



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

SECOND SECTION

**CASE OF EMİNE ARAÇ v. TURKEY**

*(Application no. 9907/02)*

JUDGMENT

STRASBOURG

23 September 2008

**FINAL**

*23/12/2008*



**In the case of Emine Araç v. Turkey,**

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 2 September 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 9907/02) 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, Ms Emine Araç (“the applicant”), on 22 October 2001.

2. The applicant was represented by Mr M. Muller and Mr T. Otty, lawyers practising in London, and by Mr H. Tuna in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged that the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

4. On 19 September 2006 the Court declared the application partly inadmissible and decided to give notice to the Government of the complaint under Article 6 § 1 of the Convention. In accordance with Article 29 § 3 of the Convention, it also decided to examine the admissibility and merits of the case at the same time.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1973 and lives in Istanbul.

6. On 24 September 1998 the applicant, a student in the Faculty of Theology of İnönü University in Malatya, sought to enrol in the Faculty of Theology of Marmara University. For that purpose she provided, among

other materials, an identity photograph which showed her wearing a headscarf.

7. On 1 October 1998 the Faculty of Theology of Marmara University replied to the applicant, informing her that the identity photograph she had supplied did not comply with the regulations in force and that where this was the case, the person concerned could not be enrolled.

8. On an unspecified date the applicant lodged an application for judicial review with the Istanbul Administrative Court. She requested, in particular, that the refusal of the administrative authorities be set aside as being in breach of her rights.

9. In a judgment of 23 September 1999, the Administrative Court rejected the application, finding that the authorities' refusal had been in accordance with the regulations in force. The court considered, in particular, that the applicant had submitted an identity photograph which did not conform to the regulations, which stipulated that "photographs must show the subject facing forward and be less than six months old, so that the person concerned is readily identifiable; the head and neck must also be uncovered" (Article 4 § 1 (f) of the Guide for University Applicants adopted by the Higher Education Board on 17 April 1998).

10. Following an appeal by the applicant on points of law, the Supreme Administrative Court upheld the judgment of 23 September 1999, finding it to have been in accordance with the law and the procedural rules. The relevant parts of the Supreme Administrative Court judgment read as follows:

"Summary of the request: ...

*Opinion of Mrs Serpil K. Erdoğan, investigating judge of the Supreme Administrative Court:* the judge is of the opinion that the appeal should be dismissed and the first-instance judgment upheld.

*Opinion of Mr H. Hüseyin Tok, State Counsel (savcı) at the Supreme Administrative Court:* the grounds of appeal set out in the statement of grounds do not correspond to those enumerated in Article 49 § 1 of the Code of Administrative Procedure. In view of the juridical and legal arguments on which the first-instance judgment was based, these grounds cannot be said to require the quashing of the impugned judgment ..."

## II. RELEVANT DOMESTIC LAW AND PRACTICE

11. Article 42 of the Constitution reads as follows:

"No one may be deprived of the right to instruction and education.

The scope of the right to education shall be defined and regulated by law.

Instruction and teaching shall be provided under the supervision and control of the State in accordance with the principles and reforms of Atatürk and contemporary

scientific and educational methods. No educational or teaching institution may be set up that does not follow these rules.

...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

12. The applicant submitted that the proceedings before the Supreme Administrative Court had been unfair. She relied on Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

13. The Government contested that argument.

#### A. Admissibility

14. The Government argued, as their main submission, that Article 6 § 1 was inapplicable in the instant case, as the case brought before the administrative courts had not related to civil rights and obligations. The applicant had brought an action seeking the setting-aside of public-law regulations adopted by the university authorities. The Government further pointed out that in its decision in *André Simpson v. the United Kingdom* (no. 14688/89, Commission decision of 4 December 1989, Decisions and Reports (DR) 64, p. 196), the Commission had held that Article 6 was inapplicable to proceedings concerning the laws on education. In particular, it had found that “the right not to be denied elementary education” fell within the domain of public law, since it had no private-law analogy and no repercussions on private rights or obligations.

