



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

THIRD SECTION

CASE OF HAYRETTİN KARTAL v. TURKEY

(Application no. 4520/02)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

12/04/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hayrettin Kartal v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr R. TÜRMESEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 4520/02) 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 Hayrettin Kartal ("the applicant"), on 13 December 2001.

2. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. On 18 November 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1958 and lives in Istanbul.

5. In 1989 the applicant signed an agreement with the General Directorate of Land Office attached to the Ministry of Finance. Accordingly, the Land Office undertook to allocate a plot of land to the applicant and the applicant agreed to pay a certain amount of money to the authorities. The Land Office however failed to make the transfer and therefore on 18 October 1995 paid back the applicant's money with interest.

6. Alleging that he had suffered financial loss, on 21 December 1994 the applicant brought compensation proceedings in the Istanbul Administrative Court against the Land Office.

7. On 27 December 1995 the Istanbul Administrative Court declared lack of jurisdiction and sent the file to the Ankara Administrative Court.

8. On 26 March 1997 the Ankara Administrative Court held that as the Land Office had paid the applicant's money back with interest, there was no need for the court to rule for pecuniary or non-pecuniary compensation. It accordingly rejected the applicant's compensation claims.

9. The applicant appealed and on 18 November 1999 the Council of State, upholding the first-instance court's reasoning, rejected the applicant's request.

10. The applicant further applied for rectification, however his request was rejected by the Council of State on 27 June 2001.

THE LAW

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

11. The applicant complained that the length of the administrative proceedings had been incompatible with the "reasonable time" requirement provided in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

12. The Government contested that argument.

13. The period to be taken into consideration began on 21 December 1994 and ended on 27 June 2001. It thus lasted six years and six months.

A. Admissibility

14. The Government asked the Court to dismiss the application as inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 of the Convention. In this connection, they maintained that the applicant had to complain before the national authorities prior to his application to the Court. They stated that at no stage of the domestic proceedings did the applicant question the length of the proceedings.

15. The Court reiterates that the obligation to exhaust domestic remedies requires only that an applicant make normal use of effective and sufficient remedies that are capable of remedying the situation at the issue and affording redress for the breaches alleged (see *Karassev v. Finland* (dec.), no.31414/96, ECHR 1999-II.)

16. The Court observes that the Turkish legal system does not provide any remedies to accelerate the proceedings. Nor does it award any compensation for delays in the proceedings. Accordingly, the Court concludes that there was no appropriate and effective remedy which the applicants should have exercised for the purposes of Article 35 § 1 of the Convention (see *Hartman v. the Czech Republic*, no.53341/99, § 69, 3 December 2003). It therefore rejects the Government's objection.

17. The Court notes that the remainder of 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

18. 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, the conduct of the applicant and 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, § 43, ECHR 2000-VII).

19. 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 (see *Frydlender*, cited above).

20. It is true that the domestic courts delivered three decisions in the proceedings during a period of six years and six months. However, the Court cannot overlook the fact that a lengthy period elapsed before the Council of State. Although the Ankara Administrative Court delivered its decision on 26 March 1997, the Council of State ruled on the applicant's request for appeal only on 18 November 1999 – almost after two years and eight months. Thereafter a further one year and seven months period elapsed until the Council of State's determination of the applicant's rectification request. The Government have not offered any explanation for this state of affairs. Failing such an explanation, and in the absence of any indication that the applicant was to blame, the delay must be considered to be attributable to the domestic court's handling of the appeal proceedings. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 7,000 euros (EUR) in respect of pecuniary damage and EUR 23,000 in respect of non-pecuniary damage.

23. The Government contested these claims, considering them excessive.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant must have suffered non-pecuniary damage, such as distress and frustration, on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant a total sum of EUR 900 under this head.

B. Costs and expenses

25. The applicant did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court.

C. Default interest

26. 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 from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 900 (nine hundred euros) in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement and free of any tax that may be chargeable;
 - (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 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President