



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

THIRD SECTION

CASE OF MUSTAFA KARATEPE v. TURKEY

(Application no. 65942/01)

JUDGMENT

This version was rectified on 18 March 2008
under Rule 81 of the Rules of Court

STRASBOURG

29 November 2007

FINAL

29/02/2008

In the case of Mustafa Karatepe v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŒ,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 65942/01) 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 Mustafa Karatepe (“the applicant”), on 8 November 2000.

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

4. On 16 September 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 1960 and lives in Gaziantep.

6. On 14 January 1995 the applicant was taken into police custody by police officers from the Anti-Terror branch of the Izmir Security Directorate on suspicion of membership of an illegal organisation, namely the PKK (the Kurdistan Workers' Party).

7. On 23 January 1995 he was brought before a single judge of the Izmir State Security Court who ordered his detention on remand.

8. On 13 February 1995 the principal public prosecutor at the Izmir State Security Court filed a bill of indictment with the latter charging the applicant under Article 125 of the Criminal Code with carrying out activities for the purpose of bringing about the secession of part of the national territory.

9. On 2 December 1998 the Izmir State Security Court convicted the applicant as charged and sentenced him to death under Article 125 of the Criminal Code. Taking into account the applicant's behaviour during the trial, the death penalty was commuted to a life sentence.

10. On 17 April 2000 the Court of Cassation upheld the judgment of the Izmir State Security Court.

11. On 26 April 2000 the Court of Cassation's decision was pronounced in the absence of the applicant's representative.

12. On 1 June 2000 the Court of Cassation's decision was deposited with the registry of the First Instance Court.

13. On 21 December 2000 Law no. 4616, which governed the conditional release, suspension of proceedings or execution of sentences in respect of offences committed before 23 April 1999, came into force. The law stipulated that parole would not be applicable to persons who had committed offences under Article 125 of the Criminal Code. Thus, the applicant could not benefit from Law no. 4616.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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), *Öcalan v. Turkey* ([GC], no. 46221/99, §§ 52-54, ECHR 2005-IV and *Göç v. Turkey* ([GC], no. 36590/97, § 34, ECHR 2002-V).

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

16. 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 Izmir State Security Court which

tried and convicted him. He maintained that the written opinion of the principal public prosecutor at the Court of Cassation had never been served on him, thus depriving him of the opportunity to put forward his counter-arguments. The applicant also claimed that he had been denied the assistance of a lawyer during the initial stages of the criminal proceedings. He relied on Article 6 § 3 (c) of the Convention, which in so far as relevant, reads as follows:

“1. 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.

...

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

(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;...”

A. Admissibility

17. 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

18. 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 Izmir State Security Court. The Government further referred to the abolition of the State Security Courts in 2004.

19. The Court has examined a large number of cases raising similar issues to those in the present case 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).

20. 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*

21. 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 14 OF THE CONVENTION

22. The applicant complained under Article 14 of the Convention, in conjunction with Article 5 of the Convention, that he had been discriminated against on the basis of his political opinions. He further complained of non-applicability of Law no. 4616 to persons who had committed offences under Article 125 of the now defunct Criminal Code.

23. The Government contested the applicant's allegations and submitted that they were unsubstantiated.¹

24. The Court considers that the applicant has not substantiated his complaints.

25. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government claimed that this amount was excessive.

29. The Court 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 v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1575, § 82, and *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports* 1998-VII, § 45).

¹ Paragraph rectified on 18 March 2008. The former version read “The Government did not address this issue.”

30. 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*, cited above, § 210 *in fine*).

B. Costs and expenses

31. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court.

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

33. 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, regard being had to the above criteria and the applicant's failure to substantiate his claim, the Court makes no award under this heading.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged unfairness of the proceedings before the Izmir 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 Izmir 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 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 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President