



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

GRAND CHAMBER

CASE OF SABRİ GÜNEŞ v. TURKEY

(Application no. 27396/06)

JUDGMENT

STRASBOURG

29 June 2012

This judgment is final but it may be subject to editorial revision.

In the case of Sabri Güneş v. Turkey,

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

Nicolas Bratza, *President*,
Josep Casadevall,
Nina Vajić,
Dean Spielmann,
Lech Garlicki,
Peer Lorenzen,
Boštjan M. Zupančič,
Elisabeth Steiner,
Khanlar Hajiyev,
Ján Šikuta,
Mark Villiger,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Işıl Karakaş,
Vincent A. de Gaetano,
Erik Møse,
Helen Keller, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 8 February and 30 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 27396/06) 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 Sabri Güneş (“the applicant”), on 29 May 2006.

2. The applicant was represented by Mr A.E. Binici, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. Relying on Article 6 of the Convention, Mr Sabri Güneş alleged, in particular, that he had been denied a fair hearing and that his right of access to a court had been infringed. He also complained of a violation of Article 2 of the Convention taken together with Article 13 (right to an effective remedy).

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 24 May 2011 a Chamber of that Section composed of the following judges: Françoise Tulkens,

Danutė Jočienė, Ireneu Cabral Barreto, Dragoljub Popović, András Sajó and Işıl Karakaş, and also of Françoise Elens-Passos, Deputy Section Registrar, delivered judgment. The Chamber, by a majority, declared the application admissible as to the complaints under Articles 2, 6 § 1 (fairness of the proceedings and access to court) and 13. The Chamber also held, by five votes to two, that there had been a violation of Article 6 § 1 of the Convention. Lastly, by five votes to two, the Chamber found that it was not necessary to examine the complaint under Articles 2 and 13 of the Convention.

5. On 15 September 2011, following a request by the Government of 23 August 2011, the panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The applicant and the Government each filed written observations on the preliminary objections and on the merits (Rule 59 § 1). The Grand Chamber having decided that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mr Sabri Güneş, is a Turkish national who was born in 1981 and lives in İzmir.

9. He suffered a personal injury while doing his military service. He was hospitalised on 30 October 2001 and subsequently underwent several operations on his right knee. He is now permanently disabled.

10. On 7 April 2003 the applicant submitted a claim to the Ministry of Defence for compensation in respect of his permanent disability.

11. Following tacit dismissal of the claim by the administrative authorities, the applicant brought an action for damages in the Supreme Military Administrative Court on 12 August 2003 in respect of the disability suffered during his military service. He claimed 15,000 Turkish liras (TRY – approximately 9,400 euros (EUR)¹) in respect of pecuniary damage and the same sum in respect of non-pecuniary damage.

12. Two expert reports ordered by the Supreme Military Administrative Court were added to the case file. The first, dated 12 March 2004,

1. All conversions into euros in this judgment have been made on the basis of the rate of exchange in force at the material time.

established a 5% disability. The second, dated 30 April 2004 and communicated to the applicant on 11 May 2004, assessed the applicant's pecuniary damage at more than TRY 27,438 (approximately EUR 17,150).

13. Having held a public hearing on 7 July 2004, the Supreme Military Administrative Court delivered its judgment on the same day. It ruled in favour of the applicant and awarded him the full amount of his claim in respect of pecuniary damage, namely, TRY 15,000. It awarded him a further TRY 2,000 in respect of non-pecuniary damage. The court considered in particular that the conclusions of the expert report of 30 April 2004 were relevant and satisfied the criteria established by its case-law.

14. On 21 November 2004 the applicant applied to the Ministry of Defence for additional compensation in respect of his permanent disability. He claimed that he had only become aware of the extent of his pecuniary damage for the first time on 11 May 2004, when he received the report of 30 April 2004 assessing his pecuniary damage at TRY 27,438.

15. On 29 March 2005, following tacit dismissal of the claim by the administrative authorities, the applicant lodged a fresh claim with the Supreme Military Administrative Court for additional compensation, namely, TRY 12,438 (approximately EUR 5,600), on the basis of the expert report of 30 April 2004. He argued that he had received the expert report of 30 April 2004 on 11 May 2004, whereupon he had become aware of the true extent of the damage he had suffered.

