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

THIRD SECTION

CASE OF BÜKER v. TURKEY

(Application no. 29921/96)

JUDGMENT

STRASBOURG

24 October 2000

FINAL

24/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Büker v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Sir Nicolas BRATZA,
Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 6 July 1999, 21 March 2000 and 3 October 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 29921/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Cengiz Büker ("the applicant"), on 2 October 1995.

2. The applicant was granted leave by the President to represent himself in the proceedings before the Court (Rule 36 § 3 of the Rules of Court). The President refused the applicant's request for anonymity (Rule 47 § 3). The respondent Government ("the Government") did not designate an Agent for the purposes of the proceedings.

3. The applicant complained under Article 6 of the Convention about the unreasonable length of time taken by his university employer to reinstate him following a decision in his favour by a domestic court.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 21 March 2000 the Chamber declared the application admissible.

7. After consulting the parties, the Chamber decided that it was not necessary to hold a hearing. Neither the applicant nor the Government submitted observations on the merits in the post-admissibility procedure.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant worked on the basis of a two-year contract, beginning on 9 December 1985, as an assistant Professor in the Faculty of Medicine of the Kayseri Erciyas University. Under Turkish law he had the status of a civil servant.

9. In an administrative decision dated 21 December 1987 the Office of the University President concluded that the applicant's contract would not be renewed on the grounds of his professional incompetence. The applicant maintained that he was not informed of this decision until he went to the bank to draw out his monthly salary.

10. On 4 March 1988 the applicant challenged the decision before the Kayseri Administrative Court. In a judgment dated 6 December 1989 (Judgment no. 1) the court ruled in the applicant's favour finding that the administration failed to substantiate its view that he was not competent for the post. The court annulled the administrative decision. On 29 January 1990 the court's judgment was served on the Office of the University President, which failed to comply with it within the 60-day period prescribed by domestic law.

11. The Office of the University President appealed and the file was sent to the Supreme Administrative Court on 22 May 1990. On 13 June 1990 the 5th Chamber of the Supreme Administrative Court quashed the judgment of the Kayseri Administrative Court. This judgment was served on the Office of the University President on 30 July 1990. The case was subsequently remitted to the Kayseri Administrative Court.

12. In a judgment dated 5 July 1991 (Judgment no. 2) the Kayseri Administrative Court adhered to (*uyma*) the judgment of the Supreme Administrative Court and held that the decision of the Office of the University President not to renew the applicant's contract was lawful.

13. On 21 August 1991 the applicant appealed to the 5th Chamber of the Supreme Administrative Court. The file was referred to the court on 4 October 1991. On 18 March 1992 the 5th Chamber of the Supreme Administrative Court upheld the judgment of the Kayseri Administrative Court of 5 July 1991.

14. On 13 October 1992 the applicant subsequently petitioned the 5th Chamber of the Supreme Administrative Court requesting rectification (*karar düzeltme*) of its latest judgment. On 21 June 1993 the 5th Chamber of the Supreme Administrative Court rectified its judgment by quashing the judgment of the Kayseri Administrative Court of 5 July 1991. The case was remitted to the Kayseri Administrative Court.

15. In a judgment dated 2 December 1993 (Judgment no. 3) the Kayseri Administrative Court adhered to (*uyma*) the judgment of the Supreme Administrative Court of 21 June 1993 and again annulled the 1987 decision of the Office of the University President. On 19 February 1994 this judgment was served on the Office of the University President. The Office of the University President again did not comply with this new judgment within the 60-day period prescribed by domestic law.

16. On 23 February 1994 the Office of the University President appealed against the judgment (Judgment no. 3) of the Kayseri Administrative Court. On 27 June 1994 the 8th Chamber of the Supreme Administrative Court rejected the appeal and upheld the judgment. The judgment restated that the administration had failed to substantiate its view that the applicant was not competent for the post.

17. The Office of the University President requested the 8th Chamber of the Supreme Administrative Court to rectify its judgment (*karar düzeltme*). On 23 March 1995 the 8th Chamber of the Supreme Administrative Court rejected this request.

18. On 28 March 1995 the applicant sent a notarised letter to the Office of the University President demanding that he be reinstated in his former post and be awarded the salary and other monetary rights owing to him.

