



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

THIRD SECTION

CASE OF MEHMET ACAR SERDAR¹ ÇAKMAK v. TURKEY

(Application no. 29600/02)

JUDGMENT

This version was rectified on 12 September 2007 under Rule 81 of Court.

STRASBOURG

12 April 2007

FINAL

12/07/2007

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

¹ The applicant's name "Serdar" was changed as "Mehmet Acar Serdar".

In the case of Mehmet Acar Serdar¹ Çakmak v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEEN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 29600/02) 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 Mehmet Acar Serdar¹ Çakmak (“the applicant”), on 4 June 2002.

2. The applicant was represented by Mr Ç. Yüksel, 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 28 April 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the 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 1955 and lives in Istanbul. He was a research assistant in the Institute for Positive Sciences at the Istanbul

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Technical University (hereinafter: “the University”) at the time of the events.

5. On 30 June 1996 the University decided not to renew the applicant's contract as a research assistant. The applicant was notified of this decision on 17 July 1996.

6. On 30 July 1996 the applicant filed an action with the İstanbul Administrative Court and requested the annulment, and suspension of the execution, of the University's abovementioned decision.

7. The applicant's request for suspension was dismissed by the first instance court on 24 January 1997.

8. On 31 October 1997 the Istanbul Administrative Court dismissed the applicant's case.

9. On 20 January 1998 the applicant appealed.

10. On 1 June 2000 the Supreme Administrative Court upheld the judgment of the first instance court.

11. On 12 September 2000 the applicant requested the Supreme Administrative Court to rectify its decision.

12. On 6 December 2001 the Supreme Administrative Court dismissed the applicant's request. This decision was served on the applicant on 16 January 2002.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. 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

14. The Court notes that this complaint 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

15. 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 30 July 1996, when the applicant filed an action for annulment against the decision of the University not to renew his contract, and ended on 6 December 2001, when the Supreme Administrative Court dismissed his request for a rectification of its decision. The period under consideration thus lasted five years and four months before the Istanbul Administrative Court and the Supreme Administrative Court, which examined the case twice.

16. The Government maintained that, in the circumstances of the present case, the length of the administrative proceedings could not be considered unreasonably long.

17. The applicant maintained his allegations.

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 observes that the case was not particularly complex since the proceedings in question concerned a straightforward employment dispute.

20. As regards the conduct of the applicant, the Court notes that it does not appear that he contributed to the prolongation of the proceedings. The Government have not argued to the contrary.

21. As to the conduct of the domestic authorities, the Court does not find that there were any excessive delays before the Istanbul Administrative Court when it dismissed the applicant's case. However, the Court cannot overlook the fact that it took the Supreme Administrative Court two years and seven months to render a decision on the applicant's appeal and a further year and three months to decide on his request for a rectification of its decision. The Government did not offer any explanation for this. 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, §§ 21-22, 9 November 2004).

22. The Court reiterates that employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned who, through dismissal, loses his means of subsistence (see *Frydlender*, cited above, § 45).

23. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed, in total, 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

27. The Government contested the amounts.

28. As regards the alleged pecuniary damage sustained by the applicant, the Court notes that some of his claims discern no causal link between the violation found and the pecuniary damage requested. It further notes that in support of his remaining claims the applicant has failed to produce any receipt or other relevant documents. The Court accordingly dismisses them.

29. On the other hand, the Court considers 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 3,000.

B. Costs and expenses

30. The applicant claimed reimbursement of costs and expenses incurred before the Court, but did not specify his claim.

31. The Government requested the Court not to make any award under this head.

32. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 under this head.

C. Default interest

33. 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, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President