CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF AHMET KILIÇ v. TURKEY

(Application no. 38473/02)

JUDGMENT

STRASBOURG

25 July 2006

FINAL

25/10/2006

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 Ahmet Kılıç 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 R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 38473/02) 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 Ahmet Kılıç ("the applicant"), on 12 September 2002.

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

3. On 8 November 2004 the Court decided to communicate the application 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Amasya.

5. On 9 June 1993 the applicant began working as a watchman at the Belevi Municipality, attached to the Taşova District in the province of Amasya. Under Turkish law, his employment status was that of a civil servant. On 8 June 1995, relying on three appraisal reports drafted in the past two years, the Municipality terminated the applicant's employment contract.

6. On 12 June 1995 the applicant initiated proceedings against the Municipality in the Samsun Administrative Court and contested the termination of his contract. Furthermore, he requested to be awarded his monthly salary, which was 7,630,000 Turkish Liras (TRL)[1], together with the interest, for the period during which he was unemployed.

7. On 27 November 1996 the administrative court dismissed the applicant's request. He appealed and requested the suspension of the enforcement of the decision.

8. By an interim decision of 27 August 1997, the Supreme Administrative Court suspended the enforcement of the administrative court's decision of 27 November 1996, as well as the Municipality's decision to dismiss the applicant. The applicant resumed his work at the Municipality.

9. On 3 February 2000 the Supreme Administrative Court found that the Municipality had in fact dismissed several employees following the election of a new mayor. It was established that the Municipality had been relying on identical and stereotyped appraisal reports, which did not sufficiently reflect the reasons for their dismissal. Accordingly, the Supreme Administrative Court quashed the decision of the Samsun Administrative Court.

10. On 31 May 2000 the Samsun Administrative Court followed the judgment of the Supreme Administrative Court and annulled the decision of the Municipality. The court further ordered that the applicant be reinstated in his job and that his monthly salary and related pecuniary rights be paid to him for the period during which he had been entitled to perform his duties.

11. On 13 December 2001 the Council of State rejected the appeal filed by the Municipality. This judgment was served on the applicant on 3 April 2002.

12. To date, the Municipality has not made any payment to the applicant.

II. RELEVANT DOMESTIC LAW

13. Article 28 § 3 of the Code of Administrative Procedure reads:

> "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."

[1] TRL 7,630,000 = USD 176 approximately, in June 1995

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

14. The Government submitted that the application should be rejected for failure to exhaust domestic remedies, pursuant to Article 35 § 1 of the Convention. They argued that the applicant could have sought compensation under Article 28 § 3 of the Code on Administrative Procedure.

15. The Government supplied several judgments of the domestic administrative courts where the plaintiffs invoked Article 28 of the Code of Administrative Procedure due to the authorities' failure to enforce court decisions.

16. The applicant contended that the remedy invoked by the Government is not effective in cases where the administrative authorities fail to comply with a payment order.

17. The Court observes that only one of the decisions submitted by the Government is similar to the present one, as it concerns, among other complaints, the authorities' failure to enforce a judgment where the plaintiff was awarded compensation. However in that decision the administrative court held that it did not have jurisdiction *ratione materiae* to examine the plaintiff's request and held that he should instead file an action before the civil court. The Court notes that the remedy suggested by the administrative court in that decision has already been found to be ineffective in the *Tunç v. Turkey* judgment (no. 54040/00, §§ 19-20, 24 May 2005).

18. In light of the above, the Court dismisses the Government's preliminary objection and notes that 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.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant alleged two violations of Article 6 § 1 of the Convention, which provides as follows:

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

20. In the first place he complained about the Municipality's failure to comply with the court judgment given in his favour. Furthermore, he complained that the length of the administrative proceedings exceeded the reasonable time requirement of Article 6 § 1 of the Convention.

A. Applicability of Article 6 § 1

21. The Court notes that it has not been disputed that the applicant, who worked as a watchman at the Belevi Municipality and had the status of a civil servant, 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).

