



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

SECOND SECTION

CASE OF OSMAN ERDEN v. TURKEY

(Application no. 1520/06)

JUDGMENT

STRASBOURG

26 October 2010

FINAL

26/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Osman Erden v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 5 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 1520/06) 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 Osman Erden (“the applicant”), on 30 December 2005. The applicant was represented by Ms B. Baysal, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

2. On 18 June 2009 the President of the Second Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in 1960 and lives in Bartın.

4. On 13 January 1982 the applicant, a primary school teacher in Kahramanmaraş at the material time, was discharged from his duties and on 10 March 1989 he was reinstated.

5. The applicant subsequently requested the Ministry of Education (“the Ministry”) to reimburse him for the salaries and other financial rights he had been unfairly deprived of during the period of inactivity. The Ministry rejected this request.

6. The applicant lodged an action before the Ankara Administrative Court, requesting this court to quash the Ministry's decision and to order the payment of his entitlements.

7. On 6 November 1991 the Ankara Administrative Court partially granted the applicant's request and ordered the calculation and payment of the applicant's salaries and other financial benefits, solely for the period falling between 15 March 1985 and 10 March 1989. The administrative court did not order payment of interest on the relevant amount.

8. On 16 April 1992 the Supreme Administrative Court upheld the judgment of the Ankara Administrative Court.

9. Following the final decision of the Supreme Administrative Court, the applicant petitioned the Ministry on numerous occasions for the execution of the judgment of the Ankara Administrative Court and the payment of his money.

10. On 14 January 2001 the applicant applied to the Ankara Administrative Court, requesting the clarification (*tavzih*) of its decision dated 6 November 1991. The applicant asked the court to declare, in particular, the exact amount that he was entitled to receive from the Ministry. He explained that without this information, he could not request the enforcement of the impugned judgment by execution offices.

11. On 20 March 2002 the Ankara Administrative Court rejected the applicant's request for clarification.

12. On 30 June 2005 the applicant was paid 4.35 Turkish liras (TRY¹)², which corresponded to the salaries and other financial benefits he would have received during the specified period of his discharge. The applicant was not paid any default interest on this amount to compensate the effects of inflation, pursuant to the instructions of the Ministry of Finance dated 24 May 2005 and the judgment of the Ankara Administrative Court dated 6 November 1991.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. According to the information obtained from the Central Bank of Turkey, the annual rate of inflation in Turkey between the period April 1992, the date when the administrative court decision became final, and June 2005, the date when the payment was made to the applicant, was approximately 55%.

1. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1= TRL 1,000,000.

2. This sum amounted to approximately ECU 2,000 at the date when the applicant was reinstated to his job and to approximately 2.5 euros (EUR) at the date of payment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

14. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the excessive delay in the execution of the Ankara Administrative Court's judgment of 6 November 1991 and the resulting financial loss he suffered in view of the high inflation rates during the relevant period.

A. Admissibility

15. The Government asked the Court to dismiss the applicant's complaints for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. The Government maintained that the applicant had not applied to the domestic authorities to request payment, nor had he brought execution proceedings. The Government further maintained that the applicant had failed to comply with the six-month rule laid down in Article 35 § 1 of the Convention as he had waited too long to bring his complaint before the Court.

16. As regards the preliminary objection concerning non-exhaustion of domestic remedies, the Court recalls in the first place that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to additional remedies to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Arat and Others v. Turkey*, nos. 42894/04, 42904/04, 42905/04, 42906/04, 42907/04, 42908/04, 42909/04 and 42910/04, § 19, 13 January 2009). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to transmit it to another competent State authority responsible for execution. However, a successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its enforcement by compulsory means (see *Shvedov v. Russia*, no. 69306/01, §§ 29–37, 20 October 2005). In this connection, the Court notes from the documents in the case file that contrary to the Government's allegations, the applicant in the instant case made a number of appeals to the authorities over the years to obtain his money, virtually all of which were left unanswered until the payment was finally made in June 2005. Moreover, the applicant sought a decision of clarification from the Ankara Administrative Court regarding the amount he was due with the aim of bringing execution proceedings against the Ministry for that amount. The rejection of his request by the

administrative court, however, removed any possibility of compulsory enforcement of the judgment in question. In these circumstances, the Court considers that for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. The Government's preliminary objection must therefore be rejected.

