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

FOURTH SECTION

CASE OF KARAOĞLAN v. TURKEY

(Application no. 60161/00)

JUDGMENT

STRASBOURG

31 October 2006

FINAL

31/01/2007

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 Karaoğlan v. Turkey,

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

Sir Nicolas Bratza, *President*,
Mr J. Casadevall,
Mr R. Türmen,
Mr M. Pellonpää,
Mr S. Pavlovschi,
Mr L. Garlicki,
Mr J. Šikuta, *judges*,
and Mr T.L. Early, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 60161/00) 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 Fikret Karaoğlan ("the applicant"), on 23 December 1999.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Ms L. K. N. Claridge, and Mr K. Yıldız of the Kurdish Human Rights Project in London. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 10 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicant's right to a fair hearing by an independent and impartial tribunal 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 Belgium.

5. On 20 March 1998 the applicant was arrested and taken into custody by police officers at the Diyarbakır Security Directorate on suspicion of his involvement in the activities of an illegal organisation.

6. On 22 March 1998 the applicant was brought before a judge at the Diyarbakır State Security Court who ordered his release pending trial.

7. On 4 May 1998 the public prosecutor at the İzmir State Security Court filed a bill of indictment accusing the applicant of membership of an illegal organisation, namely the PKK. He requested that the applicant be convicted and sentenced under Article 168 § 2 of the Criminal Code and Article 5 of Law no. 3713.

8. On 15 September 1998 the İzmir State Security Court joined the trial of the applicant to the ongoing trial of four other accused. Throughout the proceedings the applicant was represented by a lawyer.

9. On 15 December 1998 the İzmir State Security Court, relying on the applicant's statement to the police, the witness testimonies of other suspects as well as other evidence, convicted the applicant as charged and sentenced him to twelve years and six months' imprisonment. This judgment was upheld by the Court of Cassation on 1 July 1999.

10. Following the decision of the Court of Cassation the applicant fled to Belgium where he successfully applied for asylum.

11. The applicant submitted that on 17 August 2005 he was arrested and taken into custody in Spain on the basis of a Red Notice issued by Turkey via Interpol on the ground of his original indictment in July 1999 and his subsequent case before the Court. He was released the next day since he had been granted asylum by Belgium. The Government denied the existence of any such notice.

12. The Government further submitted that the applicant's sentence had been reduced to six years and three months' imprisonment in accordance with the provisions of the new Criminal Code.

II. THE RELEVANT DOMESTIC LAW

13. 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) and *Gençel v. Turkey* (no. 53431/99, §§ 11-12, 23 October 2003).

14. 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 OF THE CONVENTION

15. 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 İzmir State Security Court which tried and convicted him. He alleged that his statement, taken under duress in police custody, was admitted in evidence and that the İzmir State Security Court relied heavily on the statements of the co-defendants without giving him an adequate opportunity to cross-examine them. Finally, he complained that he had been tried in absentia. The applicant relied on Article 6 §§ 1 and 3 (d) 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:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

16. In the light of its established case law (see, among many other authorities, *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII), and in view of the materials submitted to it, the Court considers that the applicant's complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

B. Merits

1. Independence and impartiality of the State Security Court

17. The Court has examined a large number of cases raising similar issues to those in the present case and found a violation of Article 6 § 1 of

the Convention (see *Özel*, cited above, §§ 33-34, and *Özdemir v. Turkey*, no. 59659/00, §§ 35-36, 6 February 2003).

18. The Court finds no reason to reach a different conclusion in the instant case. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

2. *Fairness of the proceedings*

19. 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 before it (see, among other authorities, *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1573, § 74, and *Ükünç and Güneş v. Turkey*, no. 42775/98, § 26, 18 December 2003).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. In his observations dated 28 February 2006 the applicant complained that the issuing of a Red Notice by Turkey was a method of intimidation and persecution in relation to his case before the Court, which was in breach of Article 34 of the Convention. The applicant further complained of a continued breach of his rights under Articles 3, 5, 6, 8, 11 and 13 and Article 2 of Protocol No. 4 and Article 4 of Protocol No. 7 on account of the illegitimate and continued use of the Red Notice by Turkey.

21. The Government argued that the applicant's complaint under Article 34 of the Convention should be rejected for failure to comply with the six-months rule. They further refuted the applicant's allegations.

22. The Court considers it unnecessary to determine whether the complaint under Article 34 of the Convention was introduced outside the time-limit laid down by Article 35 § 1 of the Convention, since this part of the application is, in any event, inadmissible for the reasons set out below.

23. As regards the applicant's complaint under Article 34, the Court observes, firstly, that he failed to submit any cogent evidence to support his allegations that he had been arrested in Spain on the basis of a Red Notice issued by Turkey and that this was used by the latter as a means to hinder the exercise of his right of individual petition. The Court also notes that the applicant was able to lodge his application with the Court and submit a number of observations. He has also continued to correspond with the Court without any obstacles being placed in his way by the authorities (see, in particular, *Toğcu v. Turkey*, no. 27601/95, § 148, 31 May 2005). It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

24. As to the remaining complaints, the Court finds no reason to depart from its aforementioned finding that the applicant's allegations are unsubstantiated and consequently manifestly ill-founded within the meaning of Article 35 § 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant requested compensation for pecuniary and non-pecuniary damage. He relied on the case-law of the Court and left the amount to the discretion of the Court.

27. The Government invited the Court to follow its established case-law and not to make any award.

28. On the question of pecuniary damage, the Court considers in the first place that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. The Court therefore makes no award in respect of pecuniary damage.

29. The Court further considers that the finding of a violation of Article 6 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant (see *Incal,* cited above, § 82).

B. Costs and expenses

30. The applicant also claimed 6,460.82 pounds sterling (GBP) (approximately 9,240 euros (EUR)) for fees and costs incurred by his British lawyers and the Kurdish Human Rights Project (KHRP) in assisting with the application.

31. The Government contested the amount.

32. The Court may make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002). Making its own estimate based on the information available, and having regard to the criteria laid down in its case-law (see, among other authorities, *Özüpek and Others v. Turkey*, no. 60177/00, § 31, 15 March 2005), the Court awards the applicant EUR 1,000 for the costs and expenses claimed, such sum to be converted into pounds sterling at the

date of settlement and to be paid into the bank account in the United Kingdom indicated by the applicant.

C. Default interest

33. 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 applicant's right to a fair trial by an independent and impartial tribunal 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 lack of independence and impartiality of the İzmir State Security Court;

3. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of costs and expenses, such sum to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into the bank account in the United Kingdom as indicated by the applicant, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY	Nicolas BRATZA
Registrar	President