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

SECOND SECTION

CASE OF HASEFE v. TURKEY

(Application no. 25580/03)

JUDGMENT

This version was rectified on 24 August 2009
under Rule 81 of the Rules of the Court

STRASBOURG

8 January 2009

FINAL

13/04/2009

It may be subject to editorial revision.

In the case of Hasefe v. Turkey**,**

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 25580/03) 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 three Turkish nationals, Mrs Fatma Süeda Hasefe, Mrs Ayşe Hülya Hasefe and Mr Hakkı[1] Haldun Hasefe ("the applicants"), on 11 June 2003.

2. The applicants were represented by Mr Güney Dinç, a lawyer practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that administrative proceedings initiated by them to claim compensation from the Ministry of the Interior had not been concluded within a reasonable time.

4. On 2 January 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

[1] Rectified on 24 August 2009: The applicant's first name read only "Haldun" in the former version of the judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1923, 1948 and 1952 respectively and live in Istanbul.

6. The first applicant is the mother and the remaining two applicants are the sister and brother of Ms Nilgün Hasefe, who was employed by Sabancı Holdings in Istanbul. On 9 January 1996 a number of armed persons raided the Holdings' premises and killed Nilgün Hasefe and two others.

7. On 11 November 1996 the applicants wrote to the Ministry of the Interior ("the Ministry") and claimed compensation in accordance with Article 125 of the Constitution on the ground of the State's failure to protect Nilgün Hasefe's right to life. The Ministry rejected the claim on 9 December 1996.

8. On 14 February 1997 the applicants filed a compensation claim against the Ministry before the Istanbul Administrative Court (hereafter "the Istanbul court").

9. On 14 October 1999 the Istanbul court partly allowed their claims for compensation and ordered the Ministry to pay certain sums of compensation to the applicants in respect of pecuniary and non-pecuniary damage.

10. On 9 March 2000 the applicants asked the Ministry to pay them the amounts of compensation awarded by the Istanbul court.

11. The Ministry appealed against the decision on 22 March 2000 and asked for an interim injunction suspending the execution of the Istanbul court's decision. In his written submissions the prosecutor at the Supreme Administrative Court agreed with the Ministry and requested that an interim injunction be granted and that the decision of the Istanbul court be quashed. The prosecutor's written submissions were not forwarded to the applicants.

12. On 18 May 2000 the Supreme Administrative Court granted the injunction sought by the Ministry and on 6 March 2002 it quashed the Istanbul court's decision of 14 October 1999.

13. The case was remitted to the Istanbul court, which decided on 31 January 2003 to reach the same conclusion as it had in its decision of 14 October 1999. It ordered the Ministry to pay the same amounts of compensation to the applicants as those awarded in its previous decision. The Ministry appealed. The applicants also appealed and argued that the amounts of compensation ordered by the Istanbul court were no longer satisfactory owing to the low rates of interest.

14. On 14 April 2005 the Supreme Administrative Court's General Council of the Administrative Chambers (*Danıştay İdari Dava Daireleri Genel Kurulu*) dismissed the Ministry's appeal and accepted the applicants' claims for higher rates of interest in respect of non-pecuniary damage.

15. A request by the Ministry for rectification of the Istanbul court's decision of 31 January 2003 was rejected on 16 March 2006.

16. On 31 October 2006 the Istanbul court adopted a decision in line with the decision of the Supreme Administrative Court's General Council of the Administrative Chambers in so far as it concerned the rates of interest for non-pecuniary damage, and awarded compensation to the applicants. On 2 March 2007 the Ministry appealed against the decision. According to the information provided by the Government, the appeal proceedings are still pending.

17. On 10 December 2007 the Ministry paid the applicants the amounts of compensation awarded by the Istanbul court in its decision of 14 October 1999 and the interest awarded in the same court's decision of 31 October 2006. The total sum paid to the three applicants was 63,080 new Turkish liras (TRY – approximately 37,000 euros (EUR) at the time).

