



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

FOURTH SECTION

CASE OF ÖZTUNÇ v. TURKEY

(Application no. 74039/01)

JUDGMENT

STRASBOURG

27 March 2007

FINAL

27/06/2007

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 Öztunç 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. TÜRMESEN,

Mr K. TRAJA,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 6 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 74039/01) 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 Hasan Öztunç ("the applicant"), on 14 July 2001.

2. The applicant was represented by Mr A. Kıran, a lawyer practising in Van. The Turkish Government ("the Government") did not designate an agent for the purposes of the proceedings before the Court.

3. On 2 September 2005 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1936 and lives in Van.

5. In 1985 the applicant obtained a contract from the Provincial Administration of Van to carry out repair work in twelve public schools in Başkale in order to render them operational.

6. At a later date, however, he noticed that some of the schools had not yet been fully constructed. He applied to the Governor's Office in Van and requested the contract to be annulled. He submitted that the payment agreed

on for the repairs was too low, given the amount of work needed to complete the construction of those schools.

7. The Governor's Office requested the applicant to start the construction and the repairs, reassuring him that he would be reimbursed for his additional work.

8. After having completed the construction, the applicant applied to the Provincial Administration of Van and requested additional compensation of 47,000,000 Turkish liras (TRL). However, his repeated efforts proved fruitless as no payment was made.

9. On 17 July 1989 he filed an action with the Van Civil Court and claimed the outstanding amount of TRL 47,273,000 plus interest.

10. On an unspecified date, the court appointed an expert to determine the amount of additional payment that the applicant was entitled to recover. However, the expert failed to submit his report.

11. In the absence of the expert report, the court ordered on-site visits to the schools in order to establish the additional work carried out by the applicant.

12. On 30 September 1999 the members of the court, accompanied by new experts, conducted an on-site examination at the schools.

13. On an unspecified date, the experts submitted their calculation of the sums incurred by the applicant for the additional work.

14. On 26 April 2000 the Van Civil Court awarded the applicant TRL 47,273,000 plus interest calculated at three different rates depending on the relevant period of time, i.e., 30% per annum running from 17 July 1989 to 1 January 1998; 50% per annum from 1 January 1998 to 1 January 2000; and at the rediscount rate running from 1 January 2000 until the date of payment.

15. The applicant appealed. In his petition to the Court of Cassation he complained about the loss that he had suffered as a result of the high rate of inflation during the proceedings before the civil court.

16. On 30 November 2000 the Court of Cassation upheld the decision of the civil court. On 9 April 2001 the same court dismissed the applicant's request for rectification.

17. On 23 July 2001 the applicant was paid the total amount of TRL 282,795,000, consisting of the capital plus interest incurred until the payment date.

THE LAW

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

18. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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...”

19. The Government contested the applicant's argument.

A. Admissibility

20. 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

21. The Court notes that the period to be taken into consideration began on 17 July 1989 when the applicant filed his action with the first-instance court and ended on 9 April 2001, when the Court of Cassation dismissed his request for rectification. The proceedings in question lasted approximately eleven years and nine months before three levels of jurisdiction.

22. The Government argued that the case was complex, given that the first-instance court had had to conduct on-site examinations and to review two expert reports. They further maintained that the applicant had contributed to the length of the proceedings by failing to pay court fees on time and that there had been no delays attributable to the judicial authorities.

23. 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 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

24. As regards the conduct of the applicant, the Court observes that, it does not appear from the case file that he contributed to the prolongation of the proceedings to any significant extent. His delay in paying court fees appears to have halted the proceedings only for a few weeks.

25. As to the conduct of the authorities, the Court observes that there was a substantial delay in the proceedings before the first-instance court. In

this connection, it observes that the first-instance court took more than ten years to render a decision on the case. Between 1989 and 1999 the court postponed the conduct of an on-site examination on account of bad weather conditions and the security situation in the region. The Court considers that ten years before one instance is an excessively long period which cannot be justified with reference to the above-mentioned considerations or the complexity of the case. The Court therefore considers that no convincing justification for these excessive delays has been offered by the respondent Government.

26. 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).

27. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings had been excessive and failed to meet the “reasonable time” requirement.

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

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

29. The applicant further complained, in substance, that the length of the proceedings had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

30. In particular, he maintained that the delay had caused the amount of compensation to lose its value.

31. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

32. Having regard to its finding under Article 6 § 1 (see paragraph 28 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed EUR 150,000 for non-pecuniary damage. He further claimed a total of EUR 305,000 in respect of pecuniary damage.

35. The Government contested these claims.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, given the unreasonable length of the proceedings, the Court considers that the applicant must have sustained non-pecuniary damage. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 8,400 for non-pecuniary damage.

B. Costs and expenses

37. The applicant also claimed EUR 20,670 for the costs and expenses incurred before the domestic courts and the Court.

38. The Government contested the claim.

39. 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 1,000 for the proceedings before the Court.

C. Default interest

40. 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* that it is not necessary to examine whether there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish Liras at the rate applicable at the date of the settlement and free of any taxes that may be chargeable;
 - (i) EUR 8,400 (eight thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President