CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF YETKINSEKERCI v. THE UNITED KINGDOM

(Application no. 71841/01)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

15/02/2006

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 Yetkinsekerci v. the United Kingdom,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Sir Nicolas BRATZA,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 71841/01) against the United Kingdom of Great Britain and Northern Ireland lodged on 14 May 1998 with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Cahit Yetkinsekerci ("the applicant").

2. The British Government ("the Government") were represented by their Agent, Ms E. Willmott, of the Foreign and Commonwealth Office, London.

3. 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).

4. The application was allocated to the Third 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.

5. On 11 December 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

6. The applicant was born in 1951 and lives in Gaziantep.

7. On 3 September 1997, 79 packages of powder (subsequently found to be starch) were found in the belly tank of the apparently unladen lorry which the applicant had just brought into the United Kingdom. The applicant was arrested, and on 4 September 1997 he was charged with knowingly being involved in the attempted import of a controlled drug (diamorphine). He was convicted on 25 March 1998 and sentenced to 14 years' imprisonment. His application for leave to appeal arrived at the Criminal Appeals Office on 23 April 1998, and leave to appeal and legal aid were granted on 22 March 1999.

8. The Court of Appeal dismissed the applicant's appeal on 6 March 2001. As to sentence it found as follows:

> "76. ... The points ... are, first, that no diamorphine was imported and that seems to us to be the most important point, namely that this was an offence of attempt and not of actual importation.
>
> 77. Second, that the appellant appears to have occupied a lowly position in what was undoubtedly an extensive chain, stretching from source abroad into this country.
>
> 78. Third, it is said that there was no evidence that he knew of the quantity involved. However, in that respect, in a massive importation of this kind, it is not usual to investigate how far an appellant was privy to the actual amount involved, bearing in mind that it would obviously have been an extremely substantial importation.
>
> 79. Fourth, the point is made that he is isolated from his country of origin, serving a sentence in England.
>
> 80. Fifth, that his age is 49, he is of previous good character and family responsibilities also militate for mercy.
>
> 81. We attach some slight importance to the fourth element. So far as the fifth is concerned it is not one in which of a case of this kind we regard appropriate and to take into consideration [sic].
>
> 82. Finally, counsel has advanced upon us the argument that this appeal has taken, as it undoubtedly has taken, an unconscionably long time to come on, for reasons which are no fault of the appellant or his advisers, but appear to have related to administrative difficulties within this court. He makes reference in that respect to Article 6 of the Convention on Human Rights. However, it is not necessary to invoke that Article for the court to take into account, if it considers it appropriate, a delay of that kind.
>
> 83. We consider that, absent any reason for reduction of an unusual kind, had this importation been an importation of diamorphine, as the appellant no doubt believed it to be, a sentence of 18 years could have been expected. It does appear that,

> on the basis that it was simply an attempt, the judge reduced the level of sentence to the order of 14 years, bearing in mind the appellant's apparent position in the chain.
>
> 84. In our view, a somewhat greater allowance could well have been made, allowing this with the fact that the defendant has spent a time of some anxiety, no doubt, waiting for longer than he should, in order to see whether his sentence would be reduced, we consider that it is appropriate to reduce the sentence of 14 years imposed to one of 12 years' imprisonment. The appeal upon the sentence will be successful to that extent."

9. The applicant was released after having served approximately one half of the 12 year sentence, and deported to Turkey.

THE LAW

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

10. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

11. The Government contested that argument.

12. The period to be taken into consideration began on 3 September 1997 and ended on 6 March 2001. It thus lasted a little over three and a half years, and the appeal stage, from conviction to appeal and including the grant of leave to appeal, lasted just under three years of that period.

A. Admissibility

13. The Government contended that the complaint is inadmissible on three grounds. They claimed, first, that the applicant is not a "victim" of a violation of Article 6 of the Convention because, in consequence of his reliance on the provision before the Court of Appeal, he obtained a substantial reduction in his sentence. Secondly, they contended that even if he is a "victim" within the meaning of Article 34, he has failed to exhaust domestic remedies because it was open to him to bring a civil action under Section 7 (1) (a) of the Human Rights Act in respect of the delay of the hearing of his appeal, but he did not do so. The applicant does not comment on these pleas. Finally, as noted above, they contended that the complaint is manifestly ill-founded.

