



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

SECOND SECTION

CASE OF KÖSEOĞLU v. TURKEY

(Application no. 73283/01)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

02/06/2008

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 Köseoğlu 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. TÜRMEŖEN,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy 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. 73283/01) 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 Oğuz Atakan Köseoğlu (“the applicant”), on 1 February 2001.

2. The applicant was represented by Ms A. Tekeli, 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 May 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 1951 and lives in Izmir.

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

6. Until 1987 the applicant worked as a primary school teacher in Izmir.

7. On 30 March 1983 he was taken into police custody on suspicion of membership of an illegal organisation.

8. From 30 March 1983 to 30 September 1987, he was suspended from his post on account of the criminal proceedings against him.

9. In 1984 the Diyarbakır Martial Court convicted the applicant under Article 141 of the Criminal Code and sentenced him to five years' imprisonment.

10. By a decision of 30 September 1987, the Ministry of National Education dismissed the applicant from his employment. It reasoned that the applicant was no longer eligible for the civil service since he failed to fulfil the requirements of the post as prescribed by Article 48 § A-5 of Law no. 657.

11. On 12 April 1991 Article 141 of the Criminal Code was repealed by Law no. 3713 (the Anti-Terror Law).

12. On 4 December 1991 the Izmir Assize Court ordered the removal of the applicant's conviction under Article 141 of the Criminal Code.

13. On 15 September 1992 the applicant filed a petition with the administrative authorities and requested his reinstatement to his previous post.

14. On 31 December 1993 the applicant was reinstated to the post of primary school teacher at a primary school in Konak.

15. On 8 February 1994 the applicant filed a petition with the principal of the primary school. He requested to be given the rights and earnings which he was denied during his suspension and dismissal periods.

16. The principal of the primary school transmitted the applicant's petition to the Konak District National Education Directorate.

17. By a decision dated 11 April 1994, the Ministry of National Education dismissed the applicant's request.

18. On 9 May 1994 the Konak District National Education Directorate informed the applicant about the Ministry's decision.

19. On 30 May 1994 the applicant filed an action with the Izmir Administrative Court, seeking compensation for the damage he had suffered as a result of his allegedly unlawful suspension and dismissal. He further requested to be granted the rights and salaries of which he had been deprived during those periods.

20. On 20 December 1996 the Izmir Administrative Court dismissed the applicant's claim. It reasoned that the decision of the administrative authorities concerning his reinstatement to his previous post would not enable him to claim the rights and earnings which were denied him during the suspension and dismissal periods.

21. On 6 April 2000 the Supreme Administrative Court dismissed the applicant's request for appeal. It opined that the reinstatement of the applicant did not give him the right to recuperate rights and earnings for the suspension and dismissal period.

22. On 31 August 2000 the Supreme Administrative Court's decision was served on the applicant.

THE LAW

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

23. 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...”

24. The Government contested that argument.

25. The period to be taken into consideration began on 30 May 1994 and ended on 31 August 2000. It therefore lasted six years and three months before two levels of jurisdiction.

A. Admissibility

26. Relying on the Court's jurisprudence the Government contended that Article 6 was not applicable in the instant case, given that the dispute in question was not purely or essentially economic (see *Neigel v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 410, § 43); *Francesco Lombardo v. Italy*, judgment of 26 November 1992, Series A no. 249-B, p. 26-27, § 17, *Massa v. Italy*, judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26; *Nicodemo v. Italy*, judgment of 2 September 1997, *Reports* 1997-V, p. 1703, § 18; *Huber v. France*, judgment of 19 February 1998, *Reports* 1998-I, § 37). Instead, it concerned the applicant's career and his status as civil servant.

27. The applicant disputed the Government's claim.

28. The Court notes that it has recently revised its case-law concerning the applicability of Article 6 § 1 to disputes between the State and civil servants in its *Vilho Eskelinen and Others v. Finland* judgment ([GC], no. 63235/00, § 62, ECHR 2007-...). Having regard to the new criteria adopted in the aforementioned case, the Court observes that the dispute in the present case concerns the applicant's salary rights which were denied to him during the period of suspension from his post. In view of the Government's failure to demonstrate, first, that the applicant did not have a right of access to a court under national law and, secondly, that any exclusion of the rights under Article 6 for the applicant was justified by the subject matter of the dispute (*ibid.*), the Court considers that Article 6 § 1 is applicable in the instant case. It therefore dismisses the Government's objection in this respect.

29. The Court also 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

30. 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).

31. 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).

32. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant further complained of a violation of Article 4 of the Convention and Article 1 of Protocol No.1, in that he had been forced to work for an additional period of eight years in order to receive a retirement pension and that the national courts misinterpreted the domestic law in denying him his rights and salaries for the unlawful suspension and dismissal periods.

34. However, the Court finds nothing whatsoever 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

35. 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

36. The applicant claimed 80,855 euros (EUR) in respect of pecuniary damage and EUR 20,000 for non-pecuniary damage.

37. The Government submitted that the amounts claimed were excessive and would lead to unjust enrichment.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 in this respect.

B. Costs and expenses

39. The applicant also claimed EUR 15,128 for the costs and expenses incurred before the Court.

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

41. 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 head.

C. Default interest

42. 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 3,000 (three thousand 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 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 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President