



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

FOURTH SECTION

CASE OF GABAY v. TURKEY

(Application no. 70829/01)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 27 June 2006*

STRASBOURG

25 October 2005

FINAL

25/01/2006

*This judgment will become final in the circumstances set out in Article 44
§ 2 of the Convention. It may be subject to editorial revision.*

In the case of Gabay v. Turkey,

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

Mr J. CASADEVALL, *President*,

Mr R. TÜRMEŒ,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 70829/01) 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 Yusuf Gabay, on 16 November 2000.

2. The applicant was represented by Mrs J. Ertürk, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 3 September 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

5. The applicant was born in 1939 and lives in Istanbul.

6. On an unspecified date, the applicant lodged a set of enforcement proceedings against his debtors in order to enforce the payment of six bonds issued by his debtors between 1980 and 1981. The enforcement proceedings lasted for almost ten years. In 1993 the applicant was paid a sum of 54,000,000 Turkish liras (TRL), interest included.

7. On 25 January 1994 the applicant brought an action before the Istanbul Commercial Court against his debtors and requested an additional compensation under Article 105 of the Code of Obligations, for the damage he sustained as a result of the delay in payment. He alleged that the payment was made with ten years of delay and that his loss resulting from the increase in inflation during this period exceeded the interest awarded to him for late payment.

8. On 17 April 1995 an expert report was submitted to the court. The expert report stated that the applicant should not be awarded additional compensation on the ground that he was unable to substantiate the damages he sustained against inflation.

9. On 5 October 1995 the Istanbul Commercial Court dismissed the applicant's request for the reasons stated in the expert's report. The applicant appealed.

10. On 24 December 1996 the Court of Cassation quashed the first-instance court's decision on the ground that the applicant had sustained damages due to the delay in payment and that he should be awarded compensation. The case was remitted to the first instance court.

11. On 29 September 1997 the first-instance court adhered to its first decision. The applicant appealed.

12. On 3 November 1999 the Joint Civil Chambers of the Court of Cassation upheld the first-instance court's decision. The applicant's request for rectification was dismissed on 24 April 2000. This decision was served on the applicant on 24 May 2000.

THE LAW

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

13. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

14. The Government contested that argument.

15. The period to be taken into consideration began on 25 January 1994 and ended on 24 April 2000. It thus lasted six years and three months, a period during which the first-instance court and the Court of Cassation delivered two and three decisions respectively.

A. Admissibility

16. 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

17. 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, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

18. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, *Frydlender*, cited above).

19. The Court notes that the domestic courts delivered five decisions in the proceedings during a period of six years and three months. However, the Court cannot overlook the fact that a lengthy period- two years and one month- elapsed between the date of the decision of the Istanbul Commercial Court (29 September 1997) and the date of the decision of the Joint Civil Chambers of the Court of Cassation on the applicant's appeal (3 November 1999). The Government did not offer any explanation for this state of affairs. In the absence of such an explanation, or of any indication that the applicant was to blame, the delay must be considered to be attributable to the domestic courts' handling of the appeal proceedings (see, *mutatis mutandis*, *Nuri Özkan v. Turkey*, no. 50733/99, § 21, 9 November 2004).

20. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contented that the amount claimed was excessive.

25. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a sum of EUR 2,000 for non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

27. The Government submitted that the claims were excessive and unsubstantiated. They argued that no receipt or any other document was produced by the applicant to prove his claims.

28. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, regard being had to the information in its possession and the above criteria, the Court considers that the applicant failed to substantiate his claim in full. However, in the circumstances of the case, it is reasonable to award the applicant the sum of EUR 500 under this head.

C. Default interest

29. 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 remainder of 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, and EUR 500 (five hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Turkish liras at the rate applicable at the date of settlement

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President