



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

THIRD SECTION

CASE OF HASAN ERKAN v. TURKEY

(Application no. 29840/03)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Hasan Erkan 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. TÜRMEŖ,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 29840/03) 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 Hasan Erkan, on 15 August 2003.

2. The applicant was represented before the Court by Ms Arzu Becerik, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not appoint an agent for the purpose of the proceedings before the Court.

3. On 24 March 2005 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1927 and lives in Yalova. He worked as a teacher and retired on 3 September 1973. On 31 October 1991 he completed a pre-undergraduate (*önlisans*) course at Anadolu University.

5. On 19 February 1992 the applicant applied to the Directorate of Education in Istanbul (*Milli Eğitim Müdürlüğü*) and requested to be

reassigned to a post as a teacher. Since he had obtained a higher education diploma, he expected to be promoted to a higher grade for each year of work as a teacher, in accordance with Article 36 of the Law on Civil Servants (Law No. 657). This, in turn, would entitle him to a higher pension.

6. On 5 May 1992 the Ministry of Education appointed the applicant to the post of primary school teacher in Kartal district of Istanbul. This decision was sent to the Kartal District Governor (*Kaymakamlık*) on 26 May 1992 but not communicated to the applicant.

7. On 7 August 1992 the applicant once again applied to the Istanbul Directorate of Education and found out about the decision of 5 May 1992. On 10 August 1992 he started working as a teacher.

8. On 1 October 1992 the applicant's contract was terminated by the Ministry of Education on the ground that when he started to work he was over the age of 65, i.e. the compulsory retirement age in Turkey. Furthermore, the days he worked from 10 August 1992 until 1 October 1992 were not added to the total period of his service. As a result, the applicant could not advance to a higher grade.

9. On 17 January 1993 the applicant filed an action before the Ankara Administrative Court and asked for the days he worked in 1992 to be taken into account when calculating the total period of his service. He also stated that the reason for him to start working after he was over the age of sixty-five had been the failure of the authorities to communicate him the decision concerning his assignment.

10. On 22 December 1994 the Ankara Administrative Court dismissed his request. The applicant appealed on 5 May 1995 but did not pay the necessary appeal fees until 3 August 1995.

11. On 27 April 1998 the Council of State quashed the judgment of the Ankara Administrative Court. In the opinion of the Council of State, the applicant should have been considered as a civil servant on the day of the appointment and not on the day of his actually taking up his duties.

12. On 7 October 1999 the Administrative Court rendered its decision in which it insisted in its decision of 22 December 1994. The Administrative Court considered that the applicant could only be considered as a civil servant on the day he actually started to work, and not on the day of his appointment. It further stated that awarding the statutory rights (*özlük hakları*) to civil servants before they begin their service had no legal basis in domestic law. In the light of the aforementioned considerations, the court ruled that the applicant did not have the right to advance to a higher grade. The applicant appealed against this decision on 19 January 2000 but did not pay the necessary court fees until 23 May 2000.

13. On 15 November 2002 the Joint Council of the Council of State's Administrative Chambers (*Danıştay İdari Dava Daireleri Genel Kurulu*)

upheld the first-instance court's judgment. This decision was served on the applicant on 17 February 2003.

THE LAW

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

14. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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...”.

15. The Government contested that argument and submitted that in the course of the proceedings, the Administrative Court and the Council of State had each rendered two decisions. The case had been a complex one and numerous hearings were held in the course of these proceedings. There were no delays which could be attributable to the national authorities.

A. Admissibility

16. The Court notes that the 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

17. The Court observes that the proceedings began on 17 January 1993 when the applicant filed an action before the Ankara Administrative Court, and ended on 15 November 2002 when the Joint Council of the Council of State's Administrative Chambers upheld the first-instance court's judgment. The proceedings thus lasted nine years and ten months during which four decisions have been rendered. In this connection the Court would point out that it took the Council of State almost two years and nine months to render its decision. Furthermore, the Joint Council of the Council of State's Administrative Chambers did not decide on the appeal for a period of almost two and a half years. These delays contributed substantially to the total length of the proceedings.

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 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).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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 in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 1,300 euros (EUR) in respect of pecuniary and EUR 15,000 in respect of non-pecuniary damage.

23. The Government contested these claims.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim in respect of pecuniary damage. On the other hand, it awards the applicant EUR 5,500 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant also claimed EUR 5,150 for the fees of his legal representative and the costs and expenses associated with the bringing of his case before the Court.

26. The Government contested the claim.

27. 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 1,000 covering costs under all heads.

C. Default interest

28. 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 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of his costs and expenses, plus any tax that may be chargeable; to be converted into new 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 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 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President