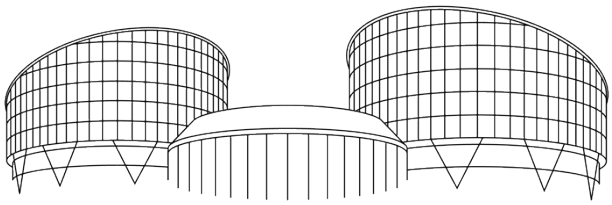

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ALHAN v. TURKEY

(Application no. 8163/07)

JUDGMENT

STRASBOURG

2 April 2013

This judgment is final but it may be subject to editorial revision.

In the case of Alhan v. Turkey,

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

Dragoljub Popović, *President,*
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

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

Having deliberated in private on 12 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 8163/07) 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 Serap Alhan ("the applicant"), on 1 February 2007.

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

3. On 14 September 2010 the application was declared partly inadmissible and the complaints concerning the length of the proceedings was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Istanbul.

6. The facts of the case, as submitted by the applicant, may be summarised as follows.

7. On 24 August 2000 the applicant instituted compensation proceedings before the Eskişehir Administrative Court claiming that she had contracted (HEPATIT-C) from the surgical instruments used during her operation.

8. On 6 November 2001 the Eskişehir Administrative Court found the applicant's objection groundless and refused her request for compensation.

9. On 21 December 2001 the applicant appealed against the judgment of 6 November 2001.

10. On 30 January 2004 the Supreme Administrative Court upheld the first instance court's judgment.

11. On 1 August 2004 the applicant requested rectification of the Supreme Administrative Court's decision.

12. On 17 August 2004 the Eskişehir Administrative Court issued an interim decision and noted that the fee for rectification had not been paid. The court asked the applicant to correct this procedural shortcoming within fifteen days.

13. On 7 October 2004, upon her non-compliance with the interim decision of the court, the court decided not to put the applicant's rectification request into action.

14. On 1 November 2004 the applicant appealed.

15. On 11 May 2006 the Supreme Administrative Court quashed the administrative court's decision not to take the applicant's request for rectification into account finding that the request had been properly submitted. Yet, the Supreme Court dismissed the request upon an examination of merits holding that there was no plausible ground requiring rectification.

16. On 28 August 2006 the applicant was notified of the decision of 11 May 2006.THE LAW

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

17. 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..."

18. The Government contested that argument.

19. The period to be taken into consideration began on 24 August 2000 and ended on 28 August 2006. It thus lasted almost six years for two levels of jurisdiction.

A. Admissibility

20. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. 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 *Daneshpayeh v. Turkey*, no. 21086/04, § 28, 16 July 2009).

22. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for example, *Daneshpayeh v. Turkey*, no. 21086/04, § 26-29, 16 July 2009; *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Yücel Doğan v. Turkey*, no. 24647/04, §§ 18-22, 6 October 2009; and *Hasefe v. Turkey*, no. 25580/03, §§ 28-30, 8 January 2009).

23. 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 case. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 10.000 euros (EUR) in respect of pecuniary and 60.000 euros non-pecuniary damage.

26. The Government contested these claims.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,500 under that head.

B. Costs and expenses

28. The applicant claimed EUR 221 for the costs and expenses incurred before the domestic courts. She submitted three invoices indicating the court fees and postal expenses made in domestic judicial proceedings.

29. The Government contested the claim.

30. Regard being had to the documents in its possession and to its case-law, the Court observes that the costs claimed concerned the introduction of the compensation proceedings and are not due to the length. It therefore rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

31. The Court considers it appropriate that the default interest rate 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 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, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
   (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 2 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popoić
President