



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

SECOND SECTION

CASE OF TERZİ v. TURKEY

(Application no. 23086/07)

JUDGMENT

STRASBOURG

25 January 2011

FINAL

25/04/2011

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

In the case of Terzi v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Işıl Karakaş,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 4 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 23086/07) 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 Fevzi Terzi (“the applicant”), on 30 May 2007.

2. The applicant was represented by Mr Ö. Tekeş and Mr H. Akçay, lawyers practising in Amasya. The Turkish Government (“the Government”) were represented by their Agent.

3. On 27 August 2009 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE****A. First Set of Proceedings**

4. The applicant was born in 1966 and lives in Amasya.

5. On 29 August 2000 he brought proceedings before the Samsun Administrative Court for annulment of an administrative penalty imposed on him.

6. On 20 December 2000 the court dismissed the applicant's request.
7. On 22 October 2003 the Supreme Administrative Court quashed the judgment of 20 December 2000.
8. On 18 February 2004 the court dismissed the applicant's request once again.
9. On 6 December 2007 the Supreme Administrative Court's General Council of Administrative Divisions quashed the judgment of 18 February 2004.
10. On 28 February 2008 the court granted the applicant's request and annulled the administrative penalty imposed on the applicant.
11. On 7 October 2009 the Supreme Administrative Court upheld the judgment of 28 February 2008.

B. Second Set of Proceedings

12. On 28 February 2001 the applicant lodged a case with the Samsun Administrative Court for annulment of his appointment to a new post.
13. On 31 October 2001 the court dismissed the applicant's request.
14. On 21 February 2006 the Supreme Administrative Court upheld the judgment of 31 October 2001.
15. On 29 November 2006 the Supreme Administrative Court dismissed a request by the applicant for rectification of the judgment.
16. On 8 January 2007 the applicant was notified of the decision dated 29 November 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. The Government contested that argument.

18. For the first set of proceedings the period to be taken into consideration began on 29 August 2000 when the applicant lodged a case with the Samsun Administrative Court and ended on 7 October 2009 when the Supreme Administrative Court dismissed the request for rectification of judgment. It thus lasted nine years and a month before two levels of jurisdiction.

19. For the second set of proceedings the period to be taken into consideration began on 28 February 2001 when the applicant lodged a case with the Samsun Administrative Court and ended on 29 November 2006

when the Supreme Administrative Court dismissed the request for rectification of judgment. It thus lasted five years and nine months before two levels of jurisdiction.

20. The Government put forward various preliminary objections concerning non-exhaustion of domestic remedies and asked the Court to dismiss the complaint under Article 6 § 1 of the Convention, as required by Article 35 § 1 of the Convention.

21. The Court notes that it has already examined similar submissions made by the respondent Government in *Daneshpayeh v. Turkey* (no. 21086/04, §§ 35-38, 16 July 2009). The Government have not submitted any arguments which could lead the Court to reach a different conclusion in the instant case. Consequently, the Court rejects the Government's preliminary objections as to the exhaustion of domestic remedies.

22. The Government further argued that the applicant had failed to comply with the six month rule under Article 35 § 1 of the Convention in respect of the second set of proceedings.

23. The Court observes that in the present case the final decision was notified to the applicant on 8 January 2007 and the application was introduced on 30 May 2007, i.e. within six months following the notification of the decision of 29 November 2006. The applicant must therefore be considered to have complied with the six-month rule provided under Article 35 § 1 of the Convention. The Government's objection must therefore be rejected.

24. 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.

25. As regards the merits, the Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and of the relevant authorities (*Daneshpayeh*, cited above, § 26).

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (*Daneshpayeh*, cited above).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

28. The applicant complained that his rights under Articles 6, 9, 10, 17, and 18 of the Convention had been violated as a result of the unfavourable outcome of the proceedings. Under Article 14 of the Convention and Article 1 of the Protocol no. 12 to the Convention the applicant argued that he had been discriminated against on account of his political views. The applicant further contended that his appointment, which had compelled him to move to another city, had violated his right to private and family life under Article 8 of the Convention. The applicant claimed that his administrative punishment and his appointment to a new post had constituted punishment without law in breach of Article 7 of the Convention.

29. The Court considers that, as Protocol No. 12 has not been ratified by the respondent State, the applicant's complaint in this regard is incompatible *ratione personae* with the Convention and must therefore be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

30. As regards the remaining complaints, in the light of all the material in its possession, the Court finds that the above submissions by the applicant do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see, in particular, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I, and *Soysal and Others v. Turkey*, nos. 54461/00, 54579/00, and 55922/00, § 45, 15 February 2007).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 331,500 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary

damage. Ruling on an equitable basis, it awards him EUR 6,200 under that head.

B. Costs and expenses

35. The applicant also claimed EUR 1,565 for the costs and expenses incurred before the domestic courts and the Court. That sum comprised domestic court fees and postal expenses incurred in the course of the domestic proceedings and the proceedings before the Court. In support of his claims the applicant submitted invoices for the postal expenses and for the domestic fees, as well as a legal fee agreement but he failed to prove that he actually incurred the amount concluded in the agreement.

36. The Government contested the claim.

37. 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 documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 500 covering costs and expenses.

C. Default interest

38. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 6,200 (six thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 500 (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;

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

Done in English, and notified in writing on 25 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President