



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

FOURTH SECTION

**CASE OF KAT İNŞAAT TİCARET KOLLEKTİF ŞİRKETİ
v. TURKEY**

(Application no. 74495/01)

JUDGMENT

STRASBOURG

24 July 2007

FINAL

24/10/2007

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 Kat İnşaat Ticaret Kollektif Şirketi v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMEŖ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 74495/01) 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 construction company registered in Turkey, the Kat İnşaat Ticaret Kollektif Şirketi / İsmet Kamyş ve Ortakları (“the applicant”), on 17 October 2000.

2. The applicant was represented by Mr T. Elçi, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 31 January 2006 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. On 18 August and 16 September 1987 and 16 May 1990 the applicant concluded three contracts with the General Directorate for Water and Infrastructure (*İSKİ*) (“the General Directorate”) and undertook the construction of parts of the water infrastructure in İstanbul.

5. Subsequent to the failure of the General Directorate to pay the applicant the relevant fees, on 10 October 1995 the applicant filed an action with the 4th Chamber of the Istanbul Commercial Court and requested the court to order the payment of 10,279,231,935 Turkish liras (TRL), alleging that the General Directorate had failed to comply with the contract of 16 May 1990.

6. In 1999 the General Directorate filed a cross-action with the 7th Chamber of İstanbul Commercial Court requesting a sum of TRL 7,650,721,062, claiming that this sum had been overpaid to the applicant.

7. On an unspecified date, the 7th Chamber of İstanbul Commercial Court decided that the case before it should be joined with the case before the 4th Chamber of the same court.

8. On 14 July 1999 the 4th Chamber of İstanbul Commercial Court requested the 7th Chamber of the same court to submit the file of a case (file no. 1999/724) which was related to the case before it.

9. Between 14 July 1999 and 3 November 2000 the 4th Chamber of İstanbul Commercial Court repeatedly requested the 7th Chamber to send the aforementioned file.

10. On 3 November 2000 a copy of the file no. 1999/724 was submitted to the 4th Chamber of the İstanbul Commercial Court by the applicant.

11. On the same day the first-instance court awarded the applicant the claim in full, plus interest at the rediscount rate, running from the date of lodging of the case. The court dismissed the General Directorate's cross-action.

12. On 14 January 2002 the Court of Cassation upheld the judgment of the first-instance court.

13. On 23 October 2002 the Court of Cassation dismissed the request for rectification of decision.

THE LAW

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

14. 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...”

15. The Government contested that allegation.

16. The period to be taken into consideration began on 10 October 1995 and ended on 23 October 2002. It thus lasted seven years for three levels of jurisdiction.

A. Admissibility

17. The Court notes that the remainder of 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

18. 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).

19. In the present case, it cannot be overlooked that a lengthy period – more than five years- elapsed, before the first instance court rendered its judgment (see paragraphs 5-11 above).

20. 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).

21. 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.

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. In respect of its Article 6 complaint, the applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested this claim.

25. Ruling on an equitable basis, the Court awards the applicant EUR 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

26. The applicant also claimed 7,850 US dollars for the costs and expenses incurred before the Court.

27. The Government contested the claim.

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, the Court notes that the applicant failed to submit any supporting documents in support of its claim. The Court therefore rejects this claim.

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 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into

New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 24 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President