



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

SECOND SECTION

CASE OF FAHRETTİN AYDIN v. TURKEY

(Application no. 31695/02)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

29/04/2008

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 Fahrettin Aydın v. Turkey,

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

Françoise Tulkens, *President*,

András Baka,

Rıza Türmen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 31695/02) 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 Fahrettin Aydın (“the applicant”), on 6 June 2002.

2. The applicant was represented by Mr E. Talay, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 17 November 2006 the Court decided to give notice of the application 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Diyarbakır.

5. The applicant is a history teacher and a member of Eğitim-Sen, a trade union formed by public employees working in the domain of education. He was working at the Diyarbakır Atatürk High School at the time of the events giving rise to the present application.

6. On 26 and 27 October 1998, in response to the call made by the Diyarbakır branch of the Confederation of Public Employees' Trade Unions

(*Kamu Emekçileri Sendikaları Konfederasyonu* – hereinafter referred to as the “KESK”), of which Eğitim-Sen is a member, the applicant arrived at his workplace wearing a rosette with the slogan “The exiles cannot intimidate us – KESK Diyarbakır”, to protest against the transfer of public officials, who were members of trade unions, to other posts outside of the state of emergency region.

7. On 28 May 1999, upon the decision of the Governor of the state of emergency region and in accordance with Article 4 (g) of Legislative Decree no. 285, the Ministry of Education transferred the applicant to a post in a school in Giresun.

8. On an unspecified date, the applicant filed a petition with the Diyarbakır Administrative Court and requested the annulment his transfer to Giresun.

9. On 14 June 2000 the Diyarbakır Administrative Court dismissed the applicant's request, without examining the merits of the case. The court noted that Article 7 of Legislative Decree no. 285 precluded any application to the administrative courts for the purpose of setting aside an administrative act performed pursuant to that Decree.

10. On 28 August 2000 the applicant appealed against the judgment of 14 June 2000. In his petition, the applicant contended that the provision contained in Article 7 of Legislative Decree no. 285 was in violation of his rights under Articles 6 and 13 of the Convention.

11. On 18 October 2001 the Supreme Administrative Court upheld the judgment of the Diyarbakır Administrative Court. This judgment was served on the applicant on 12 December 2001.

12. In their observations, the Government informed the Court that, on 21 June 2006, the applicant was transferred to a school in Diyarbakır, upon his request.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. A description of the relevant domestic law at the material time can be found in *Ertan Aydın and Others v. Turkey* (no. 43672/98, §§ 29-37, 20 September 2005).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

14. The Government submitted in the first place that the application should be rejected as being incompatible *ratione materiae* with the

provisions of the Convention. In this respect, they referred to the Court's case-law (*Pellegrin v. France* [GC], no. 28541/95, § 67, ECHR 1999-VIII) and maintained that disputes relating to the career of civil servants were outside the scope of Article 6 of the Convention.

15. Secondly, they argued that the applicant had failed to exhaust the domestic remedies as, following his transfer to Giresun, he had not applied to the Ministry of Education requesting his transfer to another city. In this connection, the Government recalled that, when the applicant made such a request in 2006, he was transferred to a school in Diyarbakır.

16. As regards the first preliminary objection of incompatibility, the Court reiterates that it has already examined and rejected the Government's similar objections in previous cases (see *Metin Turan v. Turkey*, no. 20868/02, §§ 17-20, 14 November 2006). In this respect, it refers to its recent case-law, according to which there can in principle be no justification for excluding ordinary labour disputes from the guarantees of Article 6 § 1 of the Convention, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...). It accordingly rejects this objection.

17. As regards the second objection concerning the exhaustion of domestic remedies, the Court considers that it is closely linked to the merits of the complaint raised under Article 13 of the Convention. It therefore joins the objection to the merits of that complaint.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

18. Relying on Article 11 of the Convention, the applicant maintained that his transfer to another city was a reprisal for his trade union activities.

19. The Government contested that argument. They stated that the applicant's transfer was not related to his trade union activities and maintained that, following his transfer, the applicant could have continued them. According to the Government, pursuant to Law no. 657 on public servants, all government employees can be transferred to different cities.

20. Having examined all the material submitted to it, the Court notes that the applicant has not put forward any fact or argument capable of substantiating his allegation that he had been transferred to Giresun because of his trade union activities (see, *a contrario Metin Turan*, cited above, § 30-32). Therefore the Court does not find it established that the applicant's transfer constituted an infringement of his rights under Article 11 of the Convention.

21. The Court further recalls that it has already examined similar complaints and found no violation (see, *Ertas Aydın and Others*, cited above, §§ 47-54; *Ademyılmaz and Others v. Turkey*, nos. 41496/98,

41499/98, 41501/98, 41502/98, 41959/98, 41602/98 and 43606/98, §§ 39-42, 21 March 2006; *Bulğa and Others v. Turkey*, no. 43974/98, §§ 69-76, 20 September 2005; and *Akat v. Turkey*, no. 45050/98, §§ 38-45, 20 September 2005). It finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned applications.

22. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see, also *Soysal and Others v. Turkey*, nos. 54461/00, 54579/00 and 55922/00, § 31, 15 February 2007).

III. ALLEGED VIOLATION OF ARTICLES 6 and 13 OF THE CONVENTION

23. The applicant complained that there had been no effective remedy in domestic law whereby he could challenge the administrative act performed pursuant to Legislative Decree no. 285. He relied on Articles 6 and 13 of the Convention. The Court notes that the applicant's complaint should be examined from the standpoint of Article 13 of the Convention, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

24. The Government contested the applicant's argument.

A. Admissibility

25. 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

26. The Court observes that the legislation in force at the time precluded any application to the administrative courts for the purpose of setting aside an administrative act performed pursuant to Legislative Decree no. 285.

27. The Court has examined similar cases on previous occasions and has found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicant could have challenged the administrative act which ordered his transfer to another city (*Ertas Aydın and Others*, cited above, §§ 58-62; *Ademyılmaz and Others*, cited above, §§ 45-48; *Bulğa and Others*, cited above, §§ 80-83; *Akat*, cited above, §§ 48-51; and *Soysal and Others*, cited above, §§ 50-54). It finds no

reason to depart from that conclusion in the present case. It follows that the Government's preliminary objection (see paragraph 17 above) must also be dismissed.

28. There has accordingly been a breach of Article 13.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant further invoked Articles 8, 10 and 14 of the Convention.

30. The Government contested those allegations.

31. The Court has examined the applicant's complaints raised under Articles 8, 10 and 14 of the Convention. However, having regard to all materials in its possession, 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant maintained that, as his family lived in Diyarbakır and he was transferred to a post in Giresun, he had been travelling back and forth. As a result, he claimed 20,000 euros (EUR) in respect of pecuniary damage. He further claimed EUR 10,000 in respect of non-pecuniary damage.

34. The Government contested these claims.

35. The Court observes that there is no causal link between the violation found and the pecuniary damage claimed before the Court. However, it considers that the applicant must have sustained some non-pecuniary damage. Taking into account the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 500 under that head.

B. Costs and expenses

36. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the Court.

37. The Government contested the claim.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of 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, the applicant has not substantiated that he has actually incurred the costs so claimed. Accordingly, it makes no award under this head.

C. Default interest

39. 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. *Joins to the merits* the Government's preliminary objection concerning the exhaustion of domestic remedies and *dismisses* it;
2. *Declares* the complaint concerning the right to an effective remedy admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the 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 500 (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally DOLLÉ
Registrar

Françoise TULKENS
President