

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

SECOND SECTION

CASE OF TUMLUKOLÇU v. TURKEY

(Application no. 33621/09)

JUDGMENT

STRASBOURG

18 December 2012

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



In the case of Tumlukolçu 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 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 33621/09) 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, Mr Kasım Tumlukolçu ("the applicant"), on 5 June 2009.

2. The applicant was represented by Mr S. Tumlukolçu, a lawyer practising in Adana. The Turkish Government ("the Government") were represented by their Agent.

3. On 2 November 2010 the application 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 1952 and lives in Adana.

6. On 14 October 1999 he had cataract surgery in a hospital belonging to the Social Security Agency. Upon discomfort which emerged straight after the operation, he applied to the hospital where he was operated on and found out that the reason for his complaints was that the operation had not been conducted under the necessary hygienic conditions.

7. On 17 November 2000 he brought a civil case against the Social Security Agency before the Adana 5th Civil Court of General Jurisdiction and claimed damages.

8. On 23 August 2001 the civil court decided that the case was not within its jurisdiction and sent it to the Adana 2nd Labour Court.

9. On 1 June 2001 the applicant brought a new case directly before the labour court in claim of damages. The labour court decided that both cases were out of its jurisdiction since they were not of a labour case nature. Pursuant to the Code of civil procedure, the first case was sent to the Court of Cassation for the conflict of jurisdiction between a general civil court and a labour court. Meanwhile the proceedings of the second case before the labour court were suspended until the decision of the Court of Cassation was delivered.

10. From 21 January 2002 to 3 October 2002 the case was sent from one chamber to another due to the conflict of authority among the chambers of the Court of Cassation.

11. On 24 April 2003 upon the decision of the Court of Cassation authorizing general civil courts over the case, the two cases were joined before the Adana 5th Civil Court of General Jurisdiction.

12. On 1 February 2006 the Civil Court of General Jurisdiction rendered its first decision.

13. On 2 May 2007 the Court of Cassation quashed that decision.

14. In the course of the proceedings after the Court of Cassation quashed the decision, the Social Security Agency was attached to the Ministry of Health.

15. On 30 July 2008 the civil court decided that the case was out of its jurisdiction since the other party had become an administrative body. That decision was not appealed by the parties.

16. On 23 October 2008 upon the decision of the civil court the applicant brought an administrative case against the Ministry of Health requesting damages.

17. The administrative case was still pending before the Adana 1st Administrative Court at the time of the decision.

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.

20. The period to be taken into consideration began on 17 November 2000 and had not yet ended on the date of the adoption of the decision of the Court. On that date, it had already lasted twelve years before two instances.

A. Admissibility

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.

B. Merits

22. 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 *Daneshpayeh v. Turkey*, no. 21086/04, § 28, 16 July 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and EUR 100,000 as of non-pecuniary damage.

27. The Government contested these claims.

28. 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 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts.

30. The Government contested the claim.

31. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses.

C. Default interest

32. 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 7,000 (seven thousand euros), 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 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Dragoljub Popović
President