



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

SECOND SECTION

CASE OF CEMİL AYDIN v. TURKEY

(Application no. 8537/05)

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 Cemil Aydın v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos,

Guido Raimondi, *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 case originated in an application (no. 8537/05) 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 German national, Mr Cemil Aydın (“the applicant”), on 21 February 2005.

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

3. On 30 January 2009 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).

4. The German Government did not make use of their right to intervene under Article 36 § 1 of the Convention.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1952 and lives in Nürnberg.

6. On 2 October 1998 the applicant, who was then working at the Turkish Consulate in Nürnberg, was laid off for misconduct by his employer, the Turkish Ministry of Foreign Affairs.

7. On 18 December 1998 he lodged a case with the Ankara Administrative Court against the Ministry of Foreign Affairs for unfair dismissal and compensation.

8. On 16 November 1999 the court dismissed the case.

9. On 26 March 2002 the Supreme Administrative Court upheld the judgment of 16 November 1999.

10. On 18 May 2004 the Supreme Administrative Court dismissed the applicant's rectification request.

THE LAW

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

11. 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. The Government contested that argument.

12. The period to be taken into consideration began on 18 December 1998 when the applicant lodged the action with the Ankara Administrative Court and ended on 18 May 2004 when the Supreme Administrative Court dismissed the applicant's rectification request. It thus lasted five years and five months for two levels of jurisdiction.

13. The Court notes that the application 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.

14. The Court has examined a number of cases raising similar issues to those in the present case, in which it found a violation of Article 6 § 1 of the Convention (see, for example, *Narin v. Turkey*, no. 18907/02, § 60, 15 December 2009, and *Karakullukçu v. Turkey*, no. 49275/99, § 36, 22 November 2005). Having regard to the overall length of the proceedings, the Court finds no reason to reach a different conclusion in the instant case. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

15. The applicant complained under Article 6 of the Convention that he had been denied a fair hearing as the domestic judicial authorities had not assessed the facts of his case thoroughly and they had only taken into account the arguments of the administrative authorities. The applicant further contended that his purportedly unfair dismissal had amounted to a “heavier penalty” within the meaning of Article 7 of the Convention. Lastly,

he alleged under Articles 8 and 10 of the Convention that his rights to respect for private and family life and to freedom of expression had been violated on account of his unfair dismissal.

16. However, the Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that these complaints are manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicant claimed 1,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

19. The Government contested the claim.

20. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

21. The applicant also claimed EUR 10, 500 for the costs and expenses incurred before the domestic courts.

22. The Government contested these claims.

23. 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 observes that the applicant did not produce any document in support of his claims. Accordingly, the Court makes no award under this head.

C. Default interest

24. 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 complaint concerning the 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;
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 2,400 (two thousand four 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 on 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 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President