

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

SECOND SECTION

CASE OF BRAUN v. TURKEY

(Application no. 10655/07)

JUDGMENT

STRASBOURG

21 February 2012

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



In the case of Braun v. Turkey,

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

Dragoljub Popović, *President,*
András Sajó,
Paulo Pinto de Albuquerque, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 10655/07) 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 German national, Ms Sevgi Braun ("the applicant"), on 21 February 2007.

2. The applicant was represented by Mr Nedim Erkuş, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. On 4 September 2009 the President of the Second Section decided to give notice of the application to the Government.

4. The German Government, who were invited to indicate whether they wished to exercise their right to intervene in the proceedings (Article 36 § 1 of the Convention), did not express their wish.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Wuppertal.

6. The applicant used to work as secretary on contractual basis at the Education Department of the Turkish Representation in Dusseldorf attached to the Ministry of Education.

7. On 31 December 1996 the Ministry annulled the contract.

8. On 2 June 1997 the applicant lodged a compensation case with the Ankara Labour Court against the Ministry of Education for her labour claims.

9. On 29 December 1998 the labour court issued a decision of non-jurisdiction which was upheld by the Court of Cassation on 10 February 1999.

10. Upon the decision of non-jurisdiction, on 15 March 1999 the applicant brought compensation proceedings before the Ankara Administrative Court for her labour claims, such as bonus, notice and severance pay.

11. On 21 January 2000 the court issued a decision of non-jurisdiction and transferred the case to the Supreme Administrative Court.

12. On 7 May 2002 the Supreme Administrative Court quashed the decision of 21 January 2002 holding that the matter fell within the jurisdiction of it.

13. On 29 November 2002 the Ankara Administrative Court dismissed the case as introduced out of time. Without examining the merits of the case, it established that the sixty days time-limit to bring compensation action before the administrative court had expired on 5 December 1996 whereas the applicant lodged her case with the court on 2 June 1997.

14. In her appeal petition of 21 March 2003 the applicant challenged the judgment of the administrative court and requested a hearing in the appeal proceedings.

15. On 25 October 2005 the Supreme Administrative Court upheld the judgment of 29 November 2002, finding it to have been in accordance with the law and the procedural rules. It decided that it was not necessary to hold a hearing.

16. On 28 June 2006 the Supreme Administrative Court dismissed a request by the applicant for rectification of the judgment.

17. On 22 August 2006 the decision was served on the applicant.

THE LAW

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

18. 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..."

19. The Government contested that argument claiming that the applicant had failed to comply with the six month rule laid down in Article 35 § 1 of the Convention. They further contended that the impugned proceedings could not be considered to have been excessively long in view of the

complexity of the case. They concluded therefore that there had been no delay in the proceedings that may be attributable to the State.

20. Bearing in mind that the final decision was served on the applicant on 22 August 2006 and the instant application was lodged with the Court on 21 February 2007, the Court finds that the applicant has complied with the six month rule under Article 35 § 1 of the Convention and, therefore, rejects the Government's preliminary objection.

21. The Court notes that this complaint 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.

22. The period to be taken into consideration began on 15 March 1999 and ended on 28 June 2006. It has thus lasted approximately seven years and three months for two levels of jurisdiction.

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 (see *Frydlender v. France* [GC], no. 30979/96, §§ 42-46, ECHR 2000-VII, and *Daneshpayeh v. Turkey*, no. 21086/04, §§ 26-29, 16 July 2009).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant complained under Article 6 of the Convention that the decision of the Supreme Administrative Court had been devoid of reasoning.

25. The Court reiterates that Article 6 of the Convention does not require that an appeal court, when rejecting an appeal by reference to the reasoning given by a lower court, accompanies its decision by other detailed reasons (see *Kabasakal and Atar v. Turkey*, nos. 70084/01 and 70085/01, 19 September 2006). Therefore, the Court considers that this complaint is manifestly ill-founded.

26. The applicant further contended that the lack of a hearing before the Supreme Administrative Court had breached her right to a fair trial.

27. The Court first finds that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. Furthermore, a hearing may not be necessary due to exceptional circumstances of the case, for example when it raises no

questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations.

28. In the present case, the Court observes in the first place that the applicant did not request an oral hearing before the first-instance court. The applicant could be expected to apply for one if she attached importance to it. She did not do so, however. It may reasonably be considered, therefore, that she unequivocally waived her right to a public hearing in the first-instance court. Moreover, the first-instance court, without examining the merits, dismissed the applicant's case for non-compliance with the statutory time-limit. In this respect, the Court notes that the dispute before the Supreme Administrative Court mainly concerned the application of the statutory time-limit, which involves only questions of law. Furthermore, there is no indication in the case file that her appeal was capable of raising also factual issues and issues of public importance such as to make a hearing necessary.

29. Having regard to the entirety of the proceedings before the administrative court and to the nature of the issues submitted to the Supreme Administrative Court, the Court reaches the conclusion that there were special features to justify the decision not to hold a public hearing (see *Döry v. Sweden*, no. 28394/95, §§ 37-45, 12 November 2002; *Boz v. Turkey* (dec.), no. 7906/05, 9 December 2008). It follows that these complaints must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 69,000 euros (EUR) in respect of pecuniary damage referring mainly to her labour claims, such as salary, bonus, severance pay. She also claimed EUR 20,000 in respect of non-pecuniary damage for the distress caused due to proceedings.

32. The Government contested these claims as being excessive.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant also claimed EUR 10,000 for the costs and expenses incurred in respect of lawyer's fee. She relied on an oral agreement for the payment of this amount.

35. The Government contested the claim.

36. The Court reiterates that 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. The Court considers that the applicant has not substantiated that it has actually incurred the costs claimed, solely relied on an oral agreement that she had entered into with her lawyer. In particular, she failed to submit documentary evidence, such as bills, receipts, a contract, a fee agreement or a breakdown of the hours spent by her lawyer on the case. Accordingly, the Court makes no award under this head.

C. Default interest

37. 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 complaint concerning the excessive 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, EUR 3,600 (three thousand and six hundred euros) to be converted into Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable, 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 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Deputy Registrar	Dragoljub Popović President