



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

SECOND SECTION

CASE OF HÜSEYİN ÖZEL v. TURKEY

(Application no. 2917/05)

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 Hüseyin Özel v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *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. 2917/05) 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 Hüseyin Özel (“the applicant”), on 16 December 2004.

2. The applicant was represented by Mr H. Aygün, a lawyer practising in Tunceli. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged under Article 6 of the Convention that the court fees he had been required to pay were so excessive as to deny him his right of access to court.

4. On 19 January 2010 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the applicant’s right of access to court to the Government. It was decided to rule on the admissibility and merits of that complaint at the same time (Article 29 § 1).

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

5. The applicant was born in 1946 and lives in Tunceli.

6. On 8 April 2003 the applicant made a request to the Governorship of Tunceli to be informed about the living conditions in his village, which he

claimed to have had to leave in 1994 for security reasons. On 14 April 2003 the Governorship of Tunceli informed the applicant that he could move back to his village and that he would receive services and financial support from the Governorship for doing so. Subsequently, on 18 June 2003 the Ministry of Public Works and Settlement (*Bayındırlık ve İskan Bakanlığı*) conducted an on-site inspection and issued a report which indicated that the houses in the village were old and ruined.

7. On 4 December 2003 the applicant, together with several other residents of the village, applied to the Ministry of the Interior through the Governorship of Tunceli requesting compensation for the damage to his property that had occurred over the ten years he had had to live away from his village.

8. On 7 January 2004 the Governorship of Tunceli submitted a report to the Ministry of the Interior. The report stated that the residents had left the village of their own accord in 1994 and that the Administration had no liability regarding the damage to the property. It indicated that, in any event, there was no record or title deed to prove the applicant's ownership of property in the village. The report was later approved by the Ministry of the Interior.

9. On 3 March 2004 the applicant instituted compensation proceedings in the Malatya Administrative Court against the Ministry of the Interior. He requested a total of 150,000,000,000 Turkish liras (TRL) (approximately 90,000 euros (EUR) at the time), claiming that he had not been allowed to go back to his village for nine years and that the administration was indirectly liable for the damage that had occurred over that time. The applicant also requested legal aid to cover the court fees.

10. On 16 March 2004 the Malatya Administrative Court rejected the applicant's request for legal aid, merely stating that he did not fulfil the conditions laid down in Article 465 of the Code of Civil Procedure.

11. On 22 March 2004 the court notified the applicant that he was required to pay a court fee of TRL 2,035,100,000 (approximately EUR 1,200) and a postal fee of TRL 40,000,000 (approximately EUR 25) within thirty days. The applicant objected to the court's decision regarding his request for legal aid. On 31 May 2004 the Administrative Court rejected his objection. The court stated that its decisions regarding legal aid were final.

12. On 2 June 2004 the court once more informed the applicant that he had to pay the required fees within thirty days in order to continue the proceedings and that the proceedings would be discontinued if he failed to do so.

13. On 15 July 2004 the Administrative Court discontinued the proceedings as the applicant had not paid the court fees.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Article 465 of the Code on Civil Procedure (CCP) states that a request for legal aid may only be granted if the claimant submits evidence in support of his/her case and proves his/her indigence.

15. 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, plus a certificate stating how much, if any, tax he/she had paid. These certificates must be obtained from the appropriate domestic authorities.

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

17. In March 2004, the minimum wage was TRL 423,000,000 (approximately EUR 260) a month.

THE LAW

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

18. The applicant complained, in substance, that he had been denied access to a court on account of the domestic court's refusal to grant him legal aid. The applicant invoked 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 ...”

19. The Government contested that argument.

A. Admissibility

20. The Government argued that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention in that he had not appealed against the first-instance court's judgment dated 15 July 2004.

21. The applicant disputed the Government's arguments.

22. The Court reiterates that it has examined and dismissed this preliminary objection by the Government in similar cases, holding that the applicants could not be expected to lodge successful appeals against judgments discontinuing their cases, as decisions regarding legal aid are final under Article 469 of the CCP (see *Ciğerhun 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). The Court finds no particular circumstances in the instant case requiring it to depart from its findings in the above-mentioned cases. It therefore rejects the Government's preliminary objection.

23. 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

24. The applicant argued that by refusing his legal aid request the Malatya Administrative Court had breached his right of access to court. In that connection, he maintained that the required court fees were excessive. He further claimed that he had been denied legal aid although he had submitted evidence attesting to his poor financial situation and establishing that he had a well-founded case.

25. The Government stated that in domestic law there were two types of court fees. 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 it 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 did not dispute that in the present case the applicant had submitted a statement of means, nor did they argue that the applicant's case had lacked grounds. They maintained that the decision regarding legal aid had been made by the judges on the basis of the case file and that there had been no obligation for them to grant it under the domestic law. They further argued that in the instant case the applicant had been represented by his lawyer during the domestic proceedings and thus could have sought legal assistance as regards the documents that would have supported his legal aid request. The Government concluded therefore that the domestic court's refusal to grant legal aid did not impair the essence of the applicant's right of access to court.

26. 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).

27. 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.

28. 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 his right of access to court.

29. 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 TRL 2,035,100,000, while the monthly minimum wage was TRL 423,000,000 at the time. It also observes that in rejecting the applicant's legal aid request, the Malatya Administrative Court did not indicate a specific reason but merely referred to the relevant legislation. Accordingly, it was not established whether the legal aid request was rejected as a result of the applicant's failure to prove his poor financial situation or as his case lacked basis. The Court notes 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, in particular, *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). It 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 note 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 request deprived him of the possibility of submitting his case to a tribunal.

30. 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 a court.

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 15,000 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage. He also requested EUR 4,250 for costs and expenses incurred before the Court, without submitting any documents.

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

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 regards non-pecuniary damage, deciding on an equitable basis, the Court awards the applicant a total of EUR 3,000 under this head.

35. In respect of 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 applicant has not substantiated his contention that he actually incurred the costs claimed. Accordingly, no award will be made under this head.

36. 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 remainder of 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 of 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, to be converted into Turkish liras at the rate applicable on the date of settlement, plus any tax 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