II. RELEVANT DOMESTIC LAW AND PROCEDURE

18. Article 13 of the Code of Administrative Procedure provides that anyone who has suffered damage as a result of an act committed by the administrative authorities may claim compensation from the authorities within one year of the alleged act. The victim must first apply to the relevant administrative entity and claim compensation for the damage before he or she can lodge a compensation claim in the administrative courts. If this claim is dismissed in whole or in part or if no reply is received within sixty days, the victim may bring administrative proceedings.

19. Article 28 of the Code of Administrative Procedure provides:

> “(1) The authorities shall be obliged to adopt a decision without delay or to take action in accordance with the decisions on the merits or a request for a stay of execution issued by the Supreme Administrative Court, the ordinary or regional administrative courts or the courts dealing with tax disputes. Under no circumstances may the time taken to act exceed thirty days following service of the decision on the authorities.
>
> ...
>
> (3) Where the authorities do not adopt a decision or do not act in accordance with a decision by the Supreme Administrative Court, the ordinary or regional administrative courts or the tax courts, a claim for compensation for pecuniary or non-pecuniary damage may be brought before the Supreme Administrative Court and the relevant courts against the authorities.
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> (4) In the event of deliberate failure on the part of civil servants to enforce judicial decisions within the thirty days [following the decision], compensation proceedings may be brought both against the authorities and against the civil servant who refuses to enforce the decision in question.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

20. Relying on Article 6 of the Convention, the applicants complained that the administrative proceedings had not been concluded within a reasonable time. Under the same Article, they further complained that the prosecutor's written submissions had not been communicated to them (see paragraph 11 above). Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair...hearing within a reasonable time by [a] ... tribunal ..."

21. The Government contested that argument.

A. Admissibility

1. Complaint concerning the non-communication of the prosecutor's observations

22. The Court observes that the proceedings are still continuing before the Supreme Administrative Court. It follows that the complaint is premature and should be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

2. Complaint concerning the length of the proceedings

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

B. Merits

24. In the opinion of the applicants the proceedings began on 11 November 1996, when they applied to the Ministry, and were concluded on 10 December 2007, when they were paid the amounts of compensation.

25. The Government considered that the length of the proceedings was justified on account of the complexity of the case.

26. The Court notes that, by Article 13 of the Code of Administrative Procedure, persons who have sustained damage as a result of an administrative act have to apply to the administrative entity concerned and claim compensation for the damage they have sustained before they can lodge a compensation claim in the administrative courts in respect of such damage (see "Relevant domestic law and procedure" above). In other

words, claiming compensation directly from the administration is a compulsory precondition for bringing administrative proceedings. In the present case the applicants complied with this requirement on 11 November 1996 (see paragraph 7 above). It follows that, for the purposes of the reasonable-time complaint, the proceedings in question began on 11 November 1996.

27. Although the proceedings are still continuing before the Court of Cassation (see paragraph 16 above), the applicants have not complained about the period after the payment of the amounts of compensation on 10 December 2007 (see paragraph 17 above). It follows that the proceedings for the purposes of the Court's examination continued for a period of 11 years and one month before three levels of jurisdiction.

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in light of the circumstances of the case. Particular regard must be had to the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

29. Even assuming the proceedings in the present case to be complex, the Court is not convinced that they were conducted diligently. In this connection the Court observes that it took the Supreme Administrative Court almost two years to decide the first appeal lodged by the Ministry (see paragraphs 11-12 above). The Supreme Administrative Court's General Council of the Administrative Chambers, for its part, took a period in excess of two years to decide the appeals lodged by the parties (see paragraph 14 above). In the absence of any explanation from the Government, these delays must be considered to be attributable to the Supreme Administrative Court's handling of the appeal proceedings.

