



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ELİF KARAKAYA v. TURKEY

(Application no. 5173/05)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Elif Karakaya 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 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 5173/05) 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 Elif Karakaya (“the applicant”), on 10 January 2005.

2. The applicant was represented by Ms S. Kızılkaya and Mr İ.H.Altan, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 28 August 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of compensation proceedings. It also decided to rule on the admissibility and merits of this complaint at the same time (Article 29 § 3).

THE FACTS

4. On 22 November 1998 the applicant's husband, who was performing his compulsory military service, died of a heart attack due to a congenital heart defect, which was diagnosed during the subsequent autopsy.

5. On 19 October 1999 the applicant instituted compensation proceedings before the Supreme Military Administrative Court (*Askeri Yüksek İdare Mahkemesi*). She also requested a retirement pension.

6. On 6 January 2000 the Assembly of Chambers of the Supreme Military Administrative Court (*Askeri Yüksek İdare Mahkemesi Daireler Kurulu*) rejected the applicant's claim on the ground that she had to introduce, pursuant to relevant domestic legislation, two separate

proceedings for each of her claims. On 4 February 2000 the applicant reintroduced her claims separately before the Supreme Military Administrative Court.

7. On 1 March 2000 the Supreme Military Administrative Court issued an interim decision and inquired whether the applicant had requested compensation from the Ministry of the Interior before instituting legal proceedings. With reference to the relevant domestic provisions and in the absence of such a preliminary request from the administrative authorities, the court referred the applicant's claim to the Ministry of the Interior on 29 March 2000.

8. In the meantime the applicant had been paid compensation by the Gendarmerie General Command (*Jandarma Genel Komutanlığı*) of the Ministry of the Interior on 12 February 2000. On an unspecified date the Ministry of the Interior rejected the applicant's compensation claim on the ground that she had already been paid. The applicant was notified of this decision on 24 May 2000.

9. Having thus complied with the preliminary requirement, the applicant re-introduced her compensation claim before the Supreme Military Administrative Court on 1 June 2000 and requested the same amounts of compensation as well as legal aid. By reference to the relevant provisions and the compensation already paid to the applicant, the Supreme Military Administrative Court rejected the applicant's request for legal aid on 28 June 2000.

10. On 27 March 2002, the second chamber of the Supreme Military Administrative Court issued a decision of non-jurisdiction concerning the applicant's compensation claim on the ground that she was not military personnel. With reference to the relevant domestic legislation, the chamber held that the proceedings should have been instituted before the competent civil administrative court.

11. On 7 June 2002 the applicant instituted compensation proceedings before the Ankara Administrative Court. On 17 July 2003 the Ankara Administrative Court noted that the issue ought to have been examined by the Supreme Military Administrative Court due to its military content and referred the case to the Court of Jurisdictional Disputes (*Uyuşmazlık mahkemesi*), which held on 17 November 2003 that the matter fell within the jurisdiction of the military administrative courts.

12. Referring to the above judgment, the Ankara Administrative Court issued a decision of non-jurisdiction on 19 December 2003. Consequently the Supreme Military Administrative Court continued examining the merits of the case. On 3 May 2004 an expert report regarding the applicant's possible pecuniary and non-pecuniary damage was submitted to the Ankara Administrative Court. The applicant objected to the amounts stated in the expert report.

13. On 16 June 2004 the Supreme Military Administrative Court granted the applicant compensation with statutory interest. This judgment was delivered to the applicant on 27 July 2004. The applicant did not seek rectification.

THE LAW

14. The applicant complained that the length of compensation proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. The Government contested that argument and maintained that the applicant should have challenged the non-jurisdiction decision of 27 March 2002, which would have shortened the period in question. Likewise the applicant had also failed to challenge the judgment of 16 June 2004, and had therefore not exhausted domestic remedies.

15. The Court observes that there is currently no legal remedy in Turkish law for a complaint about the excessive length of proceedings (see *Tamar v. Turkey*, no. 15614/02, § 24, 18 July 2006). Therefore an appeal against the judgment of 16 June 2004, which in the instant case was the last domestic decision delivered, could not have remedied the applicant's length complaint before the Court.

The Court holds 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.

16. The period to be taken into consideration began on 19 October 1999 and ended on 16 June 2004. It thus lasted some 4 years and 8 months before three different types of courts due to a jurisdictional conflict, one of the courts being the Court of Jurisdictional Disputes. All decisions were examined at the first level of the respective jurisdictions.

17. 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).

18. Regarding the Government's submission that the applicant should have challenged the non-jurisdiction decision of 27 March 2002, which would have shortened the period in question, the Court notes that this is a speculative approach. Challenging this decision could also have extended the proceedings further, considering the fact that the issue was eventually resolved by the Court of Jurisdictional Disputes. The applicant simply

complied with the non-jurisdiction decision and instituted her claim before the administrative courts as directed by the Supreme Military Administrative Court.

19. The Court observes that the applicant instituted the compensation proceedings on 19 October 1999. However, she had to re-institute her claim on 4 February and 1 June 2000 respectively as she had failed to comply with certain procedural legal requirements. Thereby, the Court finds that the applicant lacked diligence during this period. Thus, it considers that the period between 19 October 1999 and 1 June 2000 cannot be attributed to the authorities in its assessment of the delay at issue.

20. The Court further observes that, following the re-institution of the applicant's claim on 1 June 2000, the Supreme Military Administrative Court delivered its non-jurisdiction decision on 27 March 2002, approximately one year and nine months afterwards. Likewise, the Ankara Administrative Court subsequently delivered its non-jurisdiction decision on 17 July 2003 - about one year and one month after the case was brought before it. The Court notes that on both occasions the decisions were limited to questions of jurisdiction and not the examination of the applicant's claim on the merits. The Court finds that the main reason for the length of the present proceedings was the failure to resolve the jurisdictional issue efficiently. The delay caused thereby was excessive, in the Court's view. Once that issue had been determined, the Supreme Military Administrative Court completed the examination of the applicant's claim in about six months, a reasonable period which included the submission of an expert report.

21. The Court emphasises, however, that the subject matter of the litigation was very important for the applicant, following the death of her husband, and required special diligence on the part of the domestic courts.

22. In conclusion, having regard to its case-law on the subject, the Court considers that in the instant case the delay in resolving the jurisdiction dispute was excessive and therefore the overall length of the proceedings failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed a total of 154,754,760 Turkish liras (approximately 73,692,742 euros (EUR)) in respect of pecuniary damage, which according to the applicant was the remaining amount of compensation, plus interest, which should have been awarded by the domestic courts. The applicant left the non-pecuniary damage award to the

Court's discretion and did not submit a claim for costs and expenses. The Government contested the applicant's claim.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court however considers that the applicant must have sustained some non-pecuniary damage in respect of the delay in compensation proceedings. Ruling on an equitable basis, it awards the applicant EUR 1,500 under that head. In the absence of any claim concerning costs and expenses in the present case the Court further holds that there is no call to award any sum on that account.

25. 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 remainder of the application admissible;
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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount 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 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President