



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

SECOND SECTION

CASE OF CEMALETTİN CANLI v. TURKEY

(Application no. 22427/04)

JUDGMENT

STRASBOURG

18 November 2008

FINAL

18/02/2009

This judgment may be subject to editorial revision.

In the case of Cemalettin Canlı v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 22427/04) 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 Cemalettin Canlı (“the applicant”), on 21 May 2004.

2. The applicant was represented by Mr Gökçen Zorcu, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that records kept and disseminated unlawfully by the police about two sets of criminal proceedings which had been brought against him in the past had violated his right to respect for his private life under Article 8 of the Convention.

4. On 13 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Ankara.

6. In 1990 he was prosecuted for his alleged membership of an illegal organisation, namely *Dev-Genç* (“Revolutionary Youth”) but was acquitted

on 25 September 1990. Another set of criminal proceedings brought against him under Article 141 of the Criminal Code for membership of another illegal organisation, namely *Dev-Yol* (“Revolutionary Path”), were discontinued in 1990 following the repeal of that provision.

7. On 23 August 2003 the applicant was on his way to a demonstration in Ankara, organised by the Confederation of Public Workers’ Unions. He was arrested by the police, who allegedly beat him up. He was taken to a police station. A police report drawn up the same day stated that the applicant had a previous record for terrorist related activity in 1990.

8. On 24 August 2003 the Ankara prosecutor filed an indictment, accusing the applicant and 25 other persons of contravening the Demonstrations Act, and charged them with the offences of damaging State property and resisting arrest by using force.

9. While the criminal proceedings were pending before the Ankara Criminal Court of First Instance (hereinafter “the Ankara court”), a police report entitled “information form on additional offences” (*Ek Suç Bildirme Formu*) was submitted to the Ankara court. In the report, under the heading “Records of Guilt” (*Suçluluk Kayıtları*), were two entries concerning the applicant which read as follows:

“1- Member of Dev-Yol, 14/03/1990, Political Offences Branch [of the Police], 3371;

2- Member of Revolutionary Youth, 2/11/1990, Political Offences Branch [of the Police], 14034”.

10. The report, which also included the applicant’s fingerprints, address and birth registry details, had been drawn up in accordance with Article 12 of the Police Regulations on Fingerprinting, which empowered the police to keep such details on persons accused or convicted of certain offences.

11. On 27 January 2004 the applicant submitted a complaint to the prosecutor and brought to the prosecutor’s attention his acquittal in 1990 of the offence of membership of the illegal organisation *Dev-Genç*, and the discontinuation in 1990 of the criminal proceedings concerning his alleged membership of *Dev-Yol*. The applicant drew attention to the fact that the Police Regulations on Fingerprinting also required the police to include in their records any acquittals or discontinuations of criminal proceedings. He asked the prosecutor to prosecute the police officers who had neglected their duties by failing to comply with the Regulations.

12. In his complaint the applicant further argued that the police report as it stood infringed his right to the presumption of innocence protected by Article 6 of the European Convention on Human Rights. He was a sociologist and the author of a number of publications. He drew the attention of the prosecutor to the national press which had reported that “one of the persons arrested [in the demonstration] was a member of *Dev-Genç*”. He submitted that he was now regarded as a member of illegal organisations

and this had adverse effects on his professional life and was detrimental to his psychological integrity.

13. On 11 February 2004 the prosecutor dismissed the applicant's request for the police officers to be prosecuted. The prosecutor considered that the officers had not attempted to mislead anyone; all they had done was to forward to a criminal court official records of past incidents concerning the applicant.

14. The applicant lodged an objection against the prosecutor's decision and argued that the prosecutor had not examined or even mentioned in his decision the Regulations in question before deciding not to prosecute the police officers. He further complained that his rights under the European Convention on Human Rights, in particular his rights to a fair trial and to respect for his private and family life, had been breached.

15. The applicant's objection was rejected by the Sincan Assize Court on 17 March 2004.

16. On 8 December 2005 the applicant was acquitted in the criminal proceedings which had been brought against him on 24 August 2003 (see paragraph 8 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE, TOGETHER WITH INTERNATIONAL MATERIALS

17. According to Article 230 of the Criminal Code in force at the time of the events, it was an offence for a public servant to delay in carrying out or to omit to carry out his or her duties.

Moreover, according to Article 26 of the Police Regulations on Fingerprinting, all decisions relating to the accusations mentioned in police reports – such as decisions rendered by prosecutors not to prosecute, court decisions on acquittals, and decisions to discontinue criminal proceedings – should also be included in the reports and a certified copy of such decisions should be attached to them. Competent authorities requiring information on the person in question should be provided with the reports as well as with the decisions relating to the accusations mentioned in them.

