



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

THIRD SECTION

CASE OF ÇEM v. TURKEY

(Application no. 4819/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Çem 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. TÜRMEŖEN,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 4819/02) 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 Niyazi Çem (“the applicant”), on 6 June 2001.

2. The applicant was represented by Mr A.E. Yılmaz, 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 13 September 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1965 and lives in Istanbul.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On an unspecified date in 1993, a detained member of the PKK (*Workers' Party of Kurdistan*) confessed to the authorities that a number of lawyers, among whom was the applicant, had been operating as undercover members of the organisation. Upon his confession, the public prosecutor

attached to the State Security Court of Diyarbakır initiated a criminal investigation.

7. On 23 November 1993 the applicant was taken into custody, where he denied any association with the PKK.

8. On 20 December 1993 he was brought before a judge, who ordered his release pending trial.

9. On 22 December 1993 the prosecutor filed an indictment, charging the applicant, together with twenty-two other lawyers, with being a member of the PKK. The specific charges against him included the transmission of messages, documents and money among the incarcerated PKK members, the sheltering and healing of a wounded PKK militant and the delivery of 2 kilograms of heroin belonging to the PKK from Diyarbakır to Istanbul. The prosecutor subsequently charged nine other persons with similar crimes. Their cases were also joined to that of the applicant.

10. With a hearing on 17 February 1994, the State Security Court of Diyarbakır began the trial. At the same hearing, it ordered the release of all the accused who had not been already released by then.

11. On 19 September 1996 the prosecutor filed his observations on the merits.

12. On 18 June 1999 the Constitution was amended and the military judge sitting on the bench of the Diyarbakır State Security Court was replaced by a civilian judge.

13. On 21 December 2000 Law no. 4616 governing conditional release, discontinuation of proceedings and suspension of the execution of sentences for offences committed before 23 April 1999 came into force.

14. On 22 February 2001 the court held that all of the accused were eligible, under the new legislation, for the discontinuation of the proceedings against them. Accordingly, it discontinued the proceedings against the applicant, to be resumed only if he were to be convicted of an offence of the same or a more serious kind within a five-year period.

15. On 22 February 2006 the five-year period expired and, no information from the applicant to the contrary having been submitted, the suspended criminal case against the applicant would appear to have been definitively dropped.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. According to Article 1/4 of Law no. 4616 on conditional release, discontinuation of proceedings and suspension of the execution of sentences given for offences committed before 23 April 1999, proceedings are to be discontinued and subsequently dropped if the accused is not convicted of an offence of the same or a more serious kind within a five year period.

17. In the absence of such a subsequent conviction, the earlier prosecution and trial would be considered annulled with retroactive effect.

Thus, in practice, this particular legislation operates as a conditional amnesty law.

THE LAW

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

18. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

19. The Government contested that argument.

20. The period to be taken into consideration began on 23 November 1993 and ended on 22 February 2001. It thus lasted seven years and three months before one level of jurisdiction.

A. Admissibility

21. 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.

B. Merits

22. 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 following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant further complained under Article 6 of the Convention that he had been denied a fair hearing by an independent and impartial tribunal.

26. The Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 50,000 US dollars (USD) in respect of pecuniary damage and USD 100,000 for non-pecuniary damage.

29. The Government submitted that the amounts claimed were excessive and would lead to unjust enrichment.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,000 under that head.

B. Costs and expenses

31. The applicant also claimed USD 50,000 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.

C. Default interest

34. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 5,000 (five thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable, to be converted into New Turkish liras at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President