16. By a judgment of 22 June 2005 the Supreme Military Administrative Court considered the applicant's fresh claim to be an application to have the initial amount amended (*ıslah*) and dismissed it for being out of time. The court stated in particular:

"The claimant has clearly sought an amendment of the initial amount. The purpose of an amendment is to rectify a procedural act. Having regard to the judgment of the Constitutional Court published in the Official Journal of 14 November 2000, we must conclude that, in civil law, injured persons are entitled to seek additional compensation once an expert report has been issued. However, in the proceedings before the Supreme Military Administrative Court, the time-limits of one year and sixty days from the date of referral to the administrative authorities apply. Under section 46(4) of the Supreme Military Administrative Court Act, the amount claimed cannot be rectified once those deadlines have passed. Consequently, this claim must be rejected for being out of time ..."

One judge (out of five) expressed a dissenting opinion. He stated in particular:

"The amount of damage in personal injury cases is established only upon production of an expert report. Moreover, the date on which such reports are confirmed is taken into account when calculating the time-limits for referral to the administrative authorities and for bringing an action ..."

The claim for additional compensation based on the expert report was lodged within the relevant time-limit because the applicant did not become aware of the extent of the damage until after that report had been issued"

17. On 9 September 2005 the applicant lodged an application for rectification of the judgment.

18. By a judgment of 16 November 2005, served on the applicant on 28 November 2005, the Supreme Military Administrative Court rejected that application.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL TEXTS

A. Domestic provisions concerning the calculation of time-limits

19. Section 8(2) of the Administrative Procedure Act (Law no. 2577) and Article 162 of the Code of Civil Procedure provide that if the *dies ad quem* of a time-limit is a public holiday, that time-limit will be extended to the following working day.

B. Relevant international texts

1. *The 1969 Vienna Convention on the Law of Treaties*

20. Article 31 § 1 of the Vienna Convention, entitled “General Rule of Interpretation”, states that a treaty shall be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

2. *European Convention on the Calculation of Time-Limits*

21. The European Convention on the Calculation of Time-Limits, opened for signature on 16 May 1972 in Basle, came into force on 28 April 1983. It was drawn up with a view to establishing uniform European rules for calculating time-limits on the basis of responses obtained from governments. It applies both domestically and internationally, as clearly stated in the preamble thereto which affirms that “the unification of rules relating to the calculation of time-limits, both for domestic and international purposes”, will contribute to the attainment of greater unity between Council of Europe member States (see the explanatory report). Currently, only four of the ten signatory States have ratified that Convention. Turkey has neither signed it nor acceded to it.

22. Article 5 of that Convention provides as follows:

“Saturdays, Sundays and official holidays shall count when calculating a time-limit. However, where the *dies ad quem* of a time-limit before the expiry of which an act shall be performed is a Saturday, a Sunday, an official holiday or a day which shall be

considered as an official holiday, the time-limit shall be extended to include the first working day thereafter.”

3. *European Union Law*

23. Article 3 § 4 of Council Regulation (EEC, Euratom) no. 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (Official Journal no. L 124 of 08/06/1971) provides as follows:

“Where the last day of a period expressed other than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day.”

THE LAW

24. Mr Sabri Güneş claimed that the judgment of the Supreme Military Administrative Court dismissing his additional claim for compensation for being out of time had deprived him of his right of access to a court and, therefore, of his right to a fair trial within the meaning of Article 6 § 1 of the Convention. He also complained of a violation of Article 2 of the Convention taken together with Article 13.

THE GOVERNMENT’S PRELIMINARY OBJECTION

25. In their request for referral to the Grand Chamber, and subsequently in their observations, the Government submitted that the applicant had failed to comply with the six-month time-limit referred to in Article 35 § 1 of the Convention. In particular, they argued that the Chamber’s finding that the time-limit had been complied with was inconsistent with the Court’s well-established case-law.

26. The Court points out that the respondent Government did not raise its objection that the application was out of time at the admissibility stage. However, in its final admissibility decision, the Chamber decided to consider the issue of its own motion. The Government raised the six-month rule for the first time in their submissions to the Grand Chamber. The applicant did not rely on Rule 55, which provides that “any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application”.

27. In the light of the foregoing, the Grand Chamber considers that it should first rule on the application of the six-month rule to the instant case. In doing so, it must first ascertain whether it has jurisdiction to examine the issue of the applicant’s compliance with the six-month rule, and whether or

not the Government are estopped from raising that issue at this stage of the proceedings.

