



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

SECOND SECTION

CASE OF HASAN GENÇ v. TURKEY

(Application no. 26576/02)

JUDGMENT

STRASBOURG

31 July 2007

FINAL

31/10/2007

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 Genç v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMESEN,

Mr M. UGREKHEDIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 26576/02) 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 Hasan Genç ("the applicant"), on 23 March 2002.

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

3. On 3 October 2006 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 1944 and lives in Istanbul.

5. On 22 March 1994 the applicant was granted a lease by the Istanbul Municipality to run a car park on a plot of land by the coast in the Kadıköy district of Istanbul.

6. On 14 and 27 July 1999 and 24 March 2000 the National Estate Directorate attached to the Istanbul Revenue Office issued three orders

requesting the applicant to pay compensation for occupying the car park between 1 March 1998 and 31 December 1999.

7. On 11 August 1999, 29 September 1999 and 14 April 2000 respectively the applicant filed three separate cases with the Istanbul Administrative Court against the Istanbul Revenue Office, requesting that the orders be annulled. The first case concerned the period between 1 March and 31 December 1998, the second case concerned the period between 1 January and 1 August 1999 and the third case concerned the period between 1 August and 31 December 1999.

As regards the first two proceedings

8. On 25 May 2000 the Istanbul Administrative Court annulled the orders dated 14 July 1999 and 27 July 1999. The administrative authority appealed. Subsequently on 17 December 2004 the Supreme Administrative Court quashed the respective judgments of the Istanbul Administrative Court.

9. On 24 June 2005 the Istanbul Administrative Court followed the reasoning set out in the Supreme Administrative Court's decision and dismissed the cases. The applicant appealed.

10. On 13 March 2006 the Supreme Administrative Court quashed the respective judgments of the Istanbul Administrative Court once again.

11. On 13 November 2006 the Istanbul Administrative Court decided to annul the respective compensation orders.

12. According to the information in the case file based on the latest submissions by the parties, both actions are apparently still pending before the Supreme Administrative Court.

As regards the third set of proceedings

13. On 23 February 2001 the Istanbul Administrative Court annulled the compensation order dated 24 March 2000. The administrative authority appealed and subsequently on 4 February 2005 the Supreme Administrative Court quashed the judgment of the Istanbul Administrative Court.

14. On 18 April 2006 the Istanbul Administrative Court followed the reasoning set out in the Supreme Administrative Court's decision and dismissed the case. According to the information in the case file, this action is still pending before the Supreme Administrative Court.

THE LAW

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

15. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of 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...”

16. The Government contested that allegation.

17. The Court notes that in the instant case there are three sets of proceedings which are closely linked to each other. It observes that the first set of proceedings commenced on 11 August 1999 and, according to the information in the case file, all three actions are still pending before the Supreme Administrative Court on the date of adoption of the present judgment. The Court considers that, in the circumstances of the present case, while calculating the length of the proceedings, these three proceedings should be considered as a whole.

18. In view of the above, the Court finds that the period to be taken into consideration has lasted seven years and eleven months for three sets of proceedings, involving two levels of jurisdiction who have examined the cases more than once.

A. Admissibility

19. 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. This remaining part of the application must therefore be declared admissible.

B. Merits

20. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case, 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).

21. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Frydlender*, cited above).

22. In the present case, it is observed that the actions before the administrative courts were not complex. They concerned the annulment of three compensation orders. Furthermore, the Court cannot overlook the fact that a lengthy period – some four to five years - elapsed while the cases were pending before the Supreme Administrative Court (see paragraphs 8 and 13). 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; *Nuri Özkan v. Turkey*, no. 50733/99, § 21, 9 November 2004; *Yengin v. Turkey*, no. 42091/02, §§ 34-35, 20 February 2007). 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

23. 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

24. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

25. The Government contested the claim.

26. Ruling on an equitable basis, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

27. The applicant also claimed 43,721.30 New Turkish liras (YTL) - approximately EUR 24,448 - for the costs and expenses incurred before the domestic courts and the Strasbourg Court.

28. The Government contested the claim.

29. Making its own estimate based on the information available, the Court considers it equitable to award the applicant EUR 1,000 for the costs and expenses incurred before the Court.

C. Default interest

30. 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, the following amounts to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable:
 - (i) EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses.
 - (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 31 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President