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

SECOND SECTION

# DECISION

Application no. 34740/10
Serkan ÖZBEY
against Turkey
(see appended table)

The European Court of Human Rights (Second Section), sitting on 5 November 2020 as a Committee composed of:

Branko Lubarda, *President,*
Carlo Ranzoni,
Pauliine Koskelo, *judges,*
and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 12 April 2010,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

The applicant's details are set out in the appended table.

The applicant was represented by Mr Z. Biçer, a lawyer practising in Kocaeli.

The applicant's complaints under Article 6 § 1 of the Convention concerning the inability to increase his pecuniary claims in the course of the compensation proceedings before the military administrative court were communicated to the Turkish Government ("the Government").

## THE LAW

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by these complaints. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "I declare that the Government of Turkey offer to pay the applicant 900,00 (nine hundred) Euros to cover any pecuniary and non-pecuniary damage as well as costs and expenses that may be chargeable to the applicant with a view to resolving the above-mentioned case pending before the European Court of Human Rights.
>
> This sum will be converted into Turkish Liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case before the European Court of Human Rights.
>
> The Government consider that the inability of the applicant to increase his pecuniary claims in the course of the proceedings on account of a procedural restriction at the material time, namely the prohibition of amendment in the Code of Administrative Procedure, breached his right to a fair trial in the light of the well-established case-law of the Court (*Fatma Nur Erten and Adnan Erten v. Turkey*. no. 14674/11, 25 November 2014). The Government further emphasize that Article 53 § l (1) of the Code of Administrative Procedure, as amended by Law no. 7145 of 3l July 20l8, now provides for the reopening of administrative court proceedings in cases where the European Court of Human Rights decides to strike an application out of its list of cases following a friendly settlement or a unilateral declaration. The Government consider that the aforementioned remedy is capable of providing redress in respect of the applicant's complaints under Article 6 § l of the Convention.
>
> The Government respectfully invite the Court to declare that it is no longer justified to continue the examination of the application and to strike it out of its list of cases in accordance with Article 37 of the Convention."

The applicant was sent the terms of the Government's unilateral declaration. The Court received a response from the applicant refusing the terms of the declaration.

The Court observes that Article 37 § 1 (c) enables it to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Thus, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued (see, in particular, the *Tahsin Acar v. Turkey* judgment (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the disproportionate limitation to the right of access to a court on account of the procedural rule at the time which prevented litigants from amending their pecuniary claims in the course of administrative proceedings (see *Fatma Nur Erten and Adnan Erten v. Turkey*. no. 14674/11, §§ 29-33,

25 November 2014, and *Tamer Tanrıkulu v. Turkey*, no. 36488/08, § 20, 29 November 2016).

Noting the admissions contained in the Government's declaration, the fact that the applicant can ask for re-opening of the proceedings, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application may be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

*Takes note* of the terms of the respondent Government's declaration and of the arrangements for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 26 November 2020.

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| Liv Tigerstedt | Branko Lubarda |
| Acting Deputy Registrar | President |

# APPENDIX

## Application raising complaints under Article 6 § 1 of the Convention

| Application no.<br>Date of introduction | Applicant's name<br>Year of birth | Date of receipt of<br>Government's declaration | Date of receipt of<br>applicant's comments | Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (in euros)[1] |
|---|---|---|---|---|
| 34740/10<br><br>12/04/2010 | **Serkan ÖZBEY**<br><br>1980 | 22/07/2020 | 18/09/2020 | 900 |

[1] Plus any tax that may be chargeable to the applicant