



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

THIRD SECTION

CASE OF CANPOLAT v. TURKEY

(Application no. 63354/00)

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 Canpolat v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr R. TÜRMEŖEN,
Mr C. BİRSAN,
Mrs E. FURA-SANDSTRÖM,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *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. 63354/00) 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 Aziz Canpolat (“the applicant”), on 15 September 2000.

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

3. On 31 May 2005 the Court decided to give notice of the application to the Government. 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 1950 and was detained in the Hilvan prison, in Şanlıurfa at the time of the application.

5. On 11 October 1997 following receipt of information that the applicant was in possession of narcotic substances, police officers from the Siverek Security Directorate arrested the applicant, his son and one of the applicant's employees, İ.Ş., in the applicant's house. During the search of the applicant's house and farm, a certain amount of cannabis was found.

6. On 12 October 1997 the suspects were brought before the Siverek Magistrates' Court who ordered their detention on remand.

7. On 14 October 1997, the Siverek Magistrates' Court sent the case file to the public prosecutor's office at the Diyarbakır State Security Court holding that the case concerned the prosecution of organised drug trafficking.

8. On 24 October 1997 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment against the applicant and the two other suspects. The public prosecutor charged them under Article 403 § 5 of the Criminal Code of being in possession of hashish with the aim of trafficking. İ.Ş. was also charged with the consummation of hashish.

9. On 26 May 1998 the Diyarbakır State Security Court convicted the applicant and İ.Ş. The applicant was sentenced to three years and four months' imprisonment.

10. On 5 October 1998 the Court of Cassation quashed the judgment of the first-instance court.

11. On 24 November 1998 the Diyarbakır State Security Court once again convicted the applicant and his co-accused and sentenced them to six years and three months' imprisonment.

12. On 15 April 1999 the Court of Cassation again quashed the first-instance court's judgment, holding that the applicant's and his co-accused's defence rights had not been respected as they had not been informed about the date of the hearing.

13. On 15 June 1999 the Diyarbakır State Security Court convicted the applicant and his co-accused and sentenced them to six years and three months' imprisonment. It also ordered their release from detention having regard to the time that they had spent in prison.

14. On 20 April 2000 the Court of Cassation upheld the judgment of the first-instance court.

II. RELEVANT DOMESTIC LAW

15. The description of the relevant domestic law at the material time can be found in the judgments of *Ağaoğlu v. Turkey* (no. 27310/95, §§ 30-32, 6 December 2005) and *Canevi and Others v. Turkey* (no. 40395/98, §§ 22 and 23, 10 November 2004).

THE LAW

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

16. The applicant complained under Article 6 § 1 of the Convention that he had been denied a fair hearing on account of a military judge sitting on the bench of the Diyarbakır State Security Court which had tried and convicted him. He further complained that the length of the proceedings brought against him was incompatible with the “reasonable time” requirement provided in Article 6 § 1 of the Convention. The relevant parts of Article 6 § 1 read as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

A. Independence and impartiality of the Diyarbakır State Security Court

1. Admissibility

17. The Government argued that the applicant's complaint in respect of the independence and impartiality of the Diyarbakır State Security Court must be rejected for non-exhaustion of domestic remedies. They maintained that the applicant did not raise this complaint before the domestic courts. They further argued that the applicants should have lodged their application with the Court within six months of the date on which the State Security Court rendered its judgment.

18. The Court recalls that it has already examined and rejected the Government's similar preliminary objections (see, for example, *Vural v. Turkey*, no. 56007/00, § 22, 21 December 2004; *Çolak v. Turkey (no. 1)*, no. 52898/99, § 25, 15 July 2004; *Özel v. Turkey*, no. 42739/98, § 25, 7 November 2002; and *Özdemir v. Turkey*, no. 59659/00, § 26, 6 February 2003). The Court finds no particular circumstances, in the instant case, which would require it to depart from its findings in the aforementioned cases. The Court accordingly rejects the Government's preliminary objections.

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.

2. Merits

20. The Government submitted that there was no basis to find that the applicant could have any legitimate doubts about the independence of the Diyarbakır State Security Court. The Government further referred to the constitutional amendment of 18 June 1999 whereby military judges could no longer sit on such courts. Finally, they stated that the State Security Courts had been abolished as of 2004.

21. The Court notes that it has examined similar cases in the past and has found a violation of Article 6 § 1 of the Convention (see *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, § 73; *Özel*, cited above, §§ 33-34; *Ağaoğlu*, cited above, § 41; and *Canevi and Others*, cited above, § 35).

22. The Court sees no reason to reach a different conclusion in this case. It is understandable that the applicant, a civilian who was prosecuted in a State Security Court, 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, even though the applicant was appearing before the State Security Court for organised drug trafficking, he could have legitimate reasons to fear that the court might allow itself to be unduly influenced by considerations having nothing to do with the nature of his 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.

23. 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.

B. Length of the proceedings

24. The Government submitted that the length of the proceedings in the instant case could not be considered unreasonable in view of the complexity of the case and the nature of the offence with which the applicant was charged.

25. The Court notes that the proceedings began on 11 October 1997 when the applicant was taken into police custody and ended on 20 April 2000 when the Court of Cassation upheld the judgment of the Diyarbakır State Security Court. The proceedings thus lasted approximately two years and six months.

26. 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 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 (see, among many others, *Kiper v. Turkey*, no. 44785/98, § 36, 23 May 2006).

27. After examining the overall duration of the proceedings, taking into account the complexity of the case and the fact that the case was dealt with at two levels of jurisdiction, each of which examined the case three times, as well as the number of the accused, the Court does not consider that the length of the proceedings in the present case was excessive. Moreover, the applicant has not shown any substantial periods of inactivity attributable to the judicial authorities.

28. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed a total of 20,000 euros (EUR) for pecuniary and non-pecuniary damage.

31. The Government contested the applicant's claim.

32. 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 *Tezcan Uzunhasanoğlu v. Turkey*, no. 35070/97, § 27, 20 April 2004). 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.

33. 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 *İncal*, cited above, § 82).

34. 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* [GC], no. 46221/99, § 210, ECHR 2005-...; and *Ağaoğlu*, cited above, § 60).

B. Costs and expenses

35. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court.

36. The Government submitted that the claims were excessive and unsubstantiated.

37. 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 (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

38. 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 complaint concerning the independence and impartiality of the State Security Court which tried and convicted the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the applicant was not tried by an independent and impartial tribunal;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant;
4. *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 costs and expenses plus any tax that may be chargeable to be

converted into new Turkish liras at the rate applicable at the date of the settlement;

(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 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President