CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF MUSTAFA TÜRKOĞLU v. TURKEY

(Application no. 58922/00)

JUDGMENT

STRASBOURG

8 August 2006

FINAL

08/11/2006

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 Mustafa Türkoğlu v. Turkey,

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

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI, *judges,*
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 4 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 58922/00) 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 Mustafa Türkoğlu ("the applicant"), on 23 May 2000.

2. The applicant was represented by Ms Z. Aşçıoğlu, 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 24 June 2004 the Court decided to communicate the application. 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 1978 and lives in Van.

6. On 16 January 1993 the applicant was injured while he was working on the construction site of a hotel.

A. Proceedings before the Marmaris Criminal Court of First Instance

7. On 18 May 1994 the principal public prosecutor at the Marmaris Criminal Court of First Instance ("criminal court") filed a bill of indictment against A. B. and A. T., the owner-builder and the master-builder.

8. On 28 June 1995 the applicant submitted a petition to the criminal court and requested to intervene in the proceedings as an intervening complainant. The criminal court accepted his request.

9. On 11 March 1996 and 25 November 1996 the experts who were assigned by the criminal court submitted their reports. In their reports they stated that A.B. and E.C. were respectively by 25% and 75% responsible for the accident.

10. Between 25 November 1996 and 25 May 1999 the criminal court examined the documents submitted by various authorities.

11. On 25 May 1999 the criminal court convicted the owner-builder and the master-builder, under Article 459 § 2 of the Criminal Code, for having failed to take the necessary measures to prevent the accident which had resulted in injuries to the applicant. The criminal court sentenced them to three months' imprisonment which was converted to a fine. Thus, E.T. became liable to a fine of 375,000 Turkish liras (TRL) (approximately 1 euro (EUR)) and A.B. to a fine of TRL 123,333 (approximately EUR 0, 28). The judgment became final on 6 July 1999.

B. Proceedings before the Marmaris Civil Court of First Instance

12. On 12 April 1995 the applicant brought an action for damages against the construction company in the Marmaris Civil Court of First Instance ("first-instance court").

13. On 21 November 1995 the applicant requested the first-instance court to await the outcome of the criminal proceedings against the owner-builder and the master-builder, pending before the criminal court. The court requested the case-file in the criminal proceedings.

14. On 8 October 1996 the first-instance court decided to await the outcome of the criminal proceedings.

15. On 26 February 1998 the applicant brought a further action for damages in the first-instance court against the construction company and the hotel in which the construction was taking place.

16. On an unspecified date, the first-instance court joined the two cases.

17. Meanwhile, by a judgment which became final on 6 July 1999, the criminal court convicted the owner-builder and the master-builder (see paragraph 11 above).

18. Between 12 April 1995 and 18 October 2001 the first-instance court held twenty-four hearings. During this period, the court requested medical

reports on the applicant and documents from various administrative authorities. The court examined the expert reports and heard two witnesses.

19. On 18 October 2001 the first-instance court awarded the applicant a certain sum in damages.

20. On 27 December 2001 the defendant party appealed to the Court of Cassation against the first-instance court's decision.

21. On 5 November 2002 the 21st Chamber of the Court of Cassation decided to send the case-file to the 13th Chamber of the Court of Cassation, holding that the latter had jurisdiction over the case.

22. On 25 March 2003 the Court of Cassation quashed the first-instance court's decision and held that the case should be dealt with by the labour courts.

23. On 14 October 2003 the Court of Cassation dismissed the defendant party's request for rectification.

24. On 20 January 2004 the first-instance court, acting in its capacity as a Labour Court, abided by the Court of Cassation's decision and awarded the applicant a sum in damages plus interest at the statutory rate.

25. On 26 January 2004 the defendant party appealed to the Court of Cassation.

26. On 20 May 2004 the defendant party's appeal was dismissed since they had failed to pay the postal fees.

THE LAW

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

27. The applicant complained that the length of the civil 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..."

28. The Government contested that argument.

A. Admissibility

29. The Government requested the Court to declare the application inadmissible for failure to comply with the requirement of exhaustion of domestic remedies and the six-month rule according to Article 35 §3 of the Convention. They submitted that the compensation proceedings were still pending before the national courts when the application was introduced with the Court.

