



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ALKIN v. TURKEY

(Application no. 75588/01)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Alkin v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 75588/01) 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, Miss Behice Alkin (“the applicant”), on 5 October 2001.

2. The applicant, who had been granted legal aid, was represented by Mr Tahir Elçi, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that the respondent State had acted in breach of its obligation under Article 2 of the Convention by failing to prevent her from being harmed by a landmine laid by soldiers. Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention she also alleged that the proceedings instigated by her in order to obtain compensation from the State had not been completed within a reasonable time and that the State had delayed execution of the domestic court decision in which she had been awarded compensation.

4. On 21 November 2005 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Behice Alkın, is a Turkish national who was born in 1985 and lives in Şırnak. At the time of the events she was eleven years old and lived in Ortabağ village, which is located within the administrative province of Şırnak.

6. The facts of the case, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

A. The incident

7. On 13 May 1996 the applicant – who was 11 years old at the time – was playing with other children in the meadows near her village when she stepped on a landmine. According to a document drawn up by the soldiers, a few minutes prior to the events a gendarme soldier from the nearby Ortabağ gendarmerie station had told the children to leave the area, and the applicant had stepped on the mine as she was leaving the area.

8. She was airlifted to Şırnak Military Hospital in a military helicopter and subsequently to Diyarbakır Military Hospital. According to a medical report prepared by Diyarbakır Military Hospital on 22 August 1996, the applicant's left leg was amputated from the knee. As the family lacked the necessary funds, the social services provided the applicant with a prosthetic leg.

B. The criminal investigation

9. The applicant's father made a statement to the gendarmerie on 19 May 1996 and stated that the incident had been an accident and that he did not want to press charges against anyone. In her statement of 4 June 1996 the applicant also stated that she did not want bring any complaints in connection with the incident, which had been an accident.

10. On an unspecified date the public prosecutor's office in the nearby town of Uludere initiated an investigation of its own motion into the circumstances of the incident. On 27 June 1996 the file was transferred to the Uludere district administrative council for the necessary authorisation to continue with the investigation.

11. On 14 August 1997 the Uludere district administrative council declined the authorisation sought by the prosecutor. It found that, despite the soldier's warning, the applicant had crossed the minefield and that therefore there had been no intention or fault on the part of the soldiers.

12. On 4 December 1997 the Diyarbakır Regional Administrative Court examined, of its own motion, the decision of the Uludere District Administrative Court and upheld it.

13. According to the applicant, neither the decision of 14 August 1997 nor the judgment of 4 December 1997 was communicated to her or her family and they only became aware of these decisions in 2004.

C. Compensation proceedings

14. On 26 March 1997 the applicant's parents, acting as her legal guardians, filed a petition with the Ministry of the Interior (hereinafter “the Ministry”) requesting compensation for pecuniary and non-pecuniary damage on account of the injury sustained by the applicant. On 5 June 1997 the Ministry informed them that they would not pay her compensation in the absence of a judicial decision.

15. On 16 June 1997 the lawyer representing the applicant's parents (“the family”) filed an action for compensation against the Ministry before the Diyarbakır Administrative Court. In their petition, the family claimed that the State had been responsible for the injury sustained by the applicant. In any event, in accordance with the case-law of the Supreme Administrative Court, the State should bear responsibility for her injury in accordance with the “social risk principle” even if no fault was established on the part of the Ministry. They requested the court to award them 6,000,000,000 Turkish liras (TRL) for pecuniary damage and TRL 1,000,000,000 for non-pecuniary damage.

16. The Ministry and the family submitted their observations on the merits of the case on 13 August and 15 September 1997 respectively. In 1998 and 1999 the Administrative Court was provided with the criminal investigation file.

17. On 26 April 2000, with the assistance of their lawyer, the family sent a letter to the Diyarbakır Administrative Court complaining about that court's failure to make any progress in its examination of the case in the previous three years. They drew the Administrative Court's attention to the financial problems they had been experiencing and stated that the court fees they had to pay had exacerbated those problems. They asked the court to expedite the proceedings.

