



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

FOURTH SECTION

CASE OF YENGİN v. TURKEY

(Application no. 42091/02)

JUDGMENT

STRASBOURG

20 February 2007

FINAL

20/05/2007

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 Yengin v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMEŒ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 30 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 42091/02) 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 Ali Rıza Yengin (“the applicant”), on 30 October 2002.

2. The applicant was represented by Mr G. Candoğan, 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 10 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the non-enforcement of a court decision and the excessive length of administrative 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1954 and lives in Istanbul. Until 1990, he worked as an electricity meter reader for the Turkish Electricity Institution (“TEK” – *Türkiye Elektrik Kurumu*). Following the privatisation of electricity distribution, TEK and the AKTAŞ Electricity Company (“AKTAŞ”) signed an agreement. As a result, the unit for which the

applicant worked was transferred to AKTAŞ. The applicant was thereafter employed by AKTAŞ on a contractual basis.

5. In the meantime, in 1993 TEK was divided into two State-owned companies, namely TEDAŞ (*Türkiye Elektrik Dağıtım A.Ş.* – responsible for the distribution of electricity) and TEAŞ (*Türkiye Elektrik Üretim Şirketi* – responsible for electricity production).

6. On 21 January 1994 the Supreme Administrative Court annulled the agreement between TEK and AKTAŞ. Subsequently, on 31 January 1994 the applicant was dismissed from AKTAŞ.

7. On 16 June 1994 the applicant applied to TEDAŞ, the successor of TEK, to be reinstated in his former post. However his request was rejected.

8. Contesting the refusal of TEDAŞ to reinstate him in his former post, the applicant initiated proceedings in the Istanbul Administrative Court. He requested to be reinstated in his former post.

9. While the proceedings were pending, in 1995 BEDAŞ (*Boğaziçi Elektrik Dağıtım A.Ş.*) was established as a subsidiary company of TEDAŞ and became responsible for the distribution of electricity in Istanbul.

10. On 12 November 1997 the Istanbul Administrative Court found in favour of the applicant and annulled the decision of TEDAŞ refusing to reinstate the applicant.

11. TEDAŞ appealed against the judgment, requesting that the execution of the judgment of 12 November 1997 be suspended. On 9 July 1998 the Supreme Administrative Court dismissed the request for suspension.

12. On 30 September 1999, in line with the Istanbul Administrative Court's judgment, the Supreme Administrative Court dismissed the appeal filed by TEDAŞ. This decision was served on the applicant on 9 December 1999.

13. While the proceedings were pending before the Supreme Administrative Court, on 24 February 1999 the Prime Minister agreed to appoint the applicant to a similar post in BEDAŞ. Following this decision, on 29 April 2000 the Director General of BEDAŞ approved the decision of the Executive Board to appoint the applicant to a post in its Çağlayan Branch. This decision was served on the applicant's representative on 13 May 2000. The applicant did not take up his duties and as a result the proposal was withdrawn.

14. On 4 September 2000 the applicant applied to BEDAŞ to be reinstated in his post, but his request was rejected.

15. On 2 October 2000 the applicant initiated a second set of proceedings before the Istanbul Administrative Court jointly against TEDAŞ and BEDAŞ. Pursuant to Article 28 § 3 of the Administrative Procedure Code, he requested compensation for the failure of the authorities to comply with the court decision ordering his reinstatement in his former post. He also requested the payment of his monthly salary and related monetary entitlements for the periods during which he had been entitled to

assume his duties in accordance with the judgment of the domestic courts upholding his claim to reinstatement.

16. On 29 May 2001 the Istanbul Administrative Court held that the applicant should have initiated compensation proceedings or applied to TEDAŞ within sixty days following the notification of the decision of the Supreme Administrative Court. It accordingly dismissed the case.

17. The applicant appealed. On 12 May 2004 the Supreme Administrative Court delivered a partial decision. It decided to uphold the decision of the Istanbul Administrative Court as regards the applicant's claim for payment of his monthly salary and related monetary entitlements. In this respect, it held that, pursuant to Article 7 of the Code of Administrative Procedure, the applicant should have applied to the administrative authorities to request payment of his monthly salary and other related entitlements within sixty days following the notification of the domestic court decision which annulled the administrative decision dismissing him. As regards the applicant's second complaint concerning the non-enforcement of the court decision ordering his reinstatement in his former post, the court held that this part of the case had been brought within the ten-year statutory time limit, and was not time-barred. It accordingly quashed the decision of the Istanbul Administrative Court in this respect.