19. On 7 December 1995 the applicant received a letter from the Office of the University President dated 4 December 1995 notifying him that he had been re-appointed to his former post as of 23 November 1995. On 15 December 1995 the applicant took up his functions.

20. On 27 December 1995 the applicant resigned. He requested the Office of the University President to process his voluntary retirement.

21. In three separate actions, the applicant sued the Office of the University President before the Kayseri Administrative Court, requesting that he be paid the monthly salaries and related monetary rights for the periods during which he was entitled to assume his duties in accordance with the judgments of the domestic courts upholding his claim to reinstatement.

22. In three judgments dated 25 January 1994, 25 January 1995 and 16 January 1996, the Kayseri Administrative Court held, *inter alia*, that since the Office of the University President had unlawfully failed to comply with its two judgments in favour of the applicant within the 60-day period prescribed by domestic law, it was liable in damages to the applicant having regard to the court's finding that the decision to terminate his contract was

unlawful. It ruled that the applicant was to be paid his monthly salary and related monetary rights for the given period. The applicant was eventually paid.

II. RELEVANT DOMESTIC LAW

23. Code of Administrative Procedure (*İdari Yargılama Usulü Kanunu*)

Article 28 § 1 (as amended on 10 June 1994)

"The administration is obliged, without delay, to act *de iure* or *de facto* in order to comply with the requirements of judgments with regard to the merits ... rendered by ... administrative courts [of first instance] ... Under no circumstance can this period exceed 30 days starting from the day on which the judgment is served on the administration."

Article 28 § 3

"When the administration fails to comply either de iure or *de facto* with the judgment of ... an administrative court an action may be brought against the administration ... for pecuniary and non-pecuniary damages before the ... competent administrative court."

Article 28 § 4

"When a civil servant intentionally fails to comply with a court judgment within a period of thirty days, the person concerned may, as an alternative to bringing proceedings against the administration, initiate a claim for compensation against that civil servant."

Article 52 (as amended on 5 April 1990)

"1. The initiation of an appeal ... does not stop the execution of the judgment rendered by a judge, court or by the Supreme Court of Cassation. ...

4. When a judgment is quashed, its execution stops automatically."

Article 54 § 1 (as amended on 5 April 1990)

"1. The parties may request only once rectification of a judgment given on appeal by ... the Supreme Administrative Court (*Danıştay*) ... within 15 days after the judgment is served on them ... ."

THE LAW

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

24. The applicant complained under Article 6 § 1 of the Convention that it took him seven and a half years to be reinstated to his university post on account of the university's failure to implement the judgments given by the administrative courts in his favour. Article 6 § 1 states as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time ... ."

A. Applicability of Article 6 § 1

25. The Court notes that it has not been disputed that the applicant, a civil servant at the material time, can rely on the safeguards of Article 6 § 1. The Court sees no reason to hold otherwise, it being noted that, despite his status, the applicant did not occupy a post involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities (*Pellegrin v. France* [GC], no. 28541/95, ECHR 1999, § 66).

Article 6 § 1 is applicable.

B. Compliance with Article 6 § 1

26. The Government submitted that the proceedings were complex, involving several instances and recourse by the parties to different types of remedies. On the understanding that the period to be considered commenced on 4 March 1988, the date on which the applicant instituted proceedings, and ended on 23 March 1995 with the rejection by the 8th Chamber of the Supreme Administrative Court of the Office of the University President's request for rectification, the Government insisted that about half of this period was taken up by the applicant's appeals and the manner in which he conducted his case. Furthermore, no unreasonable delay can be imputed to the university authorities, less so to the domestic courts which delivered a total of fourteen decisions over the relevant period.

27. The applicant stated that the university authorities failed to comply with the initial decision of the Kayseri Administrative Court upholding his complaint of unfair dismissal. Their failure obliged him to invoke the appeal process to ensure respect for that decision and he could not be faulted for availing himself of his appeal rights. The applicant considered that the length of the proceedings, which he does not consider to be extraordinary, cannot engage his responsibility.

28. The Court observes that the applicant concedes that the length of the proceedings at issue was not "extraordinary". It is his submission that the failure of the university authorities to comply with the first judgment in his favour obliged him to go back to court on several occasions in order to secure the execution of that decision.

