



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

SECOND SECTION

CASE OF SERAP DEMİRCİ v. TURKEY

(Application no. 316/07)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Serap Demirci v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 316/07) 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, Ms Serap Demirci (“the applicant”), on 25 December 2006.

2. The applicant was represented by Mr İ. Akın and Ms N.Ö. Akın, lawyers practising in Izmir. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged that her right of access to court had been breached by a domestic court’s refusal to grant her legal aid.

4. On 25 May 2010 the President of the Second Section 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 (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1980 and lives in Izmir.

6. On an unspecified date in 2006 she initiated administrative proceedings against the Ege University Hospital, claiming compensation. She indicated, *inter alia*, that the doctors at the said hospital had not acted diligently during the numerous reconstructive operations she had

undergone, which had resulted in severe complications affecting her ears and eyes. The applicant sought a total of 205,000 Turkish liras (TRY) (136,000 euros (EUR) at the time) in compensation for both pecuniary and non-pecuniary damage, submitting medical records in support of her claims. The applicant also applied for legal aid for the required court fees, presenting a certificate from the office of the mayor of the neighbourhood (*muhtar*) in which she lived attesting to her poverty.

7. On 26 January 2006 the Izmir Administrative Court rejected the applicant's legal aid application, after having stated that pursuant to the Code of Civil Procedure, an application for legal aid must be supported by proof that the case is well-founded and that the claimant does not have the means to pay the required court fees.

8. On 6 February 2006 the court informed the applicant that she was required to pay a total of TRY 2,767 (approximately EUR 1,800 at the time) in court fees within thirty days in order for the proceedings to be continued.

9. Subsequently, on 22 March 2006 the applicant applied for legal aid again and submitted additional documents proving her poor financial situation, including certificates from the Çiğli Directorate of Land Registration, the Revenue Department and the Directorate of Income, which indicated respectively that she did not own any immovable property, had no records in the tax roll and had no income. She also argued that her case was well-founded. On 29 March 2006 her application was rejected once more.

10. On 17 April 2006 the applicant was warned for the second time that she was required pay the required fees within thirty days in order for the proceedings to be continued.

11. On 14 June 2006 the Izmir Administrative Court decided to discontinue the compensation proceedings because the applicant had not paid the necessary court fees. That decision was served on the applicant on 29 June 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. Section 31 of the Administrative Procedure Act (Law no. 2577) indicates that the relevant articles of the Code of Civil Procedure ("the CCP") shall be applied for matters related to legal aid before the administrative courts.

13. Article 465 of the CCP states that an application for legal aid may only be granted if the claimant submits evidence in support of his/her case and proves his/her state of poverty.

14. According to Article 468 of the CCP, in order to determine whether or not the person applying for legal aid has sufficient means, he/she shall be required to submit a statement of his or her means, another certificate indicating whether or not the individual owns any property and a certificate

regarding how much, if any, tax he/she has paid. These certificates should be obtained from the appropriate domestic authorities.

15. Article 469 of the CCP provides that decisions regarding legal aid are binding.

16. In June 2006, the minimum wage in force was TRY 531 a month (EUR 265 at the time).

THE LAW

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

17. The applicant complained, in substance, that she had been denied access to the courts on account of the domestic court's refusal to grant her legal aid. The applicant cited Article 6 § 1 of the Convention, which, in so far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

18. The Government contested that argument.

A. Admissibility

19. The Government argued that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention, in that she had not appealed against the first-instance court's judgment dated 14 June 2006.

20. The Court reiterates that it has already examined and dismissed the Government's preliminary objection in similar cases, holding that the applicants could not be expected to lodge successful appeals against the judgments discontinuing their cases, as decisions regarding legal aid are final under Article 469 of the CCP (see *Cığırhun Öner v. Turkey*, no. 33612/03, § 29, 20 May 2008; *Serin v. Turkey*, no. 18404/04, § 24, 18 November 2008; and *Sabri Aslan and Others v. Turkey*, no. 37952/04, § 22, 15 December 2009). It finds no particular circumstances in the instant case requiring it to depart from its findings in the aforementioned cases. It therefore rejects the Government's preliminary objection.

21. The Court notes that the 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

22. The applicant complained that the Izmir Administrative Court had breached her right of access to court by rejecting her legal aid application.