18. On 28 October 2005 the Istanbul Administrative Court delivered its decision. It found that following the judgment of the Istanbul Administrative Court, the applicant had in fact been offered a position in BEDAŞ (the subsidiary of TEDAŞ). However he had not taken up his duties. As a result, the court held that the domestic authorities had fulfilled their obligation to implement the court decision ordering the applicant's reinstatement. It accordingly dismissed the case. This decision was notified to the applicant on 2 June 2006.

19. On 14 June 2006 the applicant appealed and the case is still pending before the Supreme Administrative Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. 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...”

21. In the first place, the applicant complained about the failure of the authorities to comply with the court judgment ordering his reinstatement.

Furthermore, he complained that the length of the administrative proceedings had exceeded the reasonable time requirement of Article 6 § 1 of the Convention.

Non-enforcement of court decision

22. The applicant alleged that the domestic authorities had not complied with the court order ordering his reinstatement in his former post.

23. The Government argued in the first place that the applicant had not exhausted domestic remedies in respect of his complaint. They stated that as the proceedings were still pending before the Supreme Administrative Court, the applicant's complaint should be rejected for non-exhaustion of domestic remedies.

24. The Government further underlined that following the Istanbul Administrative Court's judgment of 12 November 1997, the applicant had in fact been offered a position in BEDAŞ. Although the decision of the Directorate General of BEDAS had been served on the applicant's representative on 13 May 2000 pursuant to Article 11 of the Law No. 7201 on Notifications, the applicant did not take up his duties. Consequently, the applicant's allegations were unsubstantiated.

25. The applicant argued that the decision concerning his appointment should have been served on him in person.

26. The Court does not consider it necessary to decide whether the case pending before the Supreme Administrative Court could be considered an effective remedy for the applicant's complaint since this complaint should be declared inadmissible as being manifestly ill-founded for the following reasons.

27. 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.*).

28. Turning to the facts of the present case, the Court notes that following the Istanbul Administrative Court's judgment of 12 November 1997, as upheld by the Supreme Administrative Court on 30 September 1999, BEDAS sent a letter to the applicant's representative and informed him that the applicant had been appointed to a post in its Çağlayan Branch. However, it appears from the documents in the case file that the applicant did not take up his duties. The Court observes that the applicant alleged that he had not been notified in person about this proposal. However, it is clear from the documents in the file that his lawyer was indeed notified about the decision of BEDAS on 13 May 2000. As the Government pointed out in

their observations, pursuant to Article 11 of the Code on Notifications, if a case is entrusted to a legal representative, notification is made to the legal representative. In the absence of any convincing explanation from the applicant as to why he did not start working for BEDAŞ, the Court finds that the national authorities have acted in accordance with the court judgment dated 12 November 1997 by offering the applicant a post in BEDAŞ.

It follows that this complaint is manifestly-ill founded, and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

Length of the administrative proceedings

29. The applicant complained that the administrative proceedings were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention.

30. The Government contested this argument.

A. Admissibility

31. The Court notes that the applicant's complaint regarding the length of the administrative proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Court observes that the proceedings in dispute began on 2 October 2000 and are still pending before the Supreme Administrative Court. They have thus lasted more than six years.

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

34. In the present case, the Court notes that the case before the administrative courts was not particularly complex, as it concerned the applicant's request for compensation. Furthermore, no delays can be imputed to the applicant. As to the conduct of the authorities, it is to be noted that the domestic courts delivered three decisions during a period of six years. However, it cannot be overlooked that a lengthy period – almost three years – elapsed while the case was pending before the Supreme Administrative Court (paragraphs 16-17 above).

35. 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 *Ahmet Kılıç v. Turkey*, no. 38473/02, §§ 32-34, 25 July 2006, and *Nuri Özkan v. Turkey*, no. 50733/99, § 21, 9 November 2004). It further observes that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that the length of the administrative proceedings in the instant case was excessive and failed to meet the “reasonable time” requirement of Article 6 § 1.

There has accordingly been a breach of this provision.

II. 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 50,000 euros (EUR) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage.

38. The Government disputed these claims, considering them to be excessive.

39. 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 1,000 under this head.

B. Costs and expenses

40. The applicant claimed EUR 1,000 for the costs and expenses incurred before the domestic courts and the Court. However, he did not submit any receipt or invoice in support of his claims. As for the legal fees, the applicant relied on the Ankara Bar Association’s list of recommended minimum fees and requested to be awarded 4,400 new Turkish liras (YTL) (approximately EUR 2,270).

41. The Government contested this claim.

42. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant failed to submit any supporting documents in support of his claim. The Court therefore rejects this claim.

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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention in respect of the length of the proceedings;
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, the following sum to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) for non-pecuniary damage,
 - (ii) 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 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President