17. As for the Government's second objection, regarding the applicant's failure to comply with the six-month rule laid down in Article 35 § 1 of the Convention, the Court considers that the six-month period runs from the date of the payment, since the applicant's complaint concerns solely the national authorities' delay in enforcing the domestic court judgment and the damage he sustained as a result. Bearing in mind that the payment was made on 30 June 2005 and the instant application was lodged with the Court on 30 December 2005, the Court finds that the applicant has complied with the six-month rule under Article 35 § 1 of the Convention and, therefore, rejects the Government's objection (see *Akkuş v. Turkey*, 9 July 1997, § 21, *Reports of Judgments and Decisions* 1997-IV, and *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009).

18. The Court notes that this application 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

1. Alleged violation of Article 6 § 1 of the Convention as to the non-enforcement of the administrative court judgment

19. The applicant complained under Article 6 § 1 of the Convention of the State authorities' failure to execute the judgment of 6 November 1991, which became final on 16 April 1992.

20. The Court reiterates that the right to a fair hearing includes the right to have a binding judicial decision enforced. That right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. The execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 (*Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II).

21. The Court considers that by failing for over thirteen years to ensure the execution of the binding judgment of 6 November 1991, the Turkish authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see, among many others, *Burdov v. Russia* (no. 2), no. 33509/04, §§ 62-88, ECHR 2009-...).

22. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. *Alleged violation of Article 1 of Protocol No. 1*

23. The applicant submitted under Article 1 of Protocol No. 1 that the excessive delay in the execution of the administrative court judgment had also inflicted a great financial loss on him, particularly because the payment he received was not subject to default interest despite the high inflation rate in Turkey.

24. The Court observes that by a judgment dated 6 November 1991 the Ankara Administrative Court ordered the Ministry to pay the applicant his past entitlements and this judgment became final with the decision of the Supreme Administrative Court dated 16 April 1992. It is further noted that this amount, which was not subject to default interest, was not paid to the applicant until 30 June 2005.

25. The Court recalls that it has found a violation of Article 1 of Protocol No. 1 in a number of cases that raise similar issues to those arising here (see, *mutatis mutandis*, *Ertuğrul Kılıç v. Turkey*, no. 38667/02, 12 December 2006, and *Göktaş v. Turkey*, no. 66446/01, § 41, 29 November 2007).

26. Having examined the facts and arguments submitted by the Government, the Court considers that there is no reason to depart from the previous cases.

27. The Court considers that, as the authorities delayed executing the administrative court judgment and as no default interest was applied to the amount paid to the applicant, the applicant has had to bear an individual and excessive burden that has upset the fair balance that should be maintained between the demands of the general interest and the protection of the right to the peaceful enjoyment of possessions.

28. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. **Damage and costs and expenses**

29. The applicant claimed TRY 121,360 (approximately EUR 55,000 at the relevant time) in respect of pecuniary damage for the salaries and other benefits he had been deprived of for the entire period of his inactivity between 13 January 1982 and 10 March 1989. Alternatively, he claimed TRY 78,447 (approximately EUR 35,600 at the relevant time), which reflected his loss only between 15 March 1985 and 10 March 1989, which was the period set by the administrative court for his compensation. He also claimed EUR 10,000 for non-pecuniary damage. He did not state a specific amount for the costs and expenses he claimed but asked the Court to make

an award under this head in the light of the Turkish Bar Association's scale of fees.

30. The Government contested these claims as being unsubstantiated and fictitious.

31. Having regard to the circumstances of the case and the relevant economic data, and making its assessment on an equitable basis, the Court awards the applicant a global sum of EUR 20,000 in respect of pecuniary and non-pecuniary damage.

32. As for costs and expenses, 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 are reasonable as to quantum. In the present case, the Court observes that the applicant did no more than refer to the Turkish Bar Association's scale of fees. He failed to quantify his costs and expenses and to submit any supporting documents in support of his claim. The Court therefore makes no award under this head.

B. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into Turkish liras at the rate applicable 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 26 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President