30. In light of the foregoing, the Court holds that the "reasonable time" requirement of Article 6 § 1 has not been satisfied. Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. Relying on Article 13 of the Convention, the applicants argued that they had had no remedies by which to challenge the Ministry's failure to pay them the amounts of compensation awarded by the Istanbul court on 14 October 1999 and 31 January 2003. Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

32. The Government contested that argument and submitted that the amounts of compensation had been paid to the applicants.

33. The Court considers it appropriate to examine this complaint solely from the standpoint of Article 6 § 1 of the Convention, of which the execution of a final and binding domestic court judgment is an integral part (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

34. The Court notes that, in accordance with Article 28 of the Code of Administrative Procedure (see "Relevant domestic law and procedure" above), the Ministry was under an obligation to comply with the decision of the Istanbul court even though that decision is currently being examined on appeal and is thus not final. The Ministry has thus paid the applicants the sums awarded by the Istanbul court.

35. According to the Court's established case-law (see, in particular, *Hornsby*, cited above, § 40), the Contracting States' obligation to execute the decisions of their domestic courts extends only to those which are "final and binding". In the present case, as pointed out above, the appeal proceedings are still pending and the decision in which the applicants were awarded compensation is not yet final. It follows that the respondent Government have not failed in their obligation under Article 6 of the Court.

36. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

37. Lastly, the applicants complained about the Istanbul court's failure to apply interest to the amounts of compensation awarded in its decision of 31 January 2003. They relied on Article 1 of Protocol No. 1 to the Convention, the relevant part of which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> ..."

38. It is to be observed at the outset that the applicants made this complaint in their application form submitted to the Court 11 June 2003 (see paragraph 1 above), that is, before the decision of 31 January 2003 was quashed by the Supreme Administrative Court's General Council of the Administrative Chambers on 14 April 2005. The applicants did not maintain the complaint in their subsequent submissions to the Court.

39. In any event, it is to be noted that in its decision of 31 October 2006 the Istanbul court allowed the applicants' claims and decided that interest

should be applicable to the amounts of compensation awarded to them. The amounts paid to the applicants on 10 December 2007 included the interest.

40. Consequently, this part of the application should also be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicants claimed 53,826.88 pounds sterling (GBP – approximately EUR 69,000) in respect of pecuniary damage and GBP 40,000 (approximately EUR 51,000) in respect of non-pecuniary damage.

43. The Government contested the claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. On the other hand, it awards each applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicants claimed a total of TRY 9,140 (approximately EUR 4,500) for the costs and expenses incurred before the domestic courts and before the Court.

46. This sum included TRY 4,140 in respect of the fees of their lawyer, in support of which they referred to the Turkish Bar Association's scale of fees.

47. The remaining sum of TRY 5,000 was claimed in respect of domestic court fees and postal expenses. Nevertheless, the applicants submitted that they were only able to support some of these expenses with documentary evidence. Thus, they submitted bills showing that the amount of TRY 389 (approximately EUR 190) had been spent in respect of domestic court fees and postal expenses.

48. The Government were of the opinion that the claims were not supported with adequate evidence, and invited the Court to reject them.

49. According to the Court's case-law, an applicant is entitled to 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. In the present case, the applicants have not substantiated that they have actually incurred the costs claimed. In particular, in support of their claim for the fees of their lawyer, they failed to submit documentary evidence, such as a contract, a fee agreement or a breakdown of the hours spent by their lawyer on the case. Accordingly, the Court makes no award in respect of the fees of their lawyer.

50. Concerning the claim in respect of the remaining costs and expenses, the Court considers it reasonable to award the applicants, jointly, the sum of EUR 500.

C. Default interest

51. The Court considers it appropriate that the default interest 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 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the national currency of the respondent State, at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants:
      (i) EUR 6,000 (six thousand euros) to each applicant in respect of non-pecuniary damage; and
      (ii) EUR 500 (five hundred euros) to the three applicants jointly in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Françoise Tulkens
Deputy Registrar	President