30. The Court reiterates that according to the Convention organs' constant case-law complaints concerning length of proceedings can be brought before it before the final termination of the proceedings in question (see *Todorov v. Bulgaria* (dec.), no. 39832/98, 6 November 2003). Accordingly, the Government's objection must be dismissed.

The Court notes that the application 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

31. The Court notes that the period to be taken into consideration began on 12 April 1995 and ended on 20 May 2004, when the Court of Cassation dismissed the request for appeal. The proceedings lasted more than nine years and one month before three levels of jurisdiction, which twice examined the case.

32. The Government maintained that during the second hearing before the first-instance court, the applicant requested the suspension of the compensation proceedings in order to wait for the outcome of the criminal proceedings pending before the criminal court. On 8 October 1996 the first-instance court suspended the proceedings.

33. Furthermore, in the Government's opinion the case was of a complex nature. In this connection they pointed out that by 20 May 2004 the first-instance court had held twenty-four hearings, heard two witnesses and requested several documents from the administrative authorities. It had examined the expert reports and the applicant's medical reports.

34. The applicant maintained that the first-instance court was not obliged to wait for six years and six months pending the outcome of the criminal proceedings.

35. 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 others, *Yalman and Others v. Turkey*, no. 36110/97, § 23, 3 June 2004).

36. 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 v. France* [GC], no. 30979/96, §§ 42-46, ECHR 2000-VII).

37. The Court considers that the subject matter of the litigation, namely the determination of the amount of compensation to be paid to the applicant was not particularly complex.

38. As regards the conduct of the applicant, the Court observes that, although the applicant may have contributed to some extent to the delay in

the proceedings by his conduct, for example by requesting the suspension of the proceedings, this cannot justify the overall length of the proceedings.

39. As to the conduct of the authorities, the Court notes that, following the request of the applicant, the first-instance court suspended the compensation proceedings for six years and six months in order to await the outcome of the criminal proceedings. The criminal court issued its decision on 25 May 1999, basing itself on the expert reports which were submitted to it on 11 March 1996 and 25 November 1996. The criminal proceedings in question became final on 6 July 1999.

40. However, the first-instance court waited until 18 October 2001 in order to determine the amount of damages. The Court notes that the Government did not advance any explanation for the period of the first-instance court's inactivity between 6 July 1999 and 18 October 2001, during which period the proceedings remained stayed pending the outcome of the criminal proceedings. Given that A.B. and E.T., who were respectively the owner-builder and the master-builder, had strict liability for the damage caused to the applicant, which the criminal court confirmed in its judgment of 25 May 1999, there was no apparent need to further adjourn the civil proceedings for more than two years and three months. In any event, under Turkish law, the first-instance court was not bound by the findings of the criminal courts and therefore did not have to suspend the proceedings for such a long period of time in order to await the outcome of the criminal proceedings.

41. Furthermore, the proceedings before the Court of Cassation lasted approximately one year and nine months. The Court observes that the Court of Cassation took more than ten months to render its decision on the jurisdiction dispute. It quashed the first-instance court's decision since the latter had failed to examine the case in its capacity as a Labour Court. The Court considers that this period is also excessive and must be attributed to the domestic authorities.

42. The Court reiterates in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II)

43. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed EUR 20,000 in respect of pecuniary damage. He alleged that had the compensation awarded by the first-instance court been paid at an earlier stage than 2004 he would not have suffered pecuniary loss resulting from inflation.

47. The Government contested the claim. They submitted that the amount claimed by the applicant was excessive.

48. The Court considers that there is no causal link between the pecuniary damage claimed before the Court and the violation found. Consequently, no award is made under this head.

49. The applicant further claimed a total of EUR 30,000 for non-pecuniary damage.

50. The Government submitted that the amount claimed by the applicant was excessive.

51. The Court accepts that the applicant suffered non-pecuniary damage such as distress and frustration on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 3,500 under this head.

B. Costs and expenses

52. The applicant did not submit any receipts or invoices indicating the costs and expenses he had incurred before the Court. He left it to the Court's discretion to assess the appropriate amount.

53. The Government maintained that only those expenses which were actually and necessarily incurred could be reimbursed. In this connection, they submitted that the applicant and his representative had failed to submit documents showing the costs and expenses.

54. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far 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 it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

55. 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 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, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
      (i) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
      (iii) any taxes that may be chargeable on the above amounts;
   (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 8 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President