22. It follows that in the instant case Article 6 § 1 is applicable.

B. Compliance with Article 6

1. Non enforcement of court decisions

23. The applicant complained that the Municipality did not comply with the domestic court judgment given in his favour.

24. The Government did not submit any observations regarding the merit of this complaint.

25. The Court reiterates its case-law to the effect that the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention 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. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see, *inter alia*, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, § 40 *et seq*.).

26. In the present case, the Court observes that on 31 May 2000 the Samsun Administrative ordered the administration to pay the applicant his monthly salary and related pecuniary rights for the period during which he had been entitled to perform his duties. Following the appeal proceedings, this decision became final on 13 December 2001. The judgment has not been enforced. The Court considers that this failure engages the responsibility of the State under Article 6 § 1 of the Convention (*Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, § 44; *Tunç*, cited above, § 26).

27. Taking into account what was at stake for the applicant, the Court considers that by failing for such a substantial period of time to take the necessary measures to comply with the final judicial decisions in the present case, the Turkish authorities deprived the provisions of Article 6 § 1 of much of their useful effect.

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

2. Length of the administrative proceedings

29. The applicant complained that administrative proceedings were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention. He maintained that, although he resumed his work at the Municipality, until the end of the proceedings he lived under the stress of uncertainty.

30. The Government maintained that the proceedings lasted less than seven years, for six levels of jurisdiction. They argued that, despite the length of the proceedings, the effectiveness of the proceedings was not jeopardized, as the applicant resumed his work, following the Supreme Administrative Court's decision of 27 August 1997.

31. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant in the litigation has to be taken into account (see, among other authorities, *Richard v. France*, judgment of 22 April 1998, *Reports* 1998-II, § 57).

32. In the present case, the Court notes that the period to be taken into consideration began on 12 June 1995 when the applicant initiated proceedings before the Samsun Administrative Court. It ended on 3 April 2002 when the judgment of the Council of State, rejecting the Municipality's appeal, was served on the applicant. The proceedings therefore lasted over six years and nine months, for three levels of jurisdiction, one of which dealt with the case twice.

33. The Court observes that the case was not particularly complex, as it concerned the applicant's dismissal from his post at the Belevi Municipality. Furthermore it observes no delays that can be imputed to the applicant. However, the proceedings were of vital importance for the applicant, since it concerned his employment, and the Municipality has still not paid the applicant the sum which he was awarded.

34. As to the conduct of the authorities, the Court notes that the domestic courts delivered five decisions – one of which was an interim measure – during a period of six years and six months. However it cannot overlook the fact that a lengthy period – three years and two months – elapsed while the case was pending before the Supreme Administrative Court (see paragraphs 7 and 9 above).

35. Accordingly, the Court finds that the proceedings have not been concluded within a "reasonable time". Consequently, there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed, in the light of the Samsun Administrative Court's orders, 9,400 euros (EUR) in respect of pecuniary damage for his loss of salary and related pecuniary rights during the period in which he was not entitled to perform his duties. Moreover he claimed EUR 3,000 in non-pecuniary damages.

38. The Government contested these sums, alleging that they were based on fictitious calculations of the average salary of a watchman working at the Municipality between 1995 and 1997. They submitted that, if the Court were to find a violation of the Convention in the present case, this would in itself constitute sufficient compensation for any non-pecuniary damage allegedly suffered by the applicant.

39. The Court finds that the payment by the Government of the outstanding judgment debt would satisfy the applicant's claim for pecuniary damage. As to non-pecuniary damage, the Court considers that the applicant's prejudice 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 1,500 under that head.

B. Costs and expenses

40. The applicant claimed EUR 2000 for the costs and expenses incurred during the proceedings before the domestic authorities and the Court.

41. The Government contended that the applicant's claim was wholly unsubstantiated.

42. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant EUR 1,000 in respect of costs and expenses.

C. Default interest

43. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention, in respect of the non-enforcement of the judgment;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention, in respect of the length of the proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, the amount of the domestic judgment debt still owed to him, as well as the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:
   (i) EUR 1,500 (one thousand five hundred euros) for non-pecuniary damage;
   (ii) EUR 1,000 (one thousand euros) for costs and expense;
   (iv) plus any taxes 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President