29. The Court notes in this connection that according to its established case law the right of access to a court guaranteed by Article 6 § 1 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. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants without protecting the implementation of judicial decisions (see the Hornsby v. Greece judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp.510-511, § 40).

30. The Court further notes with respect to the manner in which the applicant has formulated his complaint that there was in fact no failure on the part of the university authorities to implement a final decision of a domestic court. The decision of 6 December 1989 of the Kayseri Administrative Court on which the applicant relies was not dispositive of his rights with respect to his employer, but marked the first stage in a series of appeals and counter-appeals which culminated in the decision rendered by the 8th Chamber of the Supreme Administrative Court on 23 March 1995 to reject the university's request for rectification of its judgment of 27 June 1994 (see paragraph 17 above).

31. The Court recalls that it has to examine in the light of the Convention as a whole the situation impugned by an applicant. In the performance of this task, it is free, notably, to give to the facts of a case, as found to be established by the material before it, a characterisation in law different to that given to them by the applicant (see, for example, the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 23, § 63).

32. With that in mind the Court will examine the applicant's case from the standpoint of compliance with the "reasonable time" requirement prescribed in Article 6 § 1. It notes in this connection that the applicant's complaint was communicated to the respondent Government under this head and that both parties made observations thereon.

33. The Court will assess the reasonableness of the period taken to reach a final determination on the applicant's claim on the basis of its usual criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, ECHR 2000).

34. The Court notes that the relevant period began to run as from the date on which the applicant sued the university authorities, 4 March 1988,

and ended on 7 December 1995, the date on which the university notified the applicant that he could have his post back. The Court does not accept the Government's contention that the period ended with the date on which the Supreme Administrative Court refused the university's request for rectification. In its opinion, the delay in complying with that ruling added to the length of the proceedings.

35. This period, seven years and nine months, is exceptionally lengthy and calls for the closest scrutiny. The length cannot be explained in terms of the complexity of the subject matter of the litigation since it involved a straightforward employment dispute; nor can the length be said to be attributable to the university authorities or to the applicant since both parties were entitled to avail themselves of domestic remedies to challenge the decisions which went against them using the appeal process. It is also to be noted that, when seized by either party, the domestic courts rendered their decisions relatively speedily.

36. The Court recalls that employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (see the above-mentioned *Frydlender* judgment, § 45). It notes that in the instant case the essential issue was whether the applicant was a competent academic and researcher in his field. To permit a simple employer-employee dispute to drag on for so long must call into question the effectiveness of the domestic legal system in handling this sort of litigation. While, as the respondent Government maintain, the range of remedies at the disposal of the parties may in principle be seen as consistent with the protection of individual rights, this cannot exempt the authorities from their duty under Article 6 § 1 to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to decide cases within a reasonable time (see, among many other authorities, the above-mentioned *Frydlender* judgment, § 45). Even if the applicant considers that the length of the period was not "extraordinary" it cannot be said in the circumstances to be reasonable within the meaning of Article 6 § 1 of the Convention.

37. The Court concludes that the length of the period was excessive. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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. Damages

39. The applicant did not submit any claims under this head either with respect to pecuniary or non-pecuniary damage. He confined himself to stating that even though he had received compensation for loss of salary (see paragraph 22 above), the award made did not compensate him for the pain and suffering which he had to endure in fighting his case through the domestic courts.

40. The Government pointed out in their submissions on the merits of the Article 6 complaint that the applicant obtained compensation from the domestic court for the damage he suffered as a result of the non-renewal of his contract.

41. The Court considers that no award should be made under the head of pecuniary damage. The applicant has not submitted a claim and, as noted by the Government, the applicant did in fact obtain compensation from the domestic courts for pecuniary loss.

42. As to non-pecuniary damage, the Court considers that the applicant can be taken to have suffered frustration and anxiety through his inability to bring his dispute with the university authorities to a speedy conclusion. Deciding on an equitable basis, the Court awards the applicant the sum of FRF 5,000.

B. Costs and expenses

43. The applicant did not submit any claims under this head either.

44. The Court considers that the applicant must be taken to have waived his right to an award under this head having regard to his failure to submit a claim.

C. Default interest

45. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 2.74 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, in respect of non-pecuniary damage FRF 5,000 (five thousand French Francs), together with any value-added tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (b) that simple interest at an annual rate of 2.74 % shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English, and notified in writing on 24 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President