



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

SECOND SECTION

CASE OF KARYAĞDI v. TURKEY

(Application no. 22956/04)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

08/04/2008

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 Karyağdı v. Turkey,

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

Françoise Tulkens, *President*,

András Baka,

Rıza Türmen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 22956/04) 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 Cem Karyağdı (“the applicant”), on 28 May 2004.

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

3. On 11 January 2007 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1981 and lives in Bursa. At the time of the events he was employed by S.İ and M.U.

5. In 1997 the applicant was injured in an occupational accident and lost the third and fourth fingers of his left hand.

6. On 22 December 1997 the applicant filed an action for compensation before the Bursa Civil Court of First Instance against S.İ., M.U and two other individuals who were allegedly responsible for the accident.

7. On 16 June 2000, an expert report assessing the extent of the damage suffered by the applicant was submitted to the court.

8. On 12 September 2000 the applicant lodged another case with the same court, claiming further damages. These two procedures were later joined.

9. On 16 January 2002 the Bursa Civil Court of First Instance decided that it did not have jurisdiction to examine the applicant's case.

10. On 20 February 2002 the defendants appealed against this decision.

11. On 23 May 2002 the Court of Cassation upheld the decision.

12. On 31 July 2002 the case was resumed before the Bursa Labour Court.

13. The first hearing was held on 21 November 2002. The court requested a report regarding the applicant's disability.

14. On 30 June and 20 October 2003, the court postponed the scheduled hearings as the report requested on 21 November 2002 had not yet been submitted.

15. On 11 March 2004 the report was submitted to the court. At the same hearing the court requested all the medical reports regarding the applicant. Furthermore, it requested that the applicant be re-examined by the Social Security Hospital.

16. The court held eight hearings after 11 March 2004, the last of which was on 19 October 2006.

17. According to the information in the case file, as submitted by the parties, the proceedings are apparently still pending before the Bursa Labour Court.

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 of 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 that claim.

20. The period to be taken into consideration began on 22 December 1997 and, according to the information in the case file as last submitted by the parties, had not yet ended by the date of adoption of the present judgment. It has therefore already lasted some nine years and eleven months for two levels of jurisdiction, which produced four judgments.

A. Admissibility

21. 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

22. 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). The Court further recalls the necessity of special diligence in employment disputes (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, § 17; *Varelas v. France*, no. 16616/02, § 31, 27 July 2006).

23. The Court observes in the instant case that it took four years for the Bursa Civil Court of First Instance to decide that it did not have jurisdiction to examine the applicant's case.

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

25. 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.

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

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

27. The applicant further alleged under Article 1 of Protocol No. 1 that the excessive length of the proceedings had resulted in an interference with his right to the peaceful enjoyment of his possessions.

28. The Government did not submit observations on the admissibility and merits of this complaint.

29. Noting its finding of a violation in relation to Article 6 § 1 of the Convention (see paragraph 26 above), the Court considers that, although this complaint is admissible, it is not necessary to make a separate examination of its merits (see *Kroenitz v. Poland*, no. 77746/01, §§ 36-37,

25 February 2003; *Vatevi v. Bulgaria*, no. 55956/00, § 48, 28 September 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 40,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 for non-pecuniary damage.

32. The Government contested these claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court accepts that the applicant must have suffered some non-pecuniary damage on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Having regard to its case-law and making its assessment on an equitable basis, the Court awards the applicant EUR 4,800 under this head.

B. Costs and expenses

34. The applicant also claimed EUR 9,500 for the costs and expenses incurred before the domestic courts and EUR 7,200 for those incurred before the Court.

35. The Government contested these claims.

36. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 it reasonable to award the sum of EUR 1,000 for any costs and expenses incurred by the applicant.

C. Default interest

37. 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 separately the applicant's complaint under 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 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 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Section Registrar

Françoise Tulkens
President