conviction. They therefore lasted six years and nine months.

29. The Court recalls in the first place 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, amongst many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

30. The Court considers that even though the case involved a certain degree of complexity since it involved the prosecution of fifteen accused persons, it cannot be said that this in itself justified the total length of the proceedings.

31. As regards the conduct of the applicant, the Court observes that it does not appear from the case-file that he contributed to the prolongation of the proceedings.

32. Concerning the conduct of the authorities, the Court notes that the instant case was examined in four levels of jurisdiction within six years and nine months. It observes however that there is a significant period of delay which is attributable to the authorities. In this respect, it observes that when the Court of Cassation remitted the case before the Ankara State Security Court for further examination, it took the first instance court three years and nine months to render its decision. The Court further observes that the criminal case against the applicant was in fact ready for decision on 27 May 1994 at the latest, because all but one of the defendants had submitted their final observations by that date. Regardless of this fact, the proceedings continued for three more years as the first instance court held thirty-three more hearings in search of this defendant who was on the run.

33. Recalling that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see *Arvelakis v. Greece*, no. 41354/98, § 26, 12 April 2001), the Court considers that the domestic court could have applied stricter measures to speed up the proceedings. It therefore finds that the proceedings in the instant case were unnecessarily prolonged as the national court had failed to act with the necessary diligence in conducting the proceedings against the applicant.

34. In view of the above, the Court considers that the length of the proceedings cannot be considered to have complied with the reasonable time requirement laid down under Article 6 § 1.

35. There has accordingly been a violation of Article 6 § 1 of the Convention in this respect.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 95,000 US dollars in respect of pecuniary and non-pecuniary damage.

38. The Government did not address this issue.

39. On the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. Moreover, the applicant's claims in respect of pecuniary damage are not supported by any evidence whatsoever. The Court can therefore not allow them.

40. The Court further considers that the finding of a violation of Article 6 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant in this respect (see *Incal*, cited above, p. 1575, § 82, and *Çıraklar*, cited above, § 45).

41. 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 (*Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

42. As to the unreasonable length of the criminal proceedings, the Court accepts that the applicant must have suffered non-pecuniary damage, such as distress and frustration on account of the duration of the proceedings, which cannot be sufficiently compensated by finding of a violation. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant a total sum of 1,800 euros (EUR) under this head.

B. Costs and expenses

43. Without requesting a specific amount, the applicant asked to be reimbursed for the costs and expenses incurred during the proceedings before the Court.

44. The Government did not make a comment on this issue.

45. Making its own estimate based on the information available, and having regard to the criteria laid down in its case-law (see, among other

authorities, *Ahmet Koç v. Turkey*, no. 32580/96, § 40, 22 June 2004 and *Çaloğlu v. Turkey*, no. 55812/00, § 33, 29 July 2004), the Court considers it reasonable to award the applicant EUR 2,000 in respect of 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 remainder of the application admissible;
2. *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 Ankara State Security Court;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the complaint relating to the length of the proceedings;
4. *Holds* that there is no need to examine the remaining complaint submitted under Article 6 § 3 of the Convention;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant in respect of his complaint relating to the independence and impartiality of the Ankara State Security Court;
6. *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, the following amounts, to be converted into Turkish Liras at the rate applicable at the date of the settlement and free of any taxes that may be chargeable;
 - (i) EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage in respect of his complaint concerning the length of the proceedings;
 - (ii) EUR 2,000 (two thousand euros) 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;

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

Done in English, and notified in writing on 14 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President