



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

FOURTH SECTION

**CASE OF KARAKULLUKÇU v. TURKEY**

*(Application no. 49275/99)*

JUDGMENT

STRASBOURG

22 November 2005

**FINAL**

***22/02/2006***

*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 Karakullukçu v. Turkey,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMESEN,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 3 November 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 49275/99) 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 Altan Karakullukçu ("the applicant"), on 20 April 1999.

2. The applicant was represented by Mr Ç. Hasdemir, a lawyer practising in İstanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 21 October 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. 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). The case was assigned to the newly composed Fourth Section.

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

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1981 and lives in Elazığ.

7. On 20 June 1991 the applicant was seriously injured in an explosion of a bomb placed in the garden of the Military barracks in Gaziosmanpaşa district of İstanbul. He was ten years old at the time of the events.

8. On 10 February 1992 the applicant's father, acting as his legal guardian, filed a petition with the Ministry of Internal Affairs requesting compensation for the damage the applicant had sustained. The Ministry of Internal Affairs rejected this request on 15 April 1992.

9. On 3 June 1992 the applicant's father brought an action for compensation before the İstanbul Administrative Court against the Ministry of Internal Affairs (hereinafter "the respondent").

10. On 16 June 1992 the case was notified to the respondent which submitted its observations on 11 August 1992.

11. On 3 March 1993 the İstanbul Administrative Court dismissed the respondent's preliminary objection.

12. Between 3 March 1993 and 4 December 1994 the first-instance court took certain procedural decisions on 10 December 1993, 27 June 1994 and 16 September 1994.

13. On 4 December 1994 the İstanbul Administrative Court considered that there was neither fault nor negligence attributable to the authorities and dismissed the case.

14. On 30 January 1995 the applicant appealed against the aforementioned decision and requested the suspension of the execution of the judgment. On 30 January 1995 the applicant paid the expenses pertaining to the appeal procedure. The applicant was warned that the amount paid was insufficient and on 30 March 1995 he paid the remaining costs of the appeal procedure.

15. On 3 May 1995 the Supreme Administrative Court dismissed the applicant's request for a suspension of the execution of the judgment of 4 December 1994.

16. On 16 November 1995 the Supreme Administrative Court quashed the judgment of the first-instance court. The court referred to the doctrine of "social risk", which did not require the establishment of any causal link between the harmful action and the loss, and reasoned that the damage caused by terrorism should be shared by the society as a whole in accordance with the principles of "justice" and "social state".

17. On 15 March 1996 the respondent requested the rectification of the judgment of the Supreme Administrative Court.

18. On 9 March 1998 the Supreme Administrative Court dismissed the request of the respondent.

19. On 30 September 1998 the İstanbul Administrative Court decided to abide by the judgment of the Supreme Administrative Court.

20. On 27 November 1998 the case-file was sent to an expert. On 29 December 1998 the expert submitted its report to the Court.

21. On 17 February 1999 the Istanbul Administrative Court awarded the applicant an amount of compensation for pecuniary and non-pecuniary damage with legal interest running from 18 February 1992.

22. On 30 April 1999 the judgment became final.

23. On 18 September 2000 the applicant was paid the due amount of compensation.

## THE LAW

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

24. The applicant complained that the length of the proceedings was 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...”

#### A. Admissibility

25. 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 of the Convention. They maintained that the applicant did not raise the substance of his complaint before the domestic courts.

26. The applicant did not deal specifically with this issue other than to dispute, in general terms, the arguments of the Government.

27. The Court reiterates that the obligation to exhaust domestic remedies requires only 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.

28. 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. The Court accordingly 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, ECHR 2003-VIII (extracts)). It therefore rejects the Government’s preliminary objections.

29. In these circumstances, the Court notes that the application 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. It must therefore be declared admissible.

## **B. Merits**

30. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the “reasonable time” requirement laid down by Article 6 § 1 began on 10 February 1992 when the applicant’s father petitioned the Ministry of Internal Affairs (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 33-34, § 98, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, Series A no. 304, p. 25, § 62, and *Vallée v. France*, judgment of 26 April 1994, Series A no. 289-A, p. 17, § 33) and ended on 30 April 1999 when the judgment became final. The period under consideration thus lasted seven years and two months, which comprised the proceedings before the Ministry of Internal Affairs and two instances of court which examined the case twice.

31. The Government submitted that the case was complicated as it raised a number of factual and legal issues which needed a detailed examination. The Government submitted that during the period in question, the applicant obtained two judgments at first-instance and two judgments at appeal stage as well as several interim decisions and many notifications. They submitted that there was no delay attributable to the authorities and that the length of the proceedings was caused by the number of legal reviews sought by the parties.

32. The applicant contested to the Government’s arguments. They argued, in particular, that the length of the proceedings was unnecessarily prolonged by the decision of the first-instance court to dismiss their request for compensation despite the well-established jurisprudence in this area.

33. 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).

34. As regards the complexity of the case, the Court does not consider that the case presented any exceptional legal or factual difficulties since the impugned proceedings concerned an action for compensation in respect of the injuries sustained by the applicant as a result of the explosion of a bomb placed in the Military barracks.

35. As regards the conduct of the applicant, the Court observes that the applicant was responsible for the prolongation of the proceedings by about two months between 30 January 1995 and 30 March 1995 (see, paragraph 14). The Court also considers that the applicant’s unsuccessful

request for the suspension of the execution of the judgment of 4 December 1994 (see, paragraphs 14 and 15) further contributed to the protraction of the proceedings.

36. As to the conduct of the domestic authorities, while the Court finds that the İstanbul Administrative Court's conduct was not beyond reproach, it does not find that the proceedings before this instance warrant a conclusion that there were unreasonable delays in the processing of the case. Nor does it find that there were any excessive delays before the Supreme Administrative Court when it dismissed the applicant's request for suspension of the execution of the decision of the first-instance court and quashed the judgment of 4 December 1994. However, the Court cannot overlook the fact that a lengthy period - two years- elapsed before the Supreme Administrative Court dismissed the unsuccessful request of the Ministry of Internal Affairs to rectify its judgment. 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, *mutadis mutandis*, *Nuri Özkan v. Turkey*, no. 50733/99, §§ 21-22, 9 November 2004).

37. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of considerable importance to him.

38. 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.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 145,600 United States Dollars (USD) (approximately 111, 272 euros (EUR)) in respect of pecuniary and USD 36,400 (approximately EUR 27,818) in respect of non-pecuniary damage.

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

43. 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 EUR 3,600 under this head.

#### **B. Costs and expenses**

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

#### **C. Default interest**

45. 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 3,600 (three thousand and six hundred euros), to be converted into New Turkish liras at the rate applicable at the date of settlement, in respect of non-pecuniary damage, plus 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 22 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President