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

Communicated on 26 May 2014

SECOND SECTION

Application no. 57818/10
Tibet MENTEŞ against Turkey
and 4 other applications
(see list appended)

# STATEMENT OF FACTS

A list of the applicants is set out in the appendix.

## A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants have been employed in the duty-free shops at the İzmir Adnan Menderes Airport since 1993. They are also members of the Tekgıda Work Union which signed a collective labour agreement with the General Directorate of Monopolies, the applicants' employer.

During their employment the applicants worked in 'work and rest cycles'. In the four months during the "summer period" they continuously worked for 24 hours and rested the next 24 hours. In the remaining eight months of the "winter period" the applicants worked for 24 hours and rested for the next 48 hours. They also worked at the weekends and on public holidays.

However, their work was not remunerated by their employer.

On 10 October 2003, the applicants, with the assistance of their lawyer, lodged separate actions against the General Directorate of Monopolies and referred to their collective agreement. They argued that they had been working in 24 and 48 hour work cycles since the beginning of their employment in 1993 but that they were not remunerated for their overtime by their employer. The applicants claimed compensation for the additional hours they worked over the legal working time (45 hours) corresponding to the last five years of their employment, because the law did not allow them to claim compensation for the earlier periods. The case was allocated to the İzmir Labour Court. The case was later merged with another case in which

the applicants claimed payment for their work during public holidays and weekends as well as their annual leave payments.

On 12 September 2005 the İzmir Labour Court decided to accept the applicants' claims only for their overtime work, and rejected the rest of their claims.

On 17 April 2006 the Court of Cassation quashed the decision of the İzmir Labour Court on the ground that the Labour Court had granted the overtime payments without deducting the time the applicants would have used for breaks during their shifts.

In line with the decision of the Court of Cassation the İzmir Labour Court appointed an expert to calculate the additional hours the applicants worked. The expert report concluded that during the 24 hour shifts the applicants would have spent three hours for their personal needs and worked for 21 hours.

On 26 May 2008 the İzmir Labour Court decided to accept the case and granted compensation to the applicants in accordance with the expert report. The case was appealed by the General Directorate of Monopolies.

On 28 October 2008 the Civil Division of the Court of Cassation quashed the decision of the İzmir Labour Court on the following grounds:

> "It is seen from the case file that during the summer months the plaintiff worked for 24 hours and subsequently rested for 24 hours; and in the winter months he worked for 24 hours and subsequently rested for 48 hours. However, as held in the well-established case-law of the Grand Chamber of the Court of Cassation's Civil Division, in workplaces where 24 hours shifts are worked, after the deduction of the time spared for certain activities such as resting, eating and fulfilling other needs, a person can only work for 14 hours a day, (....) This approach must also be followed in the present case."

The İzmir Labour Court decided to follow the decision of the Court of Cassation. On 21 July 2009 another expert report was drawn up. The report calculated the applicants' daily working time as 14 hours. On 28 December 2009 the İzmir Labour Court decided to partly accept the case, and granted the amount of compensation calculated in the expert report of 21 July 2009.

On 25 January 2010 the applicants appealed against the decision and maintained that their continuous work for 24 hours had already been confirmed by the legal records of the regional office of the Ministry of Labour, both parties' witness statements, and other evidence in the file. Although they had proven that fact, the judgment was based on the presumption that work more than 14 hours per day was impossible.

On 18 March 2010 the Court of Cassation upheld the decision of the İzmir Labour Court.

## B. Relevant domestic law

### Relevant Parts of the Labour Code provide as follows:

Section 41:

Overtime pay

...

Overtime work is work which, under conditions specified in this Code, exceeds forty-five hours a week.

...

Wages for each hour of overtime shall be remunerated at one and a half times the normal hourly rate.

Section 66:

Periods considered as hours of work

The following periods shall be considered as the employee's daily working hours:

...

c) the time during which the employee has no work to perform pending the arrival of new work but remains at the employer's disposal.

# COMPLAINTS

The applicants complain under Article 6 of the Convention about the failure of the national courts to give adequate reasoning for their decisions, and argue that the judgments adopted by those courts were not fair.

The applicants also complain under Article 4 of the Convention that despite the fact that they worked 24 hour shifts, only 14 hours of the work was remunerated. In their opinion this amounted to forced or compulsory labour within the meaning of Article 4 of the Convention.

## QUESTIONS TO THE PARTIES

1. Did the applicants have a fair hearing in the determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, were the decision of the Court of Cassation adopted on 28 October 2008, and subsequently the decision of the Labour Court dismissing the applicants' case, adequately reasoned *vis-à-vis* the applicants' claims?

2. Does the dismissal of the applicants' claims constitute an interference with the applicants' right to the peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1? If so, was the interference proportionate in its impact on the applicant's right under Article 1 of Protocol No. 1?

# APPENDIX

| No | Application No | Lodged on | Applicant<br>Date of birth<br>Place of residence | Represented by |
|---|---|---|---|---|
| 1. | 57818/10 | 09/08/2010 | **Tibet MENTEŞ**<br>25/02/1967<br>İzmir | Burcu ALBAYRAK |
| 2. | 57822/10 | 09/08/2010 | **Atilla KANTAR**<br>15/09/1965<br>İzmir | Burcu ALBAYRAK |
| 3. | 57825/10 | 09/08/2010 | **Birol ARISOY**<br>24/10/1968<br>İzmir | Burcu ALBAYRAK |
| 4. | 57827/10 | 09/08/2010 | **Rahmi AYDOĞMUŞ**<br>02/11/1960<br>İzmir | Burcu ALBAYRAK |
| 5. | 57829/10 | 09/08/2010 | **Muhammed Erkan GÜNERİ**<br>21/09/1958<br>İzmir | Burcu ALBAYRAK |