A. Whether or not the Court has jurisdiction to examine the issue of the applicant's compliance with the six-month rule and whether or not the Government are estopped from raising that issue

28. The Court points out that, in accordance with Article 35 § 4 of the Convention, it may “at any stage of the proceedings” reject an application which it considers inadmissible. Thus, even at the merits stage, the Court may reconsider a decision to declare an application admissible where it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see, among other authorities, *Azinas v. Cyprus* [GC], no. 56679/00, § 32, ECHR 2004-III, and *Odièvre v. France* [GC], no. 42326/98, § 22, ECHR 2003-III).

29. The Court has already considered that the six-month rule is a public policy rule and that, consequently, it has jurisdiction to apply of its own motion (see *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II), even if the Government have not raised that objection (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

Furthermore, in each case brought before it, the Court must ensure that the application has been lodged in compliance with the six-month time-limit, which the Chamber did in the instant case. That was also the position taken by the Commission, which considered that the Contracting States could not, of their own motion, put aside the rule of compliance with the six-month time-limit (see *X v. France*, no. 9587/81, Commission decision of 13 December 1982, Decisions and Reports (DR) 29, p. 228, and *K. v. Ireland*, no. 10416/83, Commission decision of 17 May 1984, DR 38, p. 162, § 6).

30. Consequently, the Court considers that, notwithstanding the requirements of Rule 55, which must in any case be interpreted in a manner compatible with the Convention, and in particular with Article 32 thereof, the Government are not estopped from raising the issue of the six-month rule before the Grand Chamber (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, §§ 66-69, ECHR 2006-III).

31. Accordingly, the Grand Chamber has jurisdiction to examine the issue of compliance with the six-month rule.

B. Compliance with the six-month rule

1. *The Chamber judgment*

32. The Chamber examined the issue of compliance with the six-month rule of its own motion and concluded that the time-limit provided for by Article 35 § 1 of the Convention had been complied with. In so doing, it first of all pointed out that as regards the determination of the *dies a quo* – the day on which the six-month time-limit starts to run – the Court had always taken account of domestic law and practice. It then decided to apply the principles governing the determination of the *dies a quo* to the determination of the *dies ad quem*. In support of its conclusion, it referred to the decision in the case of *Fondation Croix-Etoile, Baudin and Delajoux v. Switzerland* (no. 24856/94, 11 April 1996), in which the Commission had considered that given that the *dies ad quem* was an official holiday in domestic law, the time-limit should be extended to the first working day thereafter (see Chamber judgment, § 40).

33. The Chamber further considered that the requirements of legal certainty and protection, which were vital in that area where there was no doubt that the litigants intended in good faith to observe the procedural rules of their domestic law, were best satisfied by taking account of domestic law and practice when calculating the six-month time-limit. It considered that such an interpretation implemented the principle of subsidiarity which underpins the Convention system (see Chamber judgment, § 44).

34. Thus, the Chamber observed that the decision of the Supreme Military Administrative Court of 16 November 2005, which constituted the final domestic decision, had been served on the applicant on 28 November 2005 and that the time-limit set by Article 35 § 1 of the Convention had therefore started to run on 29 November 2005 and had expired on 28 May 2006. However, as that day was a Sunday, it considered that

“... the applicant cannot be criticised for having submitted his application on the first working day following that Sunday, in accordance with domestic custom and practice. Consequently, as far as the Court is concerned, it is more consistent with the purpose and aim of Article 35 to conclude that the six-month time-limit should be extended to the first following working day. Accordingly, since the applicant submitted his application on 29 May 2006, the time-limit laid down in Article 35 of the Convention was complied with.”

2. *The parties' submissions to the Grand Chamber*

35. As far as the Government were concerned, the application was out of time and should be rejected, in accordance with Article 35 § 1 of the Convention. They argued that the position of the Court as regards calculation of the six-month time-limit had been firmly established in its case-law (see *Kadikis (no. 2) v. Latvia*, 25 September 2003; *Otto*

v. Germany, 10 November 2009; *Benet Czech, spol. s.r.o. v. the Czech Republic*, 18 May 2010; and *Büyükdere and Others v. Turkey*, 8 June 2010). The Chamber judgment had not followed that case-law even though the Court should not depart from its precedents without good reason.