18. On 27 April 2000 the Diyarbakır Administrative Court appointed an expert to calculate the amount of pecuniary damage sustained by the applicant. The expert submitted his report to the court on 17 October 2000. According to the report, the pecuniary damage sustained by the applicant amounted to TRL 13,522,992,551.

19. On 21 December 2000 the Diyarbakır Administrative Court awarded the family the totality of the sum requested by them. In its decision the Administrative Court held that the injury to the applicant had been caused as

a result of the explosion of a landmine which had been laid by the security forces and, as such, the State had to compensate her for the damage sustained by her. The Administrative Court based its decision on the doctrine of “social risk”, which did not require the establishment of any causal link between the wrongful act and the damage, and considered that the burden of the damage caused in the fight against terrorism should be shared by society as a whole in accordance with the principles of “justice” and “the social State”.

20. The Ministry appealed against the decision on 2 May 2001.

21. The applicant applied to the office responsible for the execution of judgments and successfully requested an order for payment of the compensation to be issued against the Ministry. When the Ministry failed to comply with a payment order issued on 21 June 2001 and failed to ask for additional time, the office responsible for the execution of judgments called on the Ministry on 6 June 2002 to comply with the order.

22. On 25 February 2003 the Supreme Administrative Court dismissed the appeal lodged by the Ministry. It considered that, although there was a causal link between the laying of the landmines by the soldiers and the damage caused to the applicant, the authorities had not been at fault. As such, the awarding of damages by the Administrative Court on the basis of the “social risk principle” had been the right course of action. The Supreme Administrative Court's decision was served on the Ministry on 11 June 2003.

23. On 1 July 2003 the Ministry paid the applicant the sum of TRL 27,330,800,000 (approximately 17,000 euros (EUR) at the time).

24. The authorities subsequently informed the Ministry that the sum paid on 1 July 2003 did not correspond to the actual debt and that an additional TRL 1,483,874,000 (approximately EUR 900) was still due to the applicant. On 12 October 2004 the Ministry's bank transferred this sum to the bank account specified by the office responsible for the execution of judgments. However, as neither the name of the recipient nor any reference number was written on the transfer documents, the bank was unable to inform the applicant. The money was finally paid to the applicant's lawyer on 2 November 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

25. The applicant complained that the authorities had failed to take adequate precautions to prevent her from being harmed by the landmine and

that they had also failed to conduct an effective investigation into the circumstances of the incident. Article 2 of the Convention, in so far as relevant, reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

...”

26. The Government contested that argument.

27. The Government argued that the complaint was inadmissible on account of the applicant's failure to observe the six-month rule. They considered that the applicant should have introduced her application to the Court within six months from the Diyarbakır Regional Administrative Court's decision of 4 December 1997.

28. The applicant maintained that the Diyarbakır Administrative Court's decision had not been communicated to her. She also argued that it had been impossible for her, having just lost her leg and being only 11 years of age at the time, to make an official complaint against the soldiers.

29. The Court notes at the outset that the Government did not challenge the applicability of Article 2 of the Convention. In any event, the Court considers that the fact that the applicant fortuitously survived the explosion does not prevent the Court from examining the complaint under Article 2 of the Convention, since the laying of the landmine and its subsequent explosion were potentially lethal and put her life at risk (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 52 and 55, ECHR 2004-XI; *Osman v. the United Kingdom*, 28 October 1998, §§ 115-122, *Reports of Judgments and Decisions* 1998-VIII; and *Yaşa v. Turkey*, 2 September 1998, §§ 92-108, *Reports* 1998-VI).

30. The Court also notes that it is not disputed between the parties that the landmine which caused the applicant's injury had been laid by the military forces of the respondent Government. Thus, the Court considers that the laying of such indiscriminate and inhumane weapons as anti-personnel landmines, which affect the lives of a disproportionate number of civilians and children, amounts to intentional use of lethal force and, as such, the applicable principles in the present case are those developed in the Court's case-law concerning the negative obligation under Article 2 of the Convention.