The Council of Europe has examined questions of data protection and concluded the Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data. It came into force on 1 October 1985 and its purpose is “to secure ... for every individual ... respect for his rights and fundamental freedoms, and in particular his right to privacy with regard to automatic processing of personal data relating to him” (Article 1), such personal data being defined in Article 2 as “any information relating to an identified or identifiable individual”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The applicant complained that the records kept arbitrarily and unlawfully by the police and the publication in the national press of the details of those records had had adverse effects on his private life within the meaning of Article 8 of the Convention, which reads insofar as relevant as follows:

“1. Everyone has the right to respect for his private ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... public safety or ... the prevention of disorder ...”

19. The Government contested that argument.

A. Admissibility

20. The Government argued that the complaint was inadmissible on account of the applicant's failure to exhaust domestic remedies. According to the Government, the applicant could have asked the administrative courts to rectify the records. However, the applicant had failed to bring this complaint, even in substance, to the attention of the domestic authorities.

21. The Government further argued that the applicant had failed to bring an action against the newspapers which published the details of the police report.

22. In the opinion of the Government, the complaint filed with the prosecutor was irrelevant in so far as it aimed to seek redress for the keeping of the records, because the keeping of the records had a legal basis; the complaint filed with the prosecutor could have been an effective remedy only if an offence had been committed.

23. The applicant submitted that he had been unaware of the records until they were submitted to the Ankara court in 2003 and, as such, it was illogical to expect him to have applied to the relevant authorities to amend those records prior to 2003. After they had been submitted to the court in Ankara in 2003 it was too late, as he had already been portrayed in the media as a member of terrorist organisations.

24. According to the Court's established case-law, where an applicant has a choice of domestic remedies, it is sufficient for the purposes of the rule of exhaustion of domestic remedies that that applicant makes use of the remedy which is not unreasonable and which is capable of providing redress for the substance of his or her Convention complaints (see, *inter alia*, *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000). Indeed,

where an applicant has a choice of remedies and their comparative effectiveness is not obvious, the Court interprets the requirement of exhaustion of domestic remedies in the applicant's favour (see *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 110, ECHR 2008-... (extracts), and the cases cited therein). Once the applicant has used such a remedy, he or she cannot also be required to have tried others that were also available but probably no more likely to be successful (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 56, 12 April 2007 and the cases cited therein).

25. In the instant case, the Court observes that, according to Article 230 of the Criminal Code in force at the time of the events, it was an offence for a public servant to delay in carrying out or to omit to carry out his or her duties. Moreover, Article 26 of the Police Regulations on Fingerprinting sets out in an unambiguous fashion the circumstances in which police records are to be amended to include information on acquittals or discontinuations relating to the criminal charges mentioned in those records (see paragraph 17 above). Indeed, it is not disputed by the Government that it was the duty of police officers to amend their records.

26. The Court considers that it was reasonable for the applicant to conclude that the police officers had committed the offence defined in Article 230 of the Criminal Code by failing to perform their duties, and to make an official complaint to the prosecutor. It is also to be noted that, contrary to what was submitted by the Government, in the course of his submissions to the prosecutor and the Assize Court the applicant expressly referred to his rights under the Convention (see paragraphs 12 and 14 above).

27. Furthermore, as he pointed out, the earliest opportunity for the applicant – whose ignorance of the records until 2003 was not disputed by the Government – to apply to an administrative court and request the amendment of the records was after the records had already been submitted to the court in Ankara and had been reported in the media.

28. As for the Government's argument that the applicant failed to sue the newspapers, the Court observes that the newspapers did not distort the information contained in the report but published its details as it stood.

29. In the light of the foregoing, the Court considers that the applicant has complied with the requirement to exhaust domestic remedies. The Government's objection in that regard must therefore be rejected.

30. 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

31. The applicant maintained that the preparation of and submission to the Ankara court in 2003 of the police report had been arbitrary and unlawful. As a result, the report had become public and false information about him had been widely reported in the media. This, he maintained, had violated his right to respect for his private life.

32. The Government submitted that, to the extent that the drafting of the report was to be regarded as an interference with the applicant's rights under Article 8 of the Convention, it had been in accordance with the domestic legislation in force at the material time. Furthermore, it had been necessary in a democratic society in the interests of public safety and the prevention of disorder.

33. The first issue for the Court to deal with is whether the information in the police report constituted data pertaining to the applicant's "private life" or whether it was "public information" and therefore not within the scope of Article 8 of the Convention. The Court has had regard to the scope of the notion of "private life" as interpreted in its case-law (see, in particular, *Amann v. Switzerland* [GC], no. 27798/95, § 65 ECHR 2000-II, and *Rotaru v. Romania* [GC], no. 28341/95, § 43, ECHR 2000-V) from which it appears that "public information" can fall within the scope of "private life" where it is systematically collected and stored in files held by the authorities. That is all the truer where such information concerns a person's distant past, as in the present case (*Rotaru*, § 43).

34. The Court considers this interpretation of the notion of "private life" to be in line with the Council of Europe's Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which came into force on 1 October 1985 and whose purpose is "to secure ... for every individual ... respect for his rights and fundamental freedoms, and in particular his right to privacy with regard to automatic processing of personal data relating to him" (Article 1), such personal data being defined in Article 2 as "any information relating to an identified or identifiable individual" (paragraph 17 above).