36. The Government further challenged the connection made by the Chamber between the interpretation of the six-month rule and the principle of subsidiarity. They argued that taking account of domestic custom and practice when calculating that time-limit did not satisfy the requirements of legal certainty and protection which were vital in that area. Any such practice would oblige the Court to draw up a full schedule of official holidays in the forty-seven States Parties to the Convention, which clearly differed from one State to the next and which could also change over time within the same State.

37. The Government challenged the relevance of the instruments cited by the Chamber in its judgment. They argued that those instruments had been ratified by very few countries, were very old and out of touch with the current situation and failed to take into account the development and expansion of the Council of Europe and the European Union. Lastly, they argued that the six-month time-limit was sufficient to afford the prospective applicant time to consider whether to lodge a complaint and to decide on the complaints and arguments to be raised.

38. The applicant, for his part, referred to domestic procedural legislation under which time-limits were automatically extended where the last day thereof coincided with a non-working day. Pointing out that the six-month time-limit available to him in which to lodge an application with the Court had started to run on 28 November 2005 (see paragraph 18 above) and therefore ended on 28 May 2006, he argued that because that second date fell on a Sunday, he had been unable to lodge his application until the first working day thereafter, namely, 29 May, which in his view had been entirely legitimate.

3. *The Grand Chamber's assessment*

a. **Relevant general principles**

39. The six-month time-limit provided for by Article 35 § 1 has a number of aims. Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004). It also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see *O'Loughlin and Others v. the United Kingdom* (dec.), no. 23274/04, 25 August 2005) and facilitates the establishment of facts in a

case, since with the passage of time, any fair examination of the issues raised is rendered problematic (see *Nee v. Ireland* (dec.), no. 52787/99, 30 January 2003).

40. That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). The existence of such a time-limit is justified by the wish of the High Contracting Parties to prevent past judgments being constantly called into question and constitutes a legitimate concern for order, stability and peace (see *De Becker v. Belgium* (dec.), no. 214/56, 9 June 1958).

41. Article 35 § 1 contains an autonomous rule which has to be interpreted and applied in such a manner as to ensure to any applicant claiming to be the victim of a violation by one of the Contracting Parties of one of the rights set forth in the Convention and its Protocols the effective exercise of the right of individual petition pursuant to Article 35 § 1 of the Convention (see *Worm v. Austria* (dec.), no. 22714/93, 27 November 1995).

42. The Court reiterates that with regard to procedure and time-limits, legal certainty constitutes a binding requirement which ensures the equality of litigants before the law. That principle is implicit in all the Convention's Articles and constitutes one of the fundamental elements of the rule of law (see, among other authorities, *Beian v. Romania* (no. 1), no. 30658/05, § 39, ECHR 2007-V (extracts)).

b. Determination of the *dies ad quem*

43. The issue is whether or not, when the *dies ad quem* of a time-limit set by Article 35 § 1 of the Convention is a Saturday, a Sunday, an official holiday or a day considered to be an official holiday, the time-limit will be extended to include the first working day thereafter.

44. In that connection, it is important to note the relevant established case-law of the European Commission of Human Rights, as it results from the decision in the case of *K.C.M. v. the Netherlands* (no. 21034/92, Commission decision of 9 January 1995, DR 80-A, pp. 87-88). Referring to the method of calculating the time-limit used by the Court in its interpretation of the former Article 32 of the Convention which governed the time-limit for lodging an application (see *Istituto di Vigilanza v. Italy*, 22 September 1993, § 14, Series A no. 265-C; *Figus Milone v. Italy*, 22 September 1993, § 14, Series A no. 265-D; and *Goisis v. Italy*, 22 September 1993, § 9, Series A no. 265-E), the Commission held, in particular, that the six-month time-limit started to run on the day following delivery of the final domestic decision and that it expired six calendar months later, irrespective of the actual length of those months. For example, a final domestic decision delivered on 4 February 1994 entailed a six-month period starting on 5 February of the same year and expiring at midnight on 4 August 1994 (see *Hokkanen v. Finland*,

no. 25159/94, Commission decision of 15 May 1996); a final domestic decision delivered and pronounced on 25 January 1995 entailed a time-limit starting on 26 January of the same year and ending at midnight on 25 July 1995 (see *Pollard v. the United Kingdom*, dec. no. 28189/95, Commission decision of 12 April 1996).

