



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

FOURTH SECTION

CASE OF ÇELİKER v. TURKEY

(Application no. 75573/01)

JUDGMENT

STRASBOURG

2 October 2007

FINAL

02/01/2008

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 Çeliker v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMEŒ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 11 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 75573/01) 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, Ms Laleş Çeliker (“the applicant”), on 25 June 2001.

2. The applicant was represented by Mr S. Kaya, 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. The applicant alleged, in particular, that she had been denied a fair hearing by an independent and impartial tribunal.

4. On 6 October 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**

5. The applicant was born in 1972 and lives in Batman.

6. On 10 April 1997 the applicant was arrested and taken into police custody on suspicion of her involvement in the activities of an illegal organisation, namely the PKK (*the Kurdistan Workers' Party*). The police

officers drew up an arrest protocol in which they noted that they had found a false identity card on the applicant and seized it for the investigation.

7. Following the Batman public prosecutor's order, the applicant's detention period was extended.

8. On 15 April 1997 police officers took statements from the applicant. She confessed to being a member of the PKK and stated that she had been involved in armed clashes with the security forces.

9. On 16 April 1997 the applicant's statements were taken by the Batman public prosecutor to whom she again confessed to being a member of the PKK and stated that she had been involved in political education and propaganda activities for the organisation.

10. On the same day she was brought before a single judge at the Batman Magistrates' Court who took her statement and ordered her detention on remand.

11. On 2 May 1997 the principal public prosecutor at the Diyarbakır State Security Court filed a bill of indictment, charging the applicant under Articles 125 and 40 of the Criminal Code with carrying out activities for the purpose of bringing about the secession of part of the national territory and aiding and abetting an illegal organisation.

12. Between 5 May 1997 and 18 April 2000, the Diyarbakır State Security Court held nineteen hearings and heard a number of witnesses. During these hearings, the applicant renounced her statements taken during her detention in police custody. Witnesses heard by the court stated that the applicant was an active member of the PKK and that she had been involved in armed clashes with the security forces.

13. On 18 April 2000 the Diyarbakır State Security Court convicted the applicant as charged and sentenced her to death under Article 125 of the Criminal Code. Taking into account her confessions before the court, the death penalty was commuted to a life sentence of imprisonment.

14. On 19 December 2000 the Court of Cassation upheld the decision of the first instance court. It reasoned that the decision was justified as the evidence in the case file was capable of proving that the applicant was an active member of the PKK, which was an armed illegal organisation and carried out activities for the purpose of bringing about the secession of part of the national territory.

15. On 24 January 2001 the Court of Cassation's decision was pronounced in the absence of the applicant's representative.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law and practice in force at the material time are outlined in the following judgments: *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002) and *Öcalan v. Turkey* ([GC], (no. 46221/99, §§ 52-54, ECHR 2005-IV).

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained that she 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 Diyarbakır State Security Court which tried and convicted her. She maintained that her right to the presumption of innocence had also been breached since there was no concrete evidence to secure a conviction other than her statements obtained under duress by police officers. The applicant further claimed that she had been denied the assistance of a lawyer during the initial stages of the criminal proceedings and that she had not been informed promptly of the nature and cause of the accusation against her. She finally contended that the State Security Court had heard the witnesses against her, but had refused to hear the witnesses who would testify for her. She relied on Article 6 §§ 1, 2 and 3 (a), (c) and (d) of the Convention, which read as follows:

“1. In the determination of ... 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...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;...”

A. Admissibility

19. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *Independence and impartiality of the State Security Court*

20. 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 on which to find that the applicant could have had any legitimate doubts about the independence of the Diyarbakır State Security Court. The Government further referred to the abolition of the State Security Courts in 2004.

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

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

2. *Fairness of the proceedings*

23. 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, *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained that during the first two years of her detention she had lived in fear of the death penalty. She relied on Article 3 of the Convention

25. The Government contested that argument.

26. The Court reiterates that, to fall within the scope of Article 3 of the Convention, the alleged treatment must attain a minimum level of severity (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

27. In the present case there is no indication that the treatment complained of reached the threshold of severity required to bring the matter within the scope of Article 3 (see, *Fikri Demir v. Turkey* (dec.), 55373/00, 30 August 2005).

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

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

29. The applicant further complained that she had not been brought promptly before a judge or other officer authorised by law. She maintained that she had not been informed about the decisions of the national courts concerning the extension of her detention in police custody. She also submitted that she had been deprived of her right to have the lawfulness of her detention determined by a judge.

30. The Government contended that these complaints were inadmissible for non-compliance with the six-month rule.

31. The Court reiterates that, where no domestic remedy is available, the six-month period runs from the date of the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, the period of six months runs from the end of the situation concerned (see, among other authorities, *Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004).

32. The Court observes that the applicant was taken into police custody on 10 April 1997 and placed in detention on remand on 16 April 1997. The applicant, however, lodged her application with the Court on 25 June 2001, i.e. more than six months later.

33. It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 9 AND 10 OF THE CONVENTION

34. The applicant further complained that her conviction had violated her right to freedom of thought and expression guaranteed by Articles 9 and 10 of the Convention.

35. The Government disputed this allegation.

36. The Court observes that the applicant was not convicted for having expressed her opinion, but for carrying out activities for the purpose of bringing about the secession of part of the national territory, in contravention of Article 125 of the now defunct Criminal Code. There is therefore nothing in the case file to support her claim that there has been an interference with her rights under Articles 9 and 10 of the Convention (see

in this respect, *Kılıç v. Turkey* (dec.), no. 40498/98, 8 July 2003, and *Şirin v. Turkey* (dec.), no. 47328/99, 27 April 2004).

37. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

38. Lastly, the applicant complained that she had been discriminated against on the basis of her ethnic origin.

39. The Government submitted that this complaint was unfounded.

40. The Court has examined the applicant's allegation in the light of the evidence submitted to it, but finds it wholly unsubstantiated.

41. It follows that this complaint must also be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 61,500 euros (EUR) in respect of pecuniary damage and EUR 25,000 for non-pecuniary damage.

44. The Government claimed that these amounts were excessive.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It further considers that the finding of a violation of Article 6 § 1 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Incal*, cited above, p. 1575, § 82, and *Çıraklar*, cited above, § 45).

46. 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*, § 210 *in fine*, cited above).

B. Costs and expenses

47. The applicant also claimed EUR 5,000 for costs and expenses incurred before the domestic courts and the Court. The applicant did not submit any receipt or documents in support of her claim.

48. The Government contended that the applicant's claim was unsubstantiated.

49. According to the Court's case-law, an applicant is entitled to the reimbursement of 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, regard being had to the above criteria and the applicant's failure to substantiate his claim, the Court makes no award under this head. It further notes that there is no causal link between the violation found and the costs incurred before the domestic courts.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged unfairness of the proceedings before the Diyarbakır State Security Court 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 Diyarbakır State Security Court;
3. *Holds* that it is not necessary to consider the applicant's remaining complaints under Article 6 of the Convention relating to the fairness and conduct of the proceedings;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President