



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

THIRD SECTION

CASE OF EVCİMEN v. TURKEY

(Application no. 21865/02)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

02/06/2008

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 Evcimen 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. TÜRMESEN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE, *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. 21865/02) 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 Kemal Evcimen (“the applicant”), on 28 January 2000.

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

3. On 31 August 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged unfairness of the proceedings against the applicant on account of the lack of independence and impartiality of the Erzurum State Security Court 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 1971 and lives in Edirne.

5. At the material time, the applicant was the owner and editor of a local newspaper published in Trabzon, the *Özgür Karadeniz* (“The Free Black Sea”).

6. On 15 January 1995 the applicant was taken into police custody on suspicion of membership of an illegal organisation.

7. On 20 January 1995 he was brought before a judge who ordered his detention on remand.

8. On 10 March 1995 the public prosecutor at the Erzincan State Security Court filed a bill of indictment against the applicant, along with twenty-one other persons. The applicant was accused of membership of an illegal organisation, the DHKP-C (the Revolutionary People's Liberation Party- Front). According to the indictment, following his arrest, the applicant's house was searched by police officers who found illegal periodicals, newspapers, books and a bullet. The public prosecutor also alleged that the applicant had published a newspaper containing propaganda in support of the DHKP-C, participated in illegal demonstrations, put up posters, distributed leaflets supporting the DHKP-C and carried out activities in the Karadeniz University for the recruitment of new members for the illegal organisation.

9. On 13 March 1995 the applicant was transferred to the Erzurum special type prison.

10. On different dates in 1995, five other criminal proceedings were brought against the applicant before various courts, with charges of disseminating separatist propaganda and incitement to hatred and hostility through the medium of his newspaper.

11. The cases against the applicant and his co-accused were subsequently joined before the Erzincan State Security Court.

12. Following promulgation of the Law no. 4210, which abolished the Erzincan State Security Court and established the Erzurum State Security Court, in 1997 the Erzurum State Security Court acquired jurisdiction over the case and the case-file was sent to it.

13. On 27 November 1998 the Erzurum State Security Court convicted the applicant under Article 168 § 2 of the Criminal Code of membership of an illegal organisation, namely the DHKP-C. The court found that two articles published in *Özgür Karadeniz* on 15 November 1994 and 1 March 1995 contained separatist propaganda and incitement to hatred. It further found it established that the applicant had participated in illegal demonstrations, put up posters, distributed leaflets supporting the DHKP-C and carried out activities in the Karadeniz University for the recruitment of new members for the illegal organisation. The court sentenced the applicant to twelve years and six months' imprisonment.

14. On 18 November 1999 the Court of Cassation upheld the judgment of 27 November 1998 in respect of the applicant.

15. On 29 May 2004 the applicant was conditionally released from prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law and practice in force at the material time are outlined in *Özel v. Turkey* (no. 42739/98, §§ 20-21, 7 November 2002) and *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003).

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

THE LAW

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

18. The applicant submitted that he had been denied a fair hearing by an independent and impartial tribunal on account of the presence of a military judge on the bench of the Erzurum State Security Court which tried and convicted him. The applicant relied on Article 6 § 1 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

19. The Government submitted that the application should be declared inadmissible for failure to observe the six-month rule since the final domestic decision had been pronounced by the Court of Cassation on 18 November 1999, in the presence of the applicant's representative, while the application had been lodged on 10 May 2001; i.e. more than six months after the final domestic decision. They further noted that it had not been proven that the application had been lodged on 28 January 2000 because no document bearing the latter date had been communicated to them.

20. The applicant disputed the Government's submissions and claimed that he had submitted his application to the Court in a letter dated 28 January 2000 within the prescribed time-limit.

21. Having regard to the documents in its possession, the Court notes that the applicant filed his application in a letter dated 28 January 2000 where he set out the facts and complaints giving rise to the present application. Given that the applicant had learned about the final domestic decision on 18 November 1999, the Court observes that the application was lodged within the six months' time-limit. It therefore dismisses the Government's objection on the alleged failure to observe the six-month rule.

22. Moreover, the Court considers this complaint not to be 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

23. 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 Erzurum State Security Court. The Government further referred to the abolition of the State Security Courts in 2004.

24. 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).

25. 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.

II. 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 379,320 New Turkish liras (YTL) (approximately 202,600 euros (EUR)) in respect of pecuniary damage and YTL 150,000 (approximately EUR 80,115) for non-pecuniary damage.

28. The Government claimed that the amounts claimed were excessive.

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

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 v. Turkey*, no. 46221/99 [GC], § 210, *in fine*, ECHR 2005-IV).

B. Costs and expenses

31. The applicant also claimed EUR 19,500 for the costs and expenses incurred before the domestic courts and the Court. The applicant did not submit any receipt or documents in support of his claim.

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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *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