45. The method in question was later used in several cases examined by the Commission (see, among many others, *Legendre v. France*, no. 25924/94, Commission decision of 15 January 1997). The Court specifically followed that approach subsequently (see, among many others, *Loveridge v. the United Kingdom* (dec.), no. 39641/98, 23 October 2001; *Ataman v. Turkey* (dec.), no. 46252/99, 11 September 2001; *Zarakolu v. Turkey* (dec.), no. 32455/96, 5 November 2002; and *Nelson v. the United Kingdom*, no. 74961/01, §§ 12-13, 1 April 2008).

46. In that context, the question has arisen of which approach to adopt when the last day of the six-month time-limit is a non-working day, namely, a Saturday, a Sunday or an official holiday.

47. In its decision in the case of *Fondation Croix-Etoile, Baudin and Delajoux v. Switzerland* (cited above), the Commission considered that where the *dies ad quem* was an official holiday, the time-limit should be extended to the first working day thereafter.

48. However, the Court has not taken account of non-working days in determining the *dies ad quem*. For example, in the case of *Kadikis v. Latvia* (dec. no. 62393/00, 25 September 2003), the last day of the six-month period was a Saturday. The applicant lodged his application two days later, namely, on the following Monday, claiming that in such circumstances, domestic law provided for an automatic extension of time-limits to the first working day thereafter. The Court rejected that argument, considering that “the six-month time-limit is calculated in accordance with the Convention criteria and not on the basis of the conditions laid down by the domestic law of each respondent State”.

49. The Court has confirmed on numerous subsequent occasions the principle that compliance with the six-month time-limit must satisfy the Convention criteria and not the arrangements laid down by the domestic law of each respondent State (see, among many other authorities, *Otto*, cited above; *Benet Czech, spol. s.r.o.*, cited above; and *Büyükdere and Others*, cited above).

50. While it is not formally bound to follow any of its previous decisions or judgments, the Court considers that it is in the interest of legal certainty, foreseeability and equality before the law that it should not depart from its own precedents without compelling reason (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, ECHR 2001-I). The same is true, *a fortiori*, with regard to procedural rules, where legal certainty is of particular importance and the Court’s precedents should be followed even more strictly so as to ensure that the requirements of foreseeability and

consistency, which serve the interests of all the parties to the proceedings, are met.

It is therefore necessary to ascertain whether there are good reasons to justify a departure by the Court from its established case-law and practice as described above.

51. In its judgment, the Chamber pointed out that as regards the determination of the *dies a quo*, the Court had always taken account of domestic law and practice and it decided to use the same approach in order to determine the *dies ad quem* (see Chamber judgment, § 40).

52. However, in the Grand Chamber's view, an analysis of the case-law of the Convention institutions reveals that while taking account of domestic law and practice is, admittedly, an important aspect, it is not decisive in determining the starting point of the six-month period. That analysis in fact makes it possible to distinguish two kinds of situations in which the Convention institutions have not taken the same approach.

53. The first situation covers cases concerning the determination of the date on which a final domestic decision, delivered in the context of exhaustion of domestic remedies, has been brought to the attention of the applicant. In the case of *Worm* (decision cited above), the Government had claimed that the six-month time-limit had not been complied with, arguing that the time-limit should have started running on the date on which the court of appeal read out the final decision. However, under Austrian law, the final decision had to be served in writing on the applicant or, as the case may be, the applicant's representative. In its decision, the Commission, while acknowledging that that case had led it to review the approach it had followed previously, concluded that where under domestic law, the final decision had to be served in writing, the six-month time-limit had to be calculated from the date of service, whether or not the court had read out the relevant decision either in full or in part.

The Court subsequently confirmed that approach and held that it was more in line with the object and purpose of Article 35 § 1 for the six-month time-limit to start running on the date of service of a copy of the judgment (see *Worm*, cited above, § 33). In its subsequent judgments and decisions, it has followed that case-law and has not hesitated to set the starting point for the six-month time-limit taking account of a practice or rule under domestic law in order to give full effect to the need to ensure effective exercise of the right of individual petition (see, among many other authorities, *Papachelas v. Greece*, no. 31423/96, § 29, ECHR 1999-II concerning the date of finalisation of a decision, and *Seher Karataş v. Turkey*, no. 33179/96, § 28, 9 July 2002 concerning notice of a fine).

