



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

THIRD SECTION

CASE OF AKINCIBAŞI v. TURKEY

(Application no. 4212/02)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

29/02/2008

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 Akıncıbaşı v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŖ,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 4212/02) 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, Ms Sabriye Akıncıbaşı (“the applicant”), on 24 April 2000.

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

3. On 19 September 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. The applicant and the Government each filed further written observations. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1928 and lives in Marmaris.

6. In 1984 the applicant concluded a construction contract with Mr G.D. whereby the applicant was to own 40 % of the flats constructed by Mr G.D. on her land.

7. On 10 July 1985 Mr G.D. and the applicant's legal representative signed an additional contract and decided to sell the flats to Emlak Bank. Subsequently on 29 January 1986 the applicant filed an action with the Ankara Civil Court of First Instance against Mr G.D. She maintained that her legal representative had no right to sign such a contract and accordingly requested the annulment of the contract dated 10 July 1985 and the reimbursement of 132,000,000 Turkish liras (TRL).

8. On 31 May 1990 the 5th Chamber Ankara Civil Court of First Instance dismissed the case. This judgment was upheld by the Court of Cassation on 19 June 1991. However, upon the request of the applicant, on 26 December 1991 the Court of Cassation rectified its decision of 19 June 1991. The case was accordingly remitted to the first-instance court.

9. In the meantime, the applicant brought another case against Mr G.D. before the 12th Chamber Ankara Civil Court of First Instance and requested liquidation of partnership. On 26 December 1994 the court ordered Mr G.D. to pay TRL 88,260,073 to the applicant. This judgment became final on 17 May 1996.

10. On 28 May 1998 the 5th Chamber of the Ankara Civil Court of First Instance ordered Mr G.D. to pay TRL 59,000,000, plus interest at the statutory rate, applicable at the date of the court's decision, running from 29 January 1986. The court dismissed the applicant's request for the payment of a further TRL 63,000,000 since it considered that this amount had already been calculated and included in the case before the 12th Chamber of the Ankara Civil Court of First Instance.

11. On 10 June 1999 the Court of Cassation upheld the judgment of the first-instance court.

12. On 1 December 1999 the Court of Cassation dismissed the parties' request for rectification.

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, 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...”

14. The Government contested that argument.

15. The Court notes that the proceedings in question began on 29 January 1986 and ended on 1 December 1999. They thus lasted thirteen

years and eleven months for six levels of jurisdiction. The Court's jurisdiction *ratione temporis*, however, only permits it to consider the period of twelve years and eleven months that has elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights. It must nevertheless take account of the state of the proceedings at that time (see *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX).

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. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant further invoked Article 6 § 1 (in respect of the fairness of the proceedings), Article 14 and Article 1 of Protocol No. 1.

21. The Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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 her letter dated 2 May 1997 the applicant claimed a total of 718,534 US Dollars (USD), mainly for her pecuniary loss. The Court further notes that, in the application form, the applicant had also requested non-pecuniary compensation on account of the excessive length of the proceedings.

24. The Government contested the applicant's claims.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it accepts that the applicant must have suffered some non-pecuniary damage on account of the undue length of the civil proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Ruling on an equitable basis, the Court awards the applicant 4,800 euros (EUR) under this head.

B. Costs and expenses

26. The applicant also claimed USD 5,000 for the costs and expenses incurred before the Court.

27. The Government contested this claim.

28. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not substantiated that she has actually incurred the costs claimed. Accordingly, it makes no award 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 4,800 (four thousand and 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 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President