



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

THIRD SECTION

CASE OF CANSEVEN v. TURKEY

(Application no. 70317/01)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

15/05/2007

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 Canseven v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 70317/01) 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 Bektaş Canseven (“the applicant”), on 9 May 2000.

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

3. On 1 September 2005 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the alleged ill-treatment of the applicant during police custody and his right to a fair hearing by an independent and impartial tribunal. Under the provisions of Article 29 § 3 of the Convention, it 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 was born in 1975 and was serving his prison sentence in Gebze prison at the time of his application to the Court.

5. The applicant was arrested and taken into police custody on 26 December 1993 on suspicion of membership in an illegal organisation, namely the DEV-SOL (Revolutionary Left).

6. The applicant claims that he was subjected to ill-treatment while in police custody. In particular, he claims to have been beaten, given electric shocks, deprived of food and water, immersed in cold water and subjected to *falaka* (beating of the soles of the feet).

7. On 7 January 1994 the applicant, together with twelve other suspects, was taken to the Istanbul Forensic Institute for a medical examination. The doctor noted that there were no physical signs of ill-treatment on the applicant's body.

8. On the same day the applicant was brought before the public prosecutor at the Istanbul State Security Court where he denied the statements he gave to the police and alleged that he had been subjected to torture whilst in custody. Later that day the applicant was brought before a judge who ordered his remand in custody.

9. The public prosecutor, in view of the complaints of ill-treatment of the applicant and other suspects arrested in the course of an investigation into DEV-SOL, forwarded the case file to the Istanbul public prosecutor's office. The latter, after having instigated an investigation into the complaints, issued a decision of non-prosecution against two police officers for lack of evidence on 10 May 1994.

10. On an unspecified date the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant accusing him of membership in an illegal organisation and committing arson under Articles 168 § 2 and 369 of the Criminal Code.

11. The proceedings against the applicant were subsequently joined with the criminal proceedings against nineteen other persons who had been charged with membership of the same organisation.

12. On 8 April 1997 the Istanbul State Security Court convicted the applicant of membership in an illegal organisation and of throwing Molotov cocktails at various banks. This judgment was quashed by the Court of Cassation on 21 May 1998.

13. In the course of the proceedings the applicant repeated several times that he had been ill-treated whilst in custody.

14. On 24 December 1998 the Istanbul State Security Court convicted the applicant of membership in an illegal organisation and of throwing Molotov cocktails at various banks in 1991. The applicant was sentenced to a total of twenty-one years, one month and fourteen days' imprisonment and to a fine.

15. On 18 January 1999 the applicant appealed. He maintained in his petition, *inter alia*, that the first-instance court had based its judgment on his statements which had been given to the police under duress.

16. On 30 September 1999 the Court of Cassation upheld the judgment. This decision was deposited with the registry of the first-instance court.

17. On 10 April 2003 the execution of the applicant's sentence was suspended for six months on health grounds. The applicant was released. On

27 December 2005 the Izmir Assize Court suspended the execution of the applicant's sentence in light of the provisions of the new Criminal Code.

II. THE RELEVANT DOMESTIC LAW

18. The relevant domestic law and practice in force at the material time are outlined in the following judgments and decision: *Bati and Others v. Turkey* (nos. 33097/96 and 57834/00, §§ 96-100, 3 June 2004), *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002), *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003) and *Nuray Şen v. Turkey* ((dec.), no. 41478/98, 30 April 2002).

19. Law no. 5190 of 16 June 2004, published in the Official Journal on 30 June 2004, abolished the State Security Courts.

THE LAW

I. PRELIMINARY REMARKS

20. The Government suggested that an error had occurred in the date of introduction of the application. They pointed out that the application had been introduced on 5 September 2000 and not on 9 May 2000.

21. The applicant submitted that he had introduced his application on 20 June 2000.

22. In accordance with the Court's established practice, the date of introduction of an application is the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the complaint. However, when a substantial interval follows before an applicant submits further information as to his proposed application, the Court examines the particular circumstances of the case in order to decide what date shall be regarded as the date of introduction and from which to calculate the running of the six-month period set out in Article 35 §1 of the Convention (see, among others, *Alzery v. Sweeden*, (dec.), no. 10786/04, 26 October 2004, and *Gaillard v. France*, (dec.), no. 47337/99, 11 July 2000).

23. In the instant case the Court notes that, by a letter dated 20 June 2000, the applicant gave a brief description of the events and complained about the alleged ill-treatment in police custody and his right to a fair trial by an independent and impartial tribunal. The full application form was submitted on 5 September 2000, i.e. two months and sixteen days later. The Court considers this delay to be reasonable. It therefore concludes the date of introduction of the application to be 20 June 2000.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained that he had been subjected to torture while held in police custody, in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

25. The Government asked the Court to dismiss this part of the application as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They argued that the applicant failed to object to the decision of non-prosecution of the public prosecutor.