54. The second type of situation concerns in particular the determination of the starting point in cases in which the alleged violation consists of a "continuing situation" and/or in which there is no effective remedy in domestic law. According to the Court's settled case-law, in cases of a

continuing situation, the period starts to run afresh each day and it is only when that situation ends that the six-month period actually starts to run (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 159, ECHR-2009). Likewise, where it is clear from the outset that no effective remedy is available to the applicant, the six-month period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (*ibid.*, § 157). It is therefore a matter for the Court to determine, given what is at stake, when an applicant intending to lodge a complaint before it should lodge that complaint (*ibid.*, § 169).

55. The reason for the variable approach described above lies in the principle that the six-month rule is autonomous and must be construed and applied according to the facts of each individual case, so as to ensure the effective exercise of the right to individual petition (see, among many other authorities, *Büyükdag v. Turkey* (dec.), no. 28340/95, 6 April 2000; *Fernández-Molina González and 369 Others v. Spain* (dec.), no. 64359/01, 8 October 2002; and *Zakrzewska v. Poland*, no. 49927/06, § 55, 16 December 2008).

56. Moreover, application by the Court of its own criteria in calculating time-limits, independently of domestic rules, tends to ensure legal certainty, proper administration of justice and thus, the practical and effective functioning of the Convention mechanism. In fact, if in determining the *dies ad quem*, the Court were bound to take account of domestic law and practice, it would have to draw up a full schedule of official holidays in the forty-seven States Parties to the Convention, which vary from one State to another and even within the same State (see, for example, the case of *Stone Court Shipping Company, S.A. v. Spain*, no. 55524/00, § 39, 28 October 2003, where the two autonomous communities involved in the case did not have the same list of official holidays) and may also change over time.

57. Furthermore, having regard to the numerous means of communication now available to potential applicants (post, fax, electronic communication, internet etc.), the Court considers that the six-month time-limit is, now more than ever, sufficient to enable them to consider whether to lodge an application and, if so, to decide on the content thereof, in accordance with Rule 47 of the Rules of Court. The Court observes that while it is essential for the efficacy of the system that Contracting States comply with their obligation not to hinder the exercise of the right of individual petition, applicants must nonetheless be alert as regards compliance with the relevant procedural rules (see, *mutatis mutandis*, *Varnava and Others*, cited above, § 160).

58. Moreover, the Court notes Council Regulation (EEC, Euratom) of 3 June 1971 determining the rules applicable to periods, dates and time limits (Article 3 § 4) and the European Convention on the Calculation of

Time-Limits of 16 May 1972 (Article 5), which to date has been ratified by only four of the ten signatory States (see paragraphs 20-23 above). However, given the requirements of legal certainty as regards procedure and time-limits, and in so far as it would be difficult to conclude that there is a general consensus between Council of Europe Member States as regards the calculation of time-limits, the Court considers that it should follow its established approach.

59. In the light of the foregoing, the Court sees no reason to justify departing from the precedents described above (see paragraph 49).

c. Conclusion

60. It is sufficient to observe that, in the instant case, the final decision of the Supreme Military Administrative Court of 16 November 2005 was served on the applicant on 28 November 2005. The time-limit laid down by Article 35 § 1 of the Convention therefore started to run on the following day, 29 November, and expired at midnight on Sunday 28 May 2006. The application was lodged on 29 May 2006, that is, after the expiry of the above-mentioned time-limit.

61. As far as the Court is concerned, the fact that the last day of the six-month time-limit, that is, 28 May 2006, fell on a Sunday and that in such circumstances, under domestic law, time-limits are extended to the following working day, does not affect the determination of the *dies ad quem*. The Court reiterates that compliance with the six-month time-limit is determined using criteria specific to the Convention. Furthermore, considering the time-limit provided for in Article 35 § 1 of the Convention, there is no indication in this case that the applicant, who was represented by a lawyer who should have been aware of the Court's case-law in this regard, could not have foreseen that the *dies ad quem* would fall on a non-working day and acted accordingly (see *Otto*, cited above, and *Büyükdere and Others*, cited above, § 10).

62. Consequently, because this application was lodged more than six months after service of the final domestic decision within the meaning of Article 35 § 1 of the Convention, the Court is unable to examine the merits of the case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it is unable to examine the merits of the case.

Done in English and in French, and notified in writing on 29 June 2012.

Johan Callewaert
Deputy to the Registrar

Nicolas Bratza
President