

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

SECOND SECTION

CASE OF KAN v. TURKEY

(Application no. 54898/11)

JUDGMENT

STRASBOURG

2 February 2016

This judgment is final. It may be subject to editorial revision.



In the case of Kan v. Turkey,

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

Ksenija Turković, *President,*
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 12 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 54898/11) 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 İbrahim Kan ("the applicant"), on 20 July 2011.

2. The applicant was represented by Ms N. Karaman, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 10 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1974 and lives in Bolu. At the material time he was a military official.

5. On 18 February 2011 and 24 February 2011 the applicant's superiors imposed on him an administrative restriction for 8 days and room confinement for 5 days as disciplinary penalties. The penalties were enforced between 4 and 9 April 2011 (5 days), 11 and 14 April 2011 (3 days), 29 April and 4 May 2011 (5 days).

II. RELEVANT DOMESTIC LAW

6. The description of the relevant domestic law regarding administrative restrictions may be found in *Gül v. Turkey* (dec.) no. 74161/11, §§ 8-9, 10 July 2012, and regarding room confinements in *Tengilimoğlu and Others*

v. Turkey, nos. 26938/08, 41039/09, 66328/09 and 66451/09, §§ 10-12, 5 June 2012.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

7. Invoking Articles 5 and 6 of the Convention, the applicant complained that that the disciplinary penalties imposed on him were ordered by his military superiors and not by an independent and impartial tribunal.

8. The Government contested that argument.

9. The Court considers it appropriate to examine the complaint only under Article 5 § 1 of the Convention.

A. Regarding the administrative restriction imposed on the applicant

10. In its decision in the case of *Gül v. Turkey* (dec.) no. 74161/11, 10 July 2012, the Court found that the administrative restriction imposed on the applicant by his military superior for one day did not constitute a deprivation of liberty within the meaning of Article 5 of the Convention. The Court indicated that although confined during off-duty hours to their dwellings or to military buildings or premises, as the case may be, servicemen subjected to such a penalty were not locked up and continued to perform their duties and they remained, more or less, within the ordinary framework of their army life (*Engel and Others v. the Netherlands*, 8 June 1976, §§ 61 and 62, Series A no. 22).

11. The Court sees no reason to depart from its considerations in the aforementioned decision in the present case. In the light of the foregoing, the Court concludes that the administrative restriction imposed on the applicant for 8 days did not pose a problem under Article 5 § 1 of the Convention.

12. Accordingly, this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Regarding the room confinement imposed on the applicant

13. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

14. It further reiterates that it has already examined complaints identical to the one presented in this case in the case of *Tengilimoğlu and Others*

v. Turkey, nos. 26938/08, 41039/09, 66328/09 and 66451/09, §§ 33-39, 5 June 2012) and concluded that the lack of integration in the Turkish legal system of a mechanism to ensure that deprivation of liberty by disciplinary sanctions imposed on military officials without judicial guarantees violates Article 5 § 1 of the Convention.

15. The Court sees no reason to depart from its considerations in the aforementioned decision in the present case. It notes that the applicant served his room confinement in disciplinary cells. He was thus deprived of his liberty within the meaning of Article 5 § 1 of the Convention. Furthermore, such detentions were ordered by his military superiors who exercised authority in the chain of command and, as such, were subject to the authority of the military hierarchy and therefore enjoyed no independence in relation to it. In addition, the opposition procedure against the disciplinary actions before the hierarchy of the military superior who imposed the sanction does not provide the judicial guarantees required by Article 5 of the Convention (*Tengilimoğlu*, cited above, § 37).

16. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's detention was not of the character of a lawful detention "after conviction by a competent court".

17. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

18. The applicant claimed EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage.

19. The Government contested the amount claimed by the applicant.

20. Having regard to the nature of the violation found and ruling on an equitable basis, it awards the applicant EUR 5,000 (five thousand euros) in respect of non-pecuniary damage.

B. Default interest

21. The Court considers it appropriate that the default interest rate 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 complaints concerning the room confinement admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 §1 of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 2 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Ksenija Turković
President