26. The applicant claimed that he was never served with the public prosecutor's decision. He maintained that, in any event, since the domestic remedies were not effective, lodging an objection against it would have been unsuccessful.

27. The Court considers it unnecessary to determine whether the applicant has exhausted domestic remedies within the meaning of Article 35 of the Convention since this part of the application is inadmissible for the following reasons:

28. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, in particular, *Tanrikulu and Others v. Turkey* (dec.), no. 45907/99, 22 October 2002).

29. The Court notes that the medical report established at the end of the applicant's stay in custody does not contain any indication that he was ill-treated by the police. On this point, the Court reiterates that any ill-treatment inflicted in the manner alleged by the applicant would have left marks on his body, in particular, beatings, *falaka* and electric shocks, which would have been observed by the doctor who examined him at the end of his detention in police custody, some twelve days later, before he was formally detained on remand (see, in particular, *Tanrikulu and Others v. Turkey* (dec.), nos. 29918/96, 29919/96 and 30169/96, 24 February 2005). The Court is aware of the lack of details in this report. Nevertheless, it notes that there is no material in the case file which could call into question the findings in the report or add probative weight to the applicant's allegations. In particular, it notes that the applicant did not object to its contents in the course of the domestic proceedings and that there is no indication in the case file that the applicant requested and was refused permission to see another doctor at the end of the custody period.

30. In view of the above, the Court is of the opinion that the applicant has not laid the basis of an arguable claim that he was subjected to ill-treatment whilst in police custody. It follows that this part of the application is unsubstantiated and must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

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

31. The applicant complained that he had been denied a fair hearing by an independent and impartial tribunal on account of the presence of a military judge sitting on the bench of the State Security Court which tried and convicted him. He further submitted that he was convicted on the basis of his statements extracted under torture. Finally, the applicant maintained that the written opinion of the principal public prosecutor at the Court of Cassation was never served on him, thus depriving him of the opportunity to put forward his counter-arguments. The applicant relied on Article 6 of the Convention, which in so far as relevant reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

32. The Government argued under Article 35 § 1 of the Convention that the applicant's complaints under this head should be rejected for failure to comply with the six-month rule. They maintained that he should have lodged his application with the Court within six months of the date on which the decision of the Court of Cassation was deposited with the registry of the first-instance court. Instead, they noted that the applicant had lodged his application with the Court on 5 September 2000.

33. The applicant refuted the Government's allegations.

34. The Court observes that in the instant case the judgment of the State Security Court was upheld by the Court of Cassation on 30 September 1999 and deposited with the registry of the Istanbul State Security Court on 27 December 1999. The Court further observes that the application was lodged with the Court on 20 June 2000 (see paragraph 23 above). The application was therefore introduced in time.

35. In view of the above, the Court rejects the Government's preliminary objection.

36. However, as regards the applicant's complaint concerning his conviction on the basis of his submissions extracted allegedly under torture, the Court recalls that it has examined the applicant's complaint under Article 3 of the Convention and found it unsubstantiated. It follows that this part of the application is also inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

37. As to the applicant's remaining complaints under this head, 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 they raise 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 this part 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

38. The Court has examined a large number of cases raising similar issues to those in the present case and found a violation of Article 6 § 1 of the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

39. The Court finds no reason to reach a different conclusion in the instant case. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

2. Fairness of the proceedings

40. Having regard to its finding of a violation of the applicant's right to a fair hearing by an independent and impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 of the Convention relating to the fairness of the proceedings (see, among other authorities, *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1573, § 74, and *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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.”

42. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part.”

43. In the instant case, on 21 February 2006 the Court invited the applicant to submit his claims for just satisfaction by 10 May 2006. However, he did not submit any such claims within the specified time-limit.

44. In view of the above, the Court makes no award under Article 41 of the Convention.

45. Nevertheless, the Court considers that where an individual, as in the instant case, has been convicted by a court which did not meet the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represents, in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey*, no. 46221/99 [GC], § 210, *in fine*, ECHR 2005 - ...).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's right to a fair hearing by an independent and impartial tribunal and the non-communication of the written opinion of the principal public prosecutor at the Court of Cassation admissible and the remainder of the application inadmissible;
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 Istanbul State Security Court;
3. *Holds* that it is not necessary to consider the applicant's remaining complaints under Article 6 § 1 of the Convention relating to fairness of the proceedings.

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President