31. In that context, breaches of the right to life cannot be remedied exclusively through an award of compensation to the relatives of the victim (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 56-57, 20 December 2007; *Leonidis v. Greece*, no. 43326/05, §§ 46-48, 8 January 2009; and *Amaç and Okkan v. Turkey*, nos. 54179/00 and 54176/00, §§ 32 and 35, 20 November 2007).

32. It follows, therefore, that the relevant domestic remedy for the applicant's complaint which would have had the potential to offer adequate redress was the criminal investigation which, however, was concluded on 4 December 1997, that is, more than six months before the introduction of the application (see paragraph 12 above).

33. The Court considers that the administrative proceedings by which the applicant sought to obtain compensation do not affect the running of the six-month period. It notes that the applicant was awarded compensation on the basis of the "social risk principle", a no-fault based principle adopted by administrative courts in Turkey when awarding compensation to those who suffer damage as a result of terrorist acts or in the fight against terrorism. The Court has repeatedly refused to accept the effectiveness of this no-fault based compensation procedure in Article 2 cases (see, most recently, *Bedir v. Turkey* (dec.), no. 25070/02, 2 October 2007 and the cases cited therein) on the ground that it does not lead to the identification and punishment of those responsible.

34. As for the applicant's argument that she did not become aware of the conclusion of the criminal proceedings until 2004 (see paragraph 13 above), the Court notes that in 1997, when the criminal investigation was still continuing, the applicant and her family were represented in the compensation proceedings by a lawyer who could have made enquiries, found out about the criminal investigation and advised his clients to lodge their application with the Court within six months from its conclusion. Moreover, the criminal investigation file was in the possession of the Diyarbakır Administrative Court, to which the applicant and her lawyer were able to have access (see paragraph 16 above). Nevertheless, it does not appear that due diligence was shown by the applicant, her family or by her lawyer in informing themselves about the existence or the outcome of the criminal investigation (see, *mutatis mutandis*, *Seyithan Aydın v. Turkey*, (dec.), no. 71998/01, 4 March 2008).

35. In the light of the foregoing the Court considers that the applicant has failed to comply with the six-month rule in respect of her complaint under Article 2 of the Convention. This aspect of the case must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

36. In her letter sent to the Court on 16 May 2005 the applicant relied, for the first time, on Articles 3 and 13 of the Convention.

37. The Government contested the complaints.

38. The Court notes that these complaints were not introduced until 2005, that is, more than six months after the conclusion of the domestic proceedings. It follows that these complaints must also be rejected, pursuant

to Article 35 §§ 1 and 4 of the Convention, for non-compliance with the six-month rule.

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

39. The applicant complained that the administrative proceedings had not been completed within a reasonable time, contrary to Article 6 of the Convention.

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

40. The Government contested the complaint.

A. Admissibility

41. 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

42. The applicant complained that the length of the administrative proceedings had been in breach of the reasonable-time requirement of Article 6 § 1 of the Convention.

43. In the opinion of the Government, there had not been any inordinate delays in the course of the proceedings which, in fact, had been completed within a reasonable time.

44. The Court notes that, pursuant to Article 13 of the Code of Administrative Procedure, persons who have sustained damage as a result of an administrative act have to apply to the administrative entity concerned and claim compensation for the damage they have sustained before they can lodge a compensation claim in the administrative courts in respect of such damage (see *Hasefe v. Turkey*, no. 25580/03, § 26, 8 January 2009). In other words, claiming compensation directly from the authorities is a compulsory precondition for bringing administrative proceedings. In the present case the applicant complied with this requirement on 26 March 1997 (see paragraph 14 above). It follows that, for the purposes of the reasonable-time complaint, the proceedings in question began on 26 March 1997. They ended when the Supreme Administrative Court dismissed the Ministry's appeal on 25 February 2003. They thus lasted for almost six years before two levels of jurisdiction.

45. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case. Particular regard must be had to the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II) and what is at stake for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI)

46. Having particular regard to the fact that the examination of the case by the domestic courts was largely restricted to ascertaining whether the conditions for the applicability of the “social risk principle” obtained in the case before them, and not to examining in detail the military authorities’ alleged negligence in the explosion, the Court does not consider the subject matter of the case to be complex. On the other hand, having regard to the financial difficulties experienced by the applicant and her family, which were brought to the attention of the domestic courts (see paragraph 17 above), the Court considers that the subject matter of the case was important for the applicant.

47. Despite this fact, which was not disputed by the Government, the proceedings do not appear to have been conducted with due diligence. In this connection the Court observes that, beyond requesting and obtaining the parties’ observations and the criminal investigation file (see paragraph 16 above), no meaningful action appears to have been taken by the Diyarbakır Administrative Court in the course of the first three years. Furthermore, it took the Supreme Administrative Court almost two years to decide on the appeal lodged by the Ministry (see paragraphs 20 and 22 above). In the absence of any convincing explanations from the Government, these delays must be considered to be attributable to the domestic courts.

48. In the light of the foregoing, the Court holds that the “reasonable time” requirement of Article 6 § 1 has not been satisfied. Consequently, there has been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 ON ACCOUNT OF THE NON-ENFORCEMENT OF THE DECISION OF 21 DECEMBER 2000

49. The applicant complained that the authorities had failed to pay her the sum awarded by the Administrative Court in its decision of 21 December 2000 for a long period, during which the annual rate of inflation in Turkey had been very high. The relevant parts of the provisions in question read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law...”

50. The Government contested the applicant's arguments. They drew the Court's attention to the fact that the Supreme Administrative Court's decision had been served on the Ministry on 11 June 2003 and that the Ministry had paid the compensation to the applicant on 1 July 2003.

51. According to the Court's case-law, Article 6 § 1 of the Convention requires the implementation of final and binding judicial decisions which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be prevented, invalidated or unduly delayed (see, among other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II, and *Burdov v. Russia*, no. 59498/00, §§ 34-35, ECHR 2002-III).

52. The Court notes that, in accordance with Article 28 of the Code of Administrative Procedure (see *Hasefe*, cited above, §§ 18-19), the Ministry was under an obligation to comply with the decision of the Diyarbakır Administrative Court even before that decision was examined on appeal and became final.

53. Nevertheless, according to the Court's established case-law (see, in particular, *Hornsby*, cited above, § 40), the Contracting States' obligation to execute the decisions of their domestic courts extends only to those which are “final and binding”. In the present case, the applicant complained about the non-execution of the Diyarbakır Administrative Court's decision before it became final. As pointed out by the Government, the Ministry paid the compensation to the applicant some three weeks after the decision of the Supreme Administrative Court was served on them (see paragraphs 22-23 above). It follows that the respondent Government have not failed in their obligations under Article 6 of the Convention.

54. Similarly, the compensation awarded in the Diyarbakır Administrative Court's decision cannot be regarded as a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention before the Supreme Administrative Court examined the appeal lodged against that decision. As pointed out above, the Ministry paid the compensation to the applicant three weeks after the decision of the Supreme Administrative Court was served on them.

55. In view of the above, the Court concludes that these complaints in their entirety should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 60,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

58. The Government contested those claims.

59. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

60. The applicant also claimed EUR 6,400 for the costs and expenses incurred before the domestic courts and EUR 2,700 for those incurred before the Court. In support of her claim under this head the applicant submitted to the Court a breakdown of the hours spent by her legal representative on the case.

61. The Government argued that the applicant's claims for costs and expenses were unsubstantiated.

62. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, less the EUR 850 which the applicant received in legal aid from the Council of Europe (see paragraph 2 above).

C. Default interest

63. 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

1. *Declares* by a majority of six votes to one the complaint under Article 6 of the Convention concerning the length of the administrative proceedings admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *Holds* unanimously
 - (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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (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 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President