23. The Government stated that in domestic law there were two types of court fee. The first type was a fixed amount established by the Ministry of Finance at the end of each year and published in the Official Gazette. The second type was calculated on the basis of the value of the litigation and varied in each case. They further pointed out that court fees were required in order to ensure the proper administration of justice and prevent vexatious applications. In their observations, the Government contended that decisions regarding legal aid were given by judges on the basis of the relevant case files and that there was no obligation for them to grant legal aid under domestic law. They argued that in the instant case the applicant had failed to submit documents attesting to her poverty. In this respect, they stated that the applicant had been represented by her lawyer during the domestic proceedings and thus could have sought legal assistance as regards the documents that would have supported her legal aid application. The Government therefore concluded that the domestic court's refusal to grant legal aid had not impaired the essence of the applicant's right of access to court.

24. The Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so in the case of the right of access to court in view of the prominent place held in a democratic society by the right to a fair trial. It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the courts and that he or she is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II).

25. The right of access to court is not, however, absolute and may be subject to restrictions, provided that these pursue a legitimate aim and are proportionate. Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the ultimate decision as to the observance of the Convention's requirements rests with the Court (see *Kreuz v. Poland*, no. 28249/95, § 53, ECHR 2001-VI, and *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 33, 17 July 2007). The institution of a legal aid scheme constitutes one of those means. It may therefore be acceptable to impose conditions on the grant of legal aid on the basis, *inter alia*, of the financial situation of the litigant or his or her prospects of success in the proceedings (see *Steel and Morris*, cited above, §§ 60-62, and *Wieczorek v. Poland*, no. 18176/05, § 37, 8 December 2009). The question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each

case and will depend, *inter alia*, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively.

26. In the present case, the Court must therefore determine whether the requirement to pay the court fees imposed on the applicant constituted a restriction in breach of her right of access to court.

27. The Court notes that the court fees that the applicant was required to pay were calculated on the basis of the value of the litigation and amounted to TRY 2,767, while the monthly minimum wage was TRY 531 at the time. Although the Government argued that the applicant had failed to submit documents attesting to her poverty, the Court observes that she submitted several certificates proving her poor financial situation in support of her legal aid request before the Izmir Administrative Court. It is clear from those certificates, which were delivered by the domestic authorities, that the applicant has no income and is in a poor financial situation (see paragraphs 6 and 9 above). Nevertheless, her legal aid application was rejected by the Izmir Administrative Court, which did not indicate a specific reason in its decision but merely referred to the relevant legislation.

28. The Court observes that it has already examined similar grievances in the past and has found a violation of Article 6 § 1 of the Convention on the ground, *inter alia*, that the legal aid system in Turkey fails to offer individuals substantial guarantees to protect them from arbitrariness (see *Bakan v. Turkey*, no. 50939/99, §§ 74-78, 12 June 2007; *Mehmet and Suna Yiğit*, cited above, §§ 31-39; *Eyüp Kaya v. Turkey*, no. 17582/04, §§ 22-26, 23 September 2008; and *Kaba v. Turkey*, no. 1236/05, §§ 19-25, 1 March 2011). The Court has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned cases. In this respect, it would once again recall that pursuant to Article 469 of the CCP, decisions regarding legal aid are binding and are delivered on the basis of the case file, without hearing the applicants (*Bakan*, cited above, § 76). The Court further observes that the refusal of the applicant's legal aid application deprived her of the possibility of submitting her case before a tribunal.

29. In view of the foregoing, the Court concludes that in the instant case there has been a disproportionate restriction on the applicant's right of access to the courts.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed EUR 20,000 in respect of pecuniary damage and EUR 80,000 in respect of non-pecuniary damage. She did not make any claim for costs and expenses.

32. The Government, considering the requested amounts excessive, contested these claims.

33. As regards pecuniary damage, the Court notes that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. Accordingly, it considers that no award can be made to the applicant under this head.

34. As for non-pecuniary damage, deciding on an equitable basis, the Court awards the applicant EUR 3,000.

35. The Court further reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which she would have been had this provision not been disregarded (see *Mehmet and Suna Yiğit*, cited above, § 47). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be to quash or otherwise set aside the Izmir Administrative Court's decision dated 14 June 2006 (paragraph 11 above) and restart the proceedings, in accordance with the requirements of Article 6 § 1 of the Convention, should the applicant so request.

36. 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 application admissible;
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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (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 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President