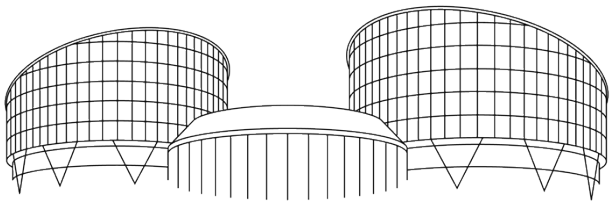

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KÖKSAL AND DURDU v. TURKEY
(Applications nos. 27080/08 and 40982/08)

JUDGMENT

STRASBOURG

15 June 2010

FINAL

15/09/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Köksal and Durdu 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 25 May 2010,

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

PROCEDURE

1. The cases originated in two applications (nos. 27080/08 and 40982/08) 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 two Turkish nationals, Mr Metin Köksal and Mr Servet Durdu ("the applicants"), on 29 May and 15 August 2008, respectively. The first applicant, Mr Köksal, was represented by Mr H. Çakıroğlu, a lawyer practising in Samsun. The second applicant, Mr Durdu, was represented by Mr M. Bayat, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

2. On 13 May 2009 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

3. The applicants were born in 1973 and 1965, respectively, and live in Samsun and Ankara.

A. Application no. 27080/08

4. On 17 October 2001 the applicant was discharged from his civil service post following his previous criminal conviction by a martial law court. The conviction had been finalised by the Military Court of Cassation's decision of 11 November 1997.

5. On 4 January 2002 the applicant brought an action before the Samsun Administrative Court to annul the discharge order.

6. On 5 June 2002 the Samsun Administrative Court rejected the applicant's request.

7. On 7 February 2005 the Supreme Administrative Court upheld the judgment of the Samsun Administrative Court. The written opinions of the public prosecutor and of the judge rapporteur ("*tetkik hakimi*") concerning his appeal request were not communicated to the applicant.

8. On 31 December 2007 the Supreme Administrative Court dismissed the applicant's request for rectification of its previous decision.

B. Application no. 40982/08

9. On 11 January 2002 the applicant was discharged from his civil service post after a disciplinary decision. Criminal proceedings were also commenced against the applicant on the same grounds as those which had led to his discharge.

10. On 15 March 2002 the applicant brought an action before the Ankara Administrative Court to annul the discharge order.

11. On 25 June 2002 the Ankara Assize Court acquitted the applicant of the offences with which he had been charged. On 22 March 2004 the Court of Cassation upheld the applicant's acquittal.

12. In the meantime, on 31 March 2003 the Ankara Administrative Court refused the applicant's request to annul the discharge order. Relying on Section 131 of the Law on Civil Servants (Law no. 657), the administrative court held that the applicant's acquittal of the criminal charges did not absolve him from the disciplinary sanction.

13. On 26 April 2005 the Supreme Administrative Court upheld the judgment of the Ankara Administrative Court. The written opinions of the public prosecutor and of the judge rapporteur concerning his appeal request were not communicated to the applicant.

14. On 23 January 2008 the Supreme Administrative Court dismissed the applicant's rectification request. The final decision was served on the applicant on 4 March 2008.

II. RELEVANT DOMESTIC LAW

15. A description of the relevant domestic law can be found in the case of *Meral v. Turkey* (no. 33446/02, §§ 22-26, 27 November 2007).

THE LAW

16. Given the similarity of the applications, both as regards fact and law, the Court deems it appropriate to join them.

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicants both complained under Article 6 § 1 of the Convention of the non-communication of the written opinions submitted by the public prosecutors to the Supreme Administrative Court concerning their appeal requests, which had denied them the opportunity to reply and had thus infringed the principle of equality of arms. The applicants also maintained under the same provision that they had been denied a trial within a reasonable time.

18. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

A. Non-communication of the public prosecutor's written opinion

19. The Government contended that, unlike in criminal proceedings, the public prosecutor in administrative proceedings was not a party to the case and his or her opinion had no influence on the decision of the administrative court. The Government also argued that the principle of equality of arms had not been infringed in the instant cases as the applicants had had the option of examining their respective case files, and thus the public prosecutors' written opinions, prior to the delivery of the judgments.

20. The Court observes that it has already examined and dismissed similar preliminary objections by the Government in previous cases and found a violation of Article 6 § 1 of the Convention (see *Meral*, cited above, §§ 32-39, and *Miran v. Turkey*, no. 43980/04, §§ 9-18, 21 April 2009). It considers that the Government have not put forward any fact or argument in the instant cases which would require it to depart from its previous findings.

There has accordingly been a violation of Article 6 § 1 of the Convention on account of the non-communication of the written opinions of the public prosecutors to the applicants.

B. Length of administrative proceedings

21. The Court notes that the proceedings in relation to application no. 27080/08 began on 4 January 2002 and ended on 31 December 2007. They thus lasted over five years and eleven months before two levels of jurisdiction, which examined the case three times. The proceedings in application no. 40982/08 commenced on 15 March 2002 and came to an end on 23 January 2008. They thus lasted over five years and ten months before two levels of jurisdiction, which examined the case three times.

22. The Government argued that the period during which the applicants' rectification requests were examined by the Supreme Administrative Court could not be taken into consideration in the assessment of the length of the proceedings as the rectification of judgments was an extraordinary legal remedy and not a part of the administrative proceedings. They also maintained that there was no delay in either of the proceedings which could be attributed to the authorities.

