



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

SECOND SECTION

CASE OF METE v. TURKEY

(Application no. 39327/02)

JUDGMENT

STRASBOURG

25 October 2005

FINAL

25/01/2006

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 Mete v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 39327/02) 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 İbrahim Bülent Mete, on 26 September 2002.

2. The applicant was represented by Mr Yılmaz Alkım, a lawyer practising in Kırklareli. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 17 June 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

6. The applicant was born in 1961 and lives in Istanbul.

7. On 14 May 1990 the Bakırköy District Governorship granted the applicant a licence to serve alcohol in his restaurant.

8. On an unspecified date, the quarter of Güngören, where the applicant's restaurant was located, became a separate district. On 13 October 1997, the Güngören District Governorship revoked the applicant's licence on the ground that the applicant's restaurant was outside the designated area for restaurants serving alcohol.

9. On 27 October 1997 the applicant was notified of this decision and was barred from running the restaurant.

10. On 3 November 1997 the applicant brought an action before the Istanbul Administrative Court for the annulment of the Güngören District Governorship's decision of 13 October 1997. He also requested that the decision be stayed.

11. On 23 January 1998 the Istanbul Administrative Court rejected the applicant's request for a stay of proceedings. The applicant objected to this decision. On 18 March 1998 the Regional Administrative Court rejected the applicant's challenge.

12. On 11 June 1998 the Istanbul Administrative Court delivered its judgment on the merits of the case. The court decided that the revocation order of the Güngören District Governorship was in conformity with the law. The applicant appealed against this judgment to the Supreme Administrative Court¹, and as a preliminary step, he once again requested the Supreme Administrative Court to stay the execution of the Governorship's decision. On 12 November 1998 the Supreme Administrative Court decided on the request for a stay and rejected it.

13. On 15 February 2001 the Supreme Administrative Court dismissed the applicant's appeal on points of law, and upheld the judgment of the first-instance court.

14. The applicant requested rectification of this decision. On 24 June 2002 the Supreme Administrative Court dismissed the applicant's request.

15. On 15 August 2002 the applicant was notified of the Supreme Administrative Court's final decision.

THE LAW

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

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

¹ The Regional Administrative Court had no jurisdiction in the present case as regards its merits, but only in respect of procedural matters such as the appeal on the stay in § 11, pursuant to Article 27 of the Code of Administrative Procedure.

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

A. Admissibility

17. The Government asked the Court to dismiss the complaint as being inadmissible for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They maintained that the applicant did not raise the substance of his complaint before the domestic courts, which were always in a position to examine such matters.

18. The Court reiterates that the obligation to exhaust domestic remedies only requires that an applicant make normal use of effective and sufficient remedies, that is those capable of remedying the situation at issue and affording redress for the breaches alleged.

19. The Court observes that the Turkish legal system does not provide any remedies to accelerate the proceedings. Nor does it award any compensation for delay. The Court accordingly concludes that there was no appropriate and effective remedy which the applicant should have exercised for the purposes of Article 35 § 1 of the Convention (see *Hartman v. Czech Republic*, no. 53341/99, § 69, ECHR 2003-VIII (extracts)). It therefore rejects the Government’s preliminary objection.

20. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible has been established.

B. Merits

21. The Court notes that the period to be taken into consideration began on 3 November 1997 and ended on 24 June 2002, when the Supreme Administrative Court rejected the applicant’s request for rectification of the decision. The proceedings thus lasted nearly four years and eight months.

22. The Government submitted that during the period in question, the applicant obtained two Administrative Court judgments, one Regional Administrative Court judgment and three Supreme Administrative Court judgments. Furthermore, the courts examined the file in detail at every stage.

23. The applicant maintained his allegation.

24. 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).

25. 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).

26. The Court notes that the domestic courts delivered six decisions in the proceedings during a period of four years and eight months. However, the Court cannot overlook the fact that a lengthy period – two years and eight months – elapsed between the date of the decision of the Istanbul Administrative Court (11 June 1998) and the date of the Supreme Administrative Court's determination of the applicant's appeal against that decision (15 February 2001). The Court further notes that there was an additional period of approximately one year and four months between that decision and the Supreme Administrative Court's decision that dismissed the request for rectification (24 June 2002). The Government did not offer any explanation for this state of affairs. In the absence of such an explanation, or of any indication that the applicant was to blame, the delay must be considered to be attributable to the domestic courts' handling of the appeal proceedings (see, *mutatis mutandis*, *Nuri Özkan v. Turkey*, no. 50733/99, § 21, 9 November 2004, and, *a contrario*, *Çakmak and Others v. Turkey*, no. 53672/00, § 40, 25 January 2005).

27. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 118,064,000,000 Turkish liras (TRL), the equivalent of 69,287 euros (EUR), in respect of pecuniary damage and TRL 100,000,000,000 (EUR 58,686) in respect of non-pecuniary damage.

31. The Government contested these claims as being excessive.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it 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 EUR 1,000 under this head.

B. Costs and expenses

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

C. Default interest

34. 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 in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one 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;
 - (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 25 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President