35. In any event, the Court observes that in the impugned report the applicant was not referred to as someone who had been "accused of", "charged with" or "prosecuted for" the offence of membership of the illegal organisations, but as being a "member" (paragraph 9 above). Having regard to the fact that the applicant has never been convicted by a court of law in relation to the allegations of membership of illegal organisations, the Court considers that referring to the applicant as a "member" of such organisations in the police report was potentially damaging to his reputation. Indeed, the inaccurate nature of the information contained in the police report was not disputed by either the prosecutor or the Government.

36. In this connection, the Court reiterates that a person's right to the protection of his or her reputation is encompassed by Article 8 as being part of the right to respect for private life (see *Pfeifer v. Austria*, no. 12556/03, § 35, ECHR 2007-..., and the cases cited therein).

37. In light of the foregoing, the Court considers that Article 8 of the Convention is applicable and that the keeping and forwarding to the Ankara court of the inaccurate police report constituted an interference with the applicant's right to respect for his private life within the meaning of that provision.

38. Such interference will contravene Article 8 of the Convention unless it is "in accordance with the law". The object of Article 8 of the Convention is essentially that of protecting the individual against arbitrary interference by public authorities (see *Malone v. the United Kingdom*, 2 August 1984, § 67, Series A no. 82). Furthermore, for the interference not to infringe a person's rights under Article 8 of the Convention, its having a legal basis in domestic law will not be sufficient; the interference must also pursue one or more of the legitimate aims referred to in Article 8 § 2 and be "necessary in a democratic society" in order to achieve them.

39. The Government was of the opinion that the interference was "in accordance with the law" as the report in question had been drawn up pursuant to the above-mentioned Police Regulations.

40. The Court has had regard to these Regulations and notes that they set out in detail the circumstances in which the police can keep and forward to other State departments personal information and the fingerprints of persons accused and convicted of criminal offences. Of particular importance for the purposes of the present case, the Regulations authorise the police to keep such information in their records in respect of persons accused of serious offences, including membership of an illegal organisation, that is, the offence with which the applicant was charged in the past but of which he was subsequently cleared in 1990.

41. The Regulations also contain provisions for the correction and revision of the information contained in police records. They oblige the police to include in their records all information regarding the outcome of any criminal proceedings relating to the accusations (see paragraph 17 above).

42. Nevertheless, as pointed out above, not only was the information set out in the report false, but it also omitted any mention of the applicant's acquittal and the discontinuation of the criminal proceedings. Moreover, the decisions rendered in 1990 were not appended to the report when it was submitted to the Ankara court in 2003. These failures, in the opinion of the Court, were contrary to the unambiguous requirements of the Police Regulations and removed a number of substantial procedural safeguards provided by domestic law for the protection of the applicant's rights under

Article 8 of the Convention (see, *mutatis mutandis*, *Craxi v. Italy* (no. 2), no. 25337/94, § 82, 17 July 2003).

43. Accordingly, the Court finds that the drafting and submission to the Ankara court by the police of the report in question was not “in accordance with the law”, within the meaning of Article 8 § 2 of the Convention. This conclusion makes it unnecessary to examine whether the other requirements of paragraph 2 of Article 8 were complied with.

44. It follows that there has been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. Lastly, the applicant complained under Article 6 § 2 of the Convention that his right to the presumption of innocence had been infringed on account of the drafting and dissemination of the police report. Under Articles 6 and 13 of the Convention he further complained that the prosecutor had not adequately examined his complaints or prosecuted the police officers.

46. The Court considers that these complaints may be declared admissible. However, in the light of the conclusion reached under Article 8 of the Convention above, it is not necessary to examine separately on the merits whether there has also been a violation of Articles 6 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government considered that the sum was excessive and baseless, and, if awarded, would lead to unjust enrichment.

50. The Court considers that the applicant must have suffered non-pecuniary damage, such as distress and frustration, on account of the publication in the press of defamatory information about him, which cannot be sufficiently compensated by the finding of a violation alone. Making an

assessment on an equitable basis, it awards the applicant EUR 5,000 under this head.

B. Costs and expenses

51. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the Court. In support of his claim he submitted a fee agreement, pursuant to which he undertook to pay his legal representative fees in accordance with the recommendations of Ankara Bar Association. In another document submitted by the applicant, it is stated that the Ankara Bar Association recommends 6,000 new Turkish liras (approximately EUR 3,300) for legal representation in proceedings before the Court.

52. The Government invited the Court to reject the applicant's claim for costs and expenses, and argued that the fee agreement signed by the applicant and his legal representative did not engage the responsibility of the Government.

53. 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 information in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

54. 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 application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine separately the complaints under Articles 6 and 13 of the Convention;

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, the following sums, to be converted into new Turkish liras at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President