



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

FOURTH SECTION

CASE OF KEMAN v. TURKEY

(Application no. 68446/01)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Keman 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. TÜRMEK,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 68446/01) 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 Gürkan Keman ("the applicant"), on 13 November 2000.

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

3. On 26 April 2005 the Court decided to give notice of the application 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 1964 and lives in Manisa, Turkey.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. In 1991 the applicant sat a competition for admission to the civil service. Following his success in the competition, the General Directorate of Higher Education Credit and Hostels Institution ("the General Directorate") (*T.C. Yüksek Öğrenim ve Yurtlar Kurumu Genel Müdürlüğü*) conducted a

pre-employment background investigation. It found that the applicant had not mentioned his criminal record in his application form.

7. On 14 January 1992 the General Directorate decided that the applicant was not eligible for appointment to a vacant post on account of the negative findings in the pre-employment investigation. In particular, in 1980 the applicant had been convicted of issuing threats against one of his teachers and had been sentenced to four months and twenty days' imprisonment, which had then been converted into a fine.

1. First set of proceedings

8. On 7 February 1992 the applicant brought an action in the Ankara Administrative Court requesting the annulment of the General Directorate's decision of 14 January 1992.

9. On 26 October 1993 the Ankara Administrative Court dismissed the action. The applicant appealed.

10. On 18 December 1995 the Supreme Administrative Court quashed the Ankara Administrative Court's judgment holding that the applicant was suitable for employment.

11. On 22 December 1998 the Supreme Administrative Court dismissed the General Directorate's request for rectification of its decision.

12. On 10 March 1999 the Ankara Administrative Court abided by the Supreme Administrative Court's decision. It found that the applicant had fulfilled all the requirements of the vacant post in question as prescribed under Law no. 657. It therefore ruled that the applicant was eligible to become a civil servant.

13. On 8 June 1999 the General Directorate appealed.

14. On 31 October 2001 the Supreme Administrative Court dismissed the appeal.

15. On 30 May 2002 the Supreme Administrative Court dismissed the request for rectification of the decision.

2. Second set of proceedings

16. On an unspecified date, the applicant brought a new action in the Ankara Administrative Court against the General Directorate requesting compensation for pecuniary and non-pecuniary damage which he allegedly had suffered as a result of the decision dated 14 January 1992.

17. On 28 December 1999 the Ankara Administrative Court awarded the applicant a certain amount of compensation for pecuniary damage but rejected his request for non-pecuniary damage. The court further decided that legal costs should be shared by the parties, given that it partially acceded to the applicant's claims for compensation.

18. On 26 April 2000 the General Directorate appealed the Supreme Administrative Court judgment, arguing that the applicant had not suffered any damage and that therefore the legal costs should be borne by him.

19. On 30 May 2002 the Supreme Administrative Court dismissed the appeal, holding that the Ankara Administrative Court's ruling was in conformity with law and procedure.

THE LAW

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

20. The applicant complained that the length of the first set of 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 7 February 1992 and ended on 30 May 2002. It thus lasted approximately ten years and three months before two levels of jurisdiction.

A. Admissibility

23. 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

24. 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).

25. 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).

26. 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 on this ground.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant further complained under Article 6 of the Convention and Article 1 of Protocol No.1 that the awards made by the Ankara Administrative Court in respect of compensation and his lawyer's costs and expenses were insufficient and disproportionate. He finally alleged under Article 14 of the Convention that he had not been appointed to a post in the civil service on account of his political opinions.

28. The Court finds nothing in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

31. The Government submitted that the amount claimed was excessive and should not lead to unjust enrichment.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage. Accordingly, it awards the applicant EUR 6,500 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court.

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

35. 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 above criteria and the applicant's failure to substantiate his claim, the Court makes no award under this heading.

C. Default interest

36. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage, 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;
 - (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 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President