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

Press Release
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ECHR 279 (2012)
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Compliance with six-month time-limit calculated in accordance with Convention criteria

In today's Grand Chamber judgment in the case of **Sabri Güneş v. Turkey** (application no. 27396/06), which is final[1], the European Court of Human Rights held, unanimously, that as the application was lodged more than six months after the final domestic decision within the meaning of Article 35 § 1 of the Convention was served:

the Court was unable to examine the merits of the case.

In this Grand Chamber judgment the Court defines compliance with the six-month time-limit (Article 35 § 1 of the Convention), that is to say the starting date and the expiry date of the time-limit. It states that the variable approach seen in its case-law is based on the principle that the six-month rule is autonomous and must be construed and applied in each individual case in such a way as to ensure the effective exercise of the right to individual petition. On several occasions the Court has confirmed the principle that compliance with the six-month time-limit is calculated in accordance with the Convention criteria and not on the basis of the conditions laid down by the domestic law of each respondent State.

Principal facts

The applicant, Sabri Güneş, is a Turkish national who was born in 1981 and lives in Izmir (Turkey). He suffered a personal injury while doing his military service, and was awarded compensation for the pecuniary and non-pecuniary damage sustained. He then applied for additional compensation in respect of his permanent disability. When the administrative authorities dismissed his claim he lodged a fresh claim with the Supreme Military Administrative Court, which considered it as a claim for a review of the initial amount and dismissed it as being out of time. The applicant lodged an application for rectification of the judgment. By a judgment of 16 November 2005, served on the applicant on 28 November 2005, the Supreme Military Administrative Court rejected that application.

Complaints, procedure and composition of the Court

In its request for referral of the case to the Grand Chamber the Government contended that Mr Güneş had failed to observe the six-month time-limit laid down in Article 35 § 1 of the Convention and requested that the Court reject his application accordingly.

The application was lodged with the European Court of Human Rights on 29 May 2006. A Chamber judgment was given on 24 May 2011. On 23 August 2011 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber) and on 15 September 2011 the panel of the Grand Chamber accepted that request.

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here:
www.coe.int/t/dghl/monitoring/execution

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Josep **Casadevall** (Andorra),
Nina **Vajić** (Croatia),
Dean **Spielmann** (Luxembourg),
Lech **Garlicki** (Poland),
Peer **Lorenzen** (Denmark),
Boštjan M. **Zupančič** (Slovenia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Ján **Šikuta** (Slovakia),
Mark **Villiger** (Liechtenstein),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** (« the former Yugoslav Republic of Macedonia »),
Işıl **Karakaş** (Turkey),
Vincent A. **de Gaetano** (Malta),
Erik **Møse** (Norway),
Helen **Keller** (Switzerland),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

The Chamber judgment

In its judgment of 24 May 2011 the Chamber had examined the question of compliance with the six-month time-limit provided for in Article 35 § 1 of the Convention[2], and concluded that the time-limit had been observed. It referred to the decision in the case of Fondation Croix-Etoile, Baudin and Delajoux v. Switzerland, (no. 24856/94), of 11 April 1996, in which the Commission had considered that when the date of expiry of the six-month time-limit was an official holiday in domestic law, the time-limit should be extended to the first working day thereafter.

The Chamber considered that the requirements of legal certainty and protection, which were vital in that area, were best satisfied by taking account of domestic law and practice when calculating the six-month time-limit. It considered that such an interpretation implemented the principle of subsidiarity which underpinned the Convention system. The Chamber accordingly observed that the final domestic decision had been served on Mr Güneş on 28 November 2005 and that the time-limit set by Article 35 § 1 of the Convention had therefore started to run on 29 November 2005 and had expired on 28 May 2006. However, as that day was a Sunday, it considered that "it [was] more consistent with the purpose and aim of Article 35 to conclude that the six-month time-limit should be extended to the first following working day".

The Grand Chamber's assessment

The six-month time-limit provided for in Article 35 of the Convention had a number of aims. Its primary purpose was to maintain legal certainty by ensuring that cases were examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for too long. It gave the applicant time to consider what action to take and facilitated the establishment of the facts in a case. The rule marked out the temporal limit of the supervision exercised by the Court;

[2] "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

it was justified by the wish of the High Contracting Parties to prevent past judgments being constantly called into question and catered for a legitimate concern for order, stability and peace.

The issue was whether or not, when the *dies ad quem* of the time-limit was an official holiday or a day considered to be an official holiday, the time limit would be extended to include the first working day thereafter.

The established case-law of the Commission was that the six-month time-limit started to run on the day following delivery of the final domestic decision and that it expired six calendar months later. That method had been used in several cases examined by the Commission and the Court had specifically followed that approach subsequently. However, the question was what approach to adopt when the last day of the six-month time-limit was a non-working day.

While the Chamber had referred to the decision in the case of *Fondation Croix-Etoile, Baudin and Delajoux v. Switzerland*, in which the Commission considered that the deadline should be extended to the next working day, the Court in its case-law had not taken non-working days into account when determining the expiry date of the time-limit. The Court had confirmed on several occasions the principle that compliance with the six-month time-limit must satisfy the Convention criteria and not the arrangements laid down by the domestic law of each respondent State. So the six-month time-limit started to run on the date of service of a copy of the final domestic judgment or decision.

Application by the Court of its own criteria in calculating time-limits, independently of domestic rules, tended to ensure legal certainty, proper administration of justice and the practical and effective functioning of the Convention mechanism. If, in determining the *dies ad quem*, the Court had to take account of domestic law and practice, it would have to draw up a full schedule of official holidays in the forty-seven member States, which varied from one State to another and could also change over time.

Having regard to the numerous means of communication now available to potential applicants (post, fax, electronic communication, internet, etc.), the Court considered that the six-month time-limit was, now more than ever, sufficient to enable them to consider whether to lodge an application and, if so, to decide on the content thereof, in accordance with Rule 47 of the Rules of Court. While it was essential for the efficacy of the system that Contracting States comply with their obligation not to hinder the exercise of the right of individual petition, applicants must nonetheless be alert as regards compliance with the relevant procedural rules.

In the instant case the final decision of the Supreme Military Administrative Court of 16 November 2005 had been served on Mr Güneş on 28 November 2005. The time-limit laid down by Article 35 § 1 of the Convention had therefore started to run on the following day, 29 November, and expired at midnight on Sunday 28 May 2006. The application had been lodged on 29 May 2006, that is, after the expiry of the above-mentioned time-limit. As Mr Güneş had lodged his application with the Court more than six months after he had been served with the final domestic decision within the meaning of Article 35 § 1 of the Convention, the Court was unable to examine the merits of the case.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.