14. As to the Government's contention that the applicant is not a "victim" within the meaning of Article 34, the Court recalls that a reduction

in sentence can have the effect of rendering an applicant "no longer a victim" if the reduction is measurable and is expressly directed to the excessive length of the proceedings (in *Eckle v. Germany*, (judgment of 15 July 1982, Series A no. 51, § 65 – 70) the applicant could continue to claim to be a victim; in *Lie and Berntsen v. Norway* (no. 25130/94, dec. 16 December 1999) and V*an Laak v. the Netherlands*, (no.17669/91, Commission decision of 31 March 1993, DR 74, p. 156) he could not). In the present case, although it is clear that the Court of Appeal agreed with the applicant that his case had not been considered with due diligence before the Court of Appeal, it cannot be said, even approximately, what proportion of the two years' reduction in sentence was related to the fact that the applicant's offence was limited to an attempt, and what proportion was due to the time spent waiting for the appeal to come on. As it is not able with any precision to ascertain to what extent the applicant's sentence was reduced, the Court cannot accept the Government's contention that the sentence was reduced sufficiently to render the applicant "no longer a victim".

15. As to the Government's contention that the applicant has failed to exhaust domestic remedies because the applicant did not bring a civil action under Section 7(1)(a) of the Human Rights Act 1998, the Court underlines the difficulties which Government accept would stand in the path of such an action – the question whether the delay at the Court of Appeal, which appears to have been due to administrative problems, was a "judicial" act, and the question whether such an action could be brought in respect of delay which occurred in large part before the entry into force on 2 October 2000 of the Human Rights Act 1998. The Court also notes that the applicant made specific reference to the Convention in the proceedings before the Court of Appeal, and that the Court of Appeal dealt with the complaint, albeit on the basis of the common law rather than Article 6.

16. The Court recalls that an action for damages in the context of terminated proceedings may be relevant for the purposes of Article 35 of the Convention, but that the only remedies which that Article requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is for the respondent State to establish that these conditions are satisfied (*Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, p. 11, §27).

17. In the absence of any cited examples of Section 7(1)(a) of the Human Rights Act providing an effective remedy in respect of completed criminal proceedings, and given the doubts as to whether such an action could even in theory provide an effective remedy where, *inter alia*, less than six months of the proceedings occurred after the entry into force of that act, the Court considers that the Government have not established that the applicant had

open to him a remedy under the Human Rights Act which could have provided effective redress for his complaint about the length of the proceedings. In any event, the applicant raised the Article 6 point before the Court of Appeal, and far from dismissing it, the Court of Appeal (albeit by reference to the common law) reduced the sentence partly in reliance on it.

18. The Court therefore rejects the Government's plea of non-exhaustion of domestic remedies.

19. 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

20. 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, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

21. 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 (generally, see *Pélissier and Sassi*, cited above; specifically, see *Howarth v. the United Kingdom*, no. 38081/9729, 21 September 2000, where two years elapsed between conviction and the appeal decision).

22. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed an unspecified sum in respect of loss of earnings and loss of contributions to the social security system, and also 500,000 pounds sterling (GBP) in respect of non-pecuniary damage.

25. The Government contested these claims.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Having regard to all the circumstances of the case, including the way in which the Court of Appeal dealt with the complaint concerning the length of the proceedings, it awards the applicant 1,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant also claimed GBP 22,000 in respect of his trial costs.

28. The Government pointed out that the applicant had failed to provide any evidence at all of what the costs actually relate to.

29. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, the Court notes that the applicant does not state how much, if any of the figure of GBP 22,000 bears any relation to the violation which the Court has just established, and it rejects the claim for costs and expenses in the domestic proceedings. No claim having been made for costs and expenses before the Court, no award should be made in respect thereof.

C. Default interest

30. 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;

3. *Holds*
   (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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 amounts 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 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President