

SUMMARY

ECtHR 23 January 2018, application no. 60392/08, Unfair dismissal, Other fundamental rights

<p>The Turkish Supreme Administrative Court cast doubt on a dismissed police officer’s innocence by failing, in an appeal review, to take proper account of the fact that he had been acquitted of rape, in breach of the presumption of innocence contained in Article 6 §2 of the European Convention on Human Rights.</p>

<p>Seven – v – Turkey, Turkish case</p>

Summary

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Facts

Hamit Seven is a Turkish national who served as a police officer in Ankara, Turkey. In 2002, a woman filed a criminal complaint against Hamit and a colleague police officer, alleging that she had been taken into a police car and raped. The police officers admitted that they had picked up the woman, while patrolling, but allegedly did this because the woman looked intoxicated, had hailed them, stopped their car and asked for their help to go to a safe place. They had taken the woman to the home of Hamit's colleague allegedly with the intention to sober her up, when she started taking off her clothes and acting in a sexually provocative way.

According to Hamit, the woman seduced him to the point where he had to ejaculate in his own hand. However, Hamit claims that there had not been sexual intercourse.

National proceedings

Disciplinary and criminal proceedings were begun simultaneously following allegations that Hamit had raped the woman while on duty, abusing his authority as a police officer. In November 2002, the Supreme Disciplinary Council found Hamit guilty of abuse of his authority as a police officer and of sexually assaulting the woman. Hamit appealed but the Ankara Administrative Court endorsed the reasoning of the prior disciplinary decision in its judgment of July 2003. By that time, the criminal proceedings were still pending.

It was not until September 2005 that the Ankara Assize Court acquitted Hamit in criminal proceedings of all charges, holding that there was no evidence of force on the woman's body (which is one of the constituent elements of the offences of rape and unlawful detention). Hamit then appealed in the administrative proceedings to the Supreme Administrative Court, but this Court refused to annul his dismissal, and endorsed the reasoning of the Ankara Administrative Court. Hamit submitted a request to rectify the Supreme Administrative Court's decision, arguing that the fact that he had been acquitted in the criminal proceedings and been found not guilty of the allegations of rape had not been taken into account in the Supreme Court's decision. The Supreme Administrative Court however, dismissed this request.

Relying on Article 6 §2 (right to presumption of innocence), Hamit complained about being dismissed while the criminal proceedings were still pending and about the Administrative Court's refusal to revise its previous decision once he had been cleared of the charges.

ECtHR findings

Article 6 §2 safeguards the right to be "presumed innocent until proved guilty according to law." There are two aspects to the presumption of innocence:

A procedural aspect relating to the conduct of a criminal trial prohibiting public officials from making premature statements about a defendant's guilt. This acts as a procedural guarantee of the fairness of the criminal trial itself. But not only that: the presumption of innocence may be infringed not only in the context of a criminal trial, but also in separate civil, disciplinary or other proceedings that are conducted simultaneously with the criminal proceedings.

A second aspect, which aims to ensure respect for a not guilty finding in the context of subsequent proceedings, where there is a link with criminal proceedings and those have ended with no conviction. This requires that the person's innocence vis-à-vis the criminal offence must not be called into doubt in subsequent proceedings.

The present case concerns both aspects. The first aspect comes into play because of a statement made during the course of the disciplinary proceedings while the criminal proceedings arising out of the same facts were still pending. The question is whether the reasoning adopted in the disciplinary proceedings before the final decision in the criminal proceedings violated Hamit's right to be presumed innocent.

In prior case law, the ECtHR has emphasised the importance of the choice of words used by public officials in their statements before a person has been tried and found guilty of a criminal offence. Where, as in the present case, the disciplinary and criminal proceedings end at different times and come to conclusions that appear to be contradictory, there is a need for the authorities to maintain a distinction between disciplinary and criminal liability in the language they use.

In Hamit's case, the lines between disciplinary and criminal liability were blurred from the very beginning of the disciplinary investigation. The Administrative Courts had referred to Hamit as "the accused" in their decision to dismiss him and described his conduct as "sexual assault" without any wording to limit what they were saying to the disciplinary sphere. The ECtHR therefore found they violated Hamit's right to be presumed innocent before the pending criminal proceedings. Moreover, the Administrative Court's judgment of July 2003, upholding the reasoning of the disciplinary authorities, described the applicant's conduct as "having intercourse with the woman without her consent". In the ECtHR's opinion, this amounted to pronouncing the applicant guilty of rape and therefore breached Article 6 §2 of the Convention.

In terms of the second aspect, the ECtHR needed to consider whether the Supreme Administrative Court's decision following the final decision in the criminal proceedings complied with the requirement to respect the presumption of innocence. The Supreme Administrative Court's appeal review made no additional comments concerning Hamit's disciplinary or criminal liability, even though Hamit explicitly argued that he had been acquitted of all charges. The ECtHR considered that the Supreme Administrative Court needed to explain why it regarded that the reasoning employed by the disciplinary authorities and the first instance court could continue to be in accordance with the law, although the

applicant had been acquitted in the meantime in the criminal proceedings. That was the only way it could have avoided the situation complained of by Hamit, namely that he was left with two contradictory judgments. By keeping silent on that point, it missed the opportunity to rectify the previous reasoning, which the ECtHR found incompatible with the presumption of innocence under Article 6 §2. Thus, the ECtHR concluded that there had also been a violation in relation to the second aspect.

Creator: European Court of Human Rights (ECtHR)

Verdict at: 2018-01-23

Case number: 60392/08