15. The applicant submitted that Article 6 was applicable in the instant case.

16. According to the Court’s settled case-law, the phrase “determination of ... civil rights and obligations” covers all proceedings the result of which is decisive for [such] rights and obligations (see *Ringeisen v. Austria*, 16 July 1971, § 94, Series A no. 13). A tenuous connection or remote consequences do not suffice for Article 6 § 1: civil rights and obligations must be the object – or one of the objects – of the dispute (*contestation*) and the result of the proceedings must be directly decisive for such a right (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 47, Series A no. 43).

17. In the instant case it seems clear that a “dispute” arose following the decision taken by the Faculty of Theology of Marmara University on 1 October 1998 not to enrol the applicant, who had supplied an identity photograph which did not comply with the regulations in force (see paragraph 7 above). This dispute, which was genuine and serious, related to the actual existence of the right asserted by the applicant to continue the university studies she had begun at the Faculty of Theology of İnönü University. The outcome of the proceedings in question was capable of leading to the setting-aside of the impugned decision, namely the refusal to enrol the applicant; it was thus directly decisive for the right at issue.

Consequently, the Court must simply ascertain whether Ms Araç’s right to continue her theology studies was a civil right within the meaning of Article 6 § 1.

18. The Court reiterates that, although it has found the concept of “civil rights and obligations” to be autonomous, it has also held that, in this context, the legislation of the State concerned is not without importance (see *König v. Germany*, 28 June 1978, § 89, Series A no. 27). Whether or not a right is to be regarded as civil within the meaning of that term in the Convention must be determined by reference not only to its legal classification but also to its substantive content and effects under the domestic law of the State concerned. Moreover, the Court, in the exercise of its supervisory function, must also take account of the object and purpose of the Convention (see *Perez v. France* [GC], no. 47287/99, § 57, ECHR 2004-I).

19. The Court observes at the outset that, in view of the wording of Article 42 of the Turkish Constitution (see paragraph 11 above), the applicant, who was a student in the Faculty of Theology of İnönü University, could make an arguable claim that Turkish law conferred on her the right to enrol in the Faculty of Theology of Marmara University provided she satisfied the statutory conditions. She was refused enrolment not because she failed to satisfy one of these conditions, but because of her failure to comply with a formal requirement laid down by the regulations in question.

20. According to the Government, the regulation of enrolment in higher-education establishments was a matter falling within the sphere of public law. In the Court’s view, however, this public-law aspect does not suffice to exclude the right in question from the category of civil rights within the meaning of Article 6 § 1. It further points out that in several cases (see, in particular, *König* and *Le Compte, Van Leuven and De Meyere*, both cited above; *Bentham v. the Netherlands*, 23 October 1985, Series A no. 97; and *Feldbrugge v. the Netherlands*, 29 May 1986, Series A no. 99), State intervention by means of a statute or delegated legislation has not prevented the Court from finding the right in issue to have a private, and hence civil, character. Proceedings which fall within the sphere of “public law” in the

domestic legal order may come within the scope of Article 6 § 1 where their outcome is decisive for civil rights and obligations.

21. In addition, in the *Kök v. Turkey* judgment (no. 1855/02, § 36, 19 October 2006), the Court found Article 6 to be applicable to a dispute concerning the setting-aside of the authorities' refusal to authorise the applicant to practise a medical specialisation. It also found that, where a State confers rights which can be enforced by means of a judicial remedy, these can, in principle, be regarded as civil rights within the meaning of Article 6 § 1 (see, along the same lines, *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, 10 July 1998, § 61, *Reports of Judgments and Decisions* 1998-IV).

22. It is important also to emphasise that Ms Araç was not affected in her relations with the public authorities as such, acting in the exercise of discretionary powers, but simply in her personal capacity as the user of a public service. Hence, she was challenging the regulations in force, which she considered prejudicial to her right to continue her studies in a higher-education establishment.

23. Furthermore, in its recent case-law the Court, leaving the door open for the application of Article 6 to the right to education, has consistently examined whether proceedings concerning the regulations on higher education conform to the requirements of Article 6 § 1 (see, by way of example, *Mürsel Eren v. Turkey* (dec.), no. 60856/00, 6 June 2002; *D.H. and Others v. the Czech Republic* (dec.), no. 57325/00, 1 March 2005; and *Tig v. Turkey* (dec.), no. 8165/03, 24 May 2005).