23. The Court reiterates that the present cases concern civil proceedings, and that the remedy of rectification of judgments in Turkey within this context constitutes an effective domestic remedy within the meaning of generally recognised international law principles (see *Molin Inşaat v. Turkey*, no. 23762/94, Commission decision of 7 September 1995, and *Latif Fuat Öztürk v. Turkey*, no. 54673/00, § 29, 2 February 2006). The Court, therefore, cannot accept the Government's argument that the rectification procedure, which the applicants availed themselves of in the instant cases, was not a part of the administrative proceedings in question.

24. The Court further notes that it has frequently found violations of Article 6 § 1 of the Convention in applications raising issues similar to the ones before it (see, for instance, *Şenol Uluslararası Nakliyat, İhracat ve Ticaret Limited Şirketi v. Turkey*, no. 75834/01, §§ 23-28, 20 May 2008). 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 circumstances. The Court particularly notes that, in both applications, the cases were pending before the Supreme Administrative Court for almost five years, which delay contributed substantially to the overall length of the proceedings.

25. Having regard to its case-law on the subject, the Court therefore considers that the length of both proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention in respect of both of the administrative proceedings in question.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

26. The applicants argued under Article 6 § 1 of the Convention that the written opinions submitted by the judge rapporteurs to the Supreme Administrative Court had not been communicated to them. They further claimed under Article 1 of Protocol No. 1 that they had been deprived of their future earnings and other financial rights on account of their unfair dismissals from the civil service.

27. As regards the complaint concerning the non-communication of the written opinion of the judge rapporteur, the Court notes that it has already examined and rejected this complaint in the case of *Meral* (cited above, §§ 40-43). The Court finds no particular circumstances in the instant cases which would require it to depart from its findings in the *Meral* case.

It follows that this part of the applications should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

28. As for the complaint raised under Article 1 of Protocol No. 1, the Court considers that the applicants had no "legitimate expectation" of receiving the future income which they had claimed (see *Ouzounis and Others v. Greece*, no. 49144/99, §§ 24 and 25, 18 April 2002). Therefore they have not shown that they had a property right requiring protection under this provision.

It follows that this part of the applications should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Alleged violation of Articles 6 § 1 and 13 of the Convention

29. The first applicant, Mr Köksal, complained under Article 6 § 1 of the Convention that the criminal conviction of the martial law court had been erroneous and unfair. He further contended under Article 13 of the Convention that he had not had an effective remedy in domestic law, without further substantiation.

30. As regards the complaint under Article 6 § 1 of the Convention, the Court notes that the conviction ordered by the martial law court had been upheld on 11 November 1997 by the decision of the Military Court of Cassation. The applicant, however, introduced his application to the Court on 29 May 2008, more than six months later.

It follows that this complaint has been introduced out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

31. As regards the complaint under Article 13 of the Convention, the Court finds that this unarguable complaint does not disclose any appearance

of a violation of the rights and freedoms set out in the Convention or its Protocols in the light of all the material in its possession, and in so far as the matters complained of are within its competence.

It follows that this part of application no. 27080/08 should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Alleged violation of Articles 6 § 2 and 7 of the Convention

32. The second applicant, Mr Durdu, complained that the failure of the administrative courts to annul the disciplinary sanction he had received, despite his acquittal by the criminal courts of the charges in relation to the same events, had violated Articles 6 § 2 and 7 of the Convention.

33. The Court notes that the applicant was not charged with a "criminal offence" in the proceedings before the administrative courts within the meaning of Article 6 § 2 of the Convention and that his discharge was brought about by a disciplinary sanction, which did not constitute "punishment" under Article 7 of the Convention (see, *mutatis mutandis*, *Korkmaz and Others v. Turkey* (dec.), nos. 44058/04, 19807/05 and 26384/05, 23 September 2008).

It follows that these complaints in application no. 40982/08 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

34. The first applicant claimed 23,000 euros (EUR) and EUR 20,000 in respect of pecuniary and non-pecuniary damage, respectively. The second applicant claimed EUR 50,000 and EUR 200,000 for pecuniary and non-pecuniary damage, respectively.

35. The Government contested these claims.

36. The Court does not discern any causal link between the violations found and the pecuniary damages alleged; it therefore rejects these claims. However, deciding on an equitable basis, it awards the applicants EUR 3,000 each in respect of non-pecuniary damage.

B. Costs and expenses

37. The first applicant claimed EUR 2,975 for the costs and expenses incurred before the Court, but did not submit any documents in

substantiation. The second applicant claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and the Court. He also claimed EUR 2,500 in legal fees in connection with the presentation of the case before the Court. The applicant did not submit any receipts or other vouchers in respect of his costs and expenses, but only submitted documentation indicating the time spent by his legal representative on the application.

38. The Government contested these claims.

39. 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 Court rejects the first applicant's claims under this head in the absence of any documentation. However, regard being had to the documents in its possession and the above criteria, it considers it reasonable to award the second applicant the sum of EUR 1,000 for his costs and expenses.

C. Default interest

40. 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. *Decides* to join the applications;

2. *Declares* the complaints under Article 6 § 1 of the Convention concerning the non-communication to the applicants of the public prosecutors' written opinions and the excessive length of the administrative proceedings admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-communication to the applicants of the public prosecutors' written opinions and the excessive length of the administrative proceedings;

4. *Holds*

(a) that the respondent State is to pay the applicants within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 1,000 (one thousand euros) to the second applicant (Mr Servet Durdu) in respect of costs and expenses, plus any tax that may be chargeable to him;

(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;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President