



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

1959 · 50 · 2009

SECOND SECTION

CASE OF YÜCEL DOĞAN v. TURKEY

(Application no. 24647/04)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Yücel Doğan v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 24647/04) 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 Yücel Doğan (“the applicant”), on 8 June 2004.

2. The Turkish Government (“the Government”) were represented by their Agent.

3. On 11 March 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1969 and lives in İzmir.

5. On 7 June 1997 the applicant passed an exam for the post of a private security guard and was subsequently employed to work for Etibank, a State-owned company. However, the exam results were subsequently annulled on the basis of a report prepared by inspectors who had found a number of wrongdoings in the conduct of the examination. The applicant's contract of employment was terminated.

6. On 27 November 1997 the applicant brought an action before the 7th Chamber of the Ankara Administrative Court, challenging the annulment of the exam results. He also asked to be reassigned to his post. The Ankara Administrative Court decided on 9 December 1997 that it had no jurisdiction to examine the case and forwarded the case file to the Konya Administrative Court.

7. On 5 March 1998 the Konya court decided that it also did not have jurisdiction to examine the case and sent the file to the Supreme Administrative Court which decided, on 15 June 1998, that the Ankara Administrative Court had jurisdiction.

8. On 14 April 1999 the 7th Chamber of the Ankara Administrative Court decided in favour of the applicant and he was reinstated in his previous post. The court found that the annulment of the exam should not have affected the successful candidates who, by having met the necessary criteria, had passed the exam properly. The bank appealed against the decision on 28 June 1999.

9. On 15 November 2001 the Supreme Administrative Court quashed the decision. The court found that the report drawn up by the inspectors contained sufficient reasons for the annulment of the exam. The Supreme Administrative Court attached weight to the gravity of the wrongdoings pointed out in that report and concluded that the employment of personnel through such an exam would not be fair. On 26 June 2002 the applicant was dismissed from his job once more.

10. On 18 September 2002 the 7th Chamber of the Ankara Administrative Court followed the Supreme Administrative Court's decision and rejected the applicant's request. On 3 December 2002 the applicant appealed.

11. On 29 December 2003 the Supreme Administrative Court upheld the decision of 18 September 2002. The final decision was communicated to the applicant on 10 May 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PROCEEDINGS

12. 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...”

13. The Government contested that argument.

14. The period to be taken into consideration began on 27 November 1997 and ended on 29 December 2003. It thus lasted over six years for two levels of jurisdiction.

A. Admissibility

15. The Government argued that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since he had failed to raise the substance of his complaint before the national courts.

16. The Court has already examined and rejected similar objections of the Government as regards the alleged failure to exhaust domestic remedies (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned application. It therefore rejects the Government's objection.

17. 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

18. The Government submitted that the length of the proceedings had not exceeded the reasonable time requirement. They argued that the applicant's case had been complex.

19. 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). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

20. In the present case the Court observes, in particular, that the first appeal lodged by the applicant was not determined by the Supreme Administrative Court for a period of almost two and a half years (see paragraphs 8-9 above).

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. 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 application.

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

23. Relying on Article 6 of the Convention, the applicant further complained that the dissenting opinion of one of the judges had not been adequately reasoned.

24. The Court has examined this complaint. However, having regard to all the material in its possession, and in so far as the complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

25. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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.”

27. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President