24. Accordingly, given the importance of the applicant's right to continue her higher education (as regards the key role and importance of the right of access to higher education, see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 136, ECHR 2005-XI), the Court does not doubt that the limitation in question, imposed by the regulations in issue, fell within the scope of the applicant's personal rights and was therefore civil in character.

25. In the light of the foregoing, and given that the lawfulness of proceedings concerning a civil right was capable of being challenged by means of a judicial remedy, of which the applicant made use, the Court considers that a dispute (*contestatio*) concerning a "civil right" arose in the instant case and was determined by the Administrative Court.

Article 6 § 1 is therefore applicable in the present case.

26. 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. The remainder of the application must therefore be declared admissible.

## B. Merits

27. The Court points out that it has previously considered a complaint similar to that made by the applicant and found a violation of Article 6 § 1 of the Convention because the applicant's right to adversarial proceedings before the Supreme Administrative Court had been infringed, in view of the nature of the observations of Principal State Counsel at the Supreme Administrative Court and the inability of the applicant to respond to them in writing (see, *mutatis mutandis*, *Göç v. Turkey* [GC], no. 36590/97, § 58, ECHR 2002-V, and *Meral v. Turkey*, no. 33446/02, §§ 32-39, 27 November 2007). Having examined the present case it considers that the Government have not adduced any convincing fact or argument capable of justifying a different conclusion on this occasion.

28. Accordingly, there has been a violation of Article 6 § 1.

## II. 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 32,500 euros (EUR) for the pecuniary damage she had allegedly sustained. She claimed to have sustained non-pecuniary damage, but left the amount of compensation to the Court's discretion.

31. The Government contested the applicant's claims.

32. The Court fails to discern any causal link between the violation found and the non-pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained some non-pecuniary damage, which has been sufficiently compensated by the finding of a violation (see *Meral v. Turkey*, no. 33446/02, § 58, 27 November 2007).

### B. Costs and expenses

33. The applicant claimed a total of 4,426.60 pounds sterling (GBP) and 6,710.40 Turkish liras (TRY) for fees and costs incurred in the course of her application. Her claim comprised:

- the fees of the lawyers of the Kurdish Human Rights Project: K. Yıldız
- GBP 712.50 (4 hours and 15 minutes' work); L. Claridge – GBP 2,437.50



(16 hours and 45 minutes' work) and H. Tuna – TRY 5,940 (13 hours and 30 minutes' work);

- translation costs: TRY 625.40 and GBP 1,228.60;
- miscellaneous expenditure: GBP 48 and TRY 145.

34. The applicant furnished proof of payment in respect of the translation costs and certain costs incurred in the proceedings before the domestic courts. Her lawyers requested that the sums awarded under that head be paid into their bank account in the United Kingdom.

35. The Government disputed the claim made by the applicant's representatives, which it considered excessive. They pointed out that only expenses actually incurred could be reimbursed; the applicant or her representatives must produce documents supporting any claim for costs and expenses. Furthermore, lists or overall figures could not be accepted as relevant or constitute proof of the alleged expenditure, which had to be reasonable in amount and have been necessary. All claims for expenses had to be supported by invoices and each item of expenditure had to be substantiated by supporting documents.

36. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

37. In the instant case, in view of the details supplied by the applicant, the Court is not convinced that all the costs claimed by the lawyers of the Kurdish Human Rights Project were necessarily incurred, especially since no proof of payment of their fees was submitted. Accordingly, taking into account the awards made previously in comparable cases (see *Meral*, cited above, § 61) and the work carried out in the proceedings before it, the Court awards the applicant EUR 1,500.

### C. Default interest

38. The Court considers it appropriate that the default interest rate 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* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *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 1,500 (one thousand five hundred euros) in respect of costs and expenses, to be converted into Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
  - (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 French, and notified in writing on 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé  
Registrar

Françoise Tulkens  
President