



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

SECOND SECTION

CASE OF KARADAVUT v. TURKEY

(Application no. 17604/04)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

07/07/2008

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 Karadavut v. Turkey,

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

Françoise Tulkens, *President*,

András Baka,

Ireneu Cabral Barreto,

Rıza Türmen,

Mindia Ugrekhelidze,

Antonella Mularoni,

Danutė Jočienė, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 17604/04) 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, Hakkı Karadavut (“the applicant”), on 3 May 2004.

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

3. On 5 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 1963 and lives in Söke.

5. At the time of the events the applicant was employed as an electrician in a private company.

6. On 2 August 1991 the scaffolding on which the applicant was working collapsed and resulted in the applicant’s total disability.

7. On 16 September 1991 the applicant brought an action for damages in the Söke Labour Court.

8. On 3 February 1994 the Söke Labour Court partially upheld the applicant’s claims and awarded 10,000,000 Turkish liras (TRL) for

pecuniary damage and TRL 30,000,000 for non-pecuniary damage, plus interest at the statutory rate, running from the date of the incident.

9. The defendant appealed.

10. On 11 October 1994 the Court of Cassation quashed the judgment and remitted the case to the Söke Labour Court. It found that the Labour Court had incorrectly calculated the amount of compensation and interest.

11. The Söke Labour Court rendered its second judgment on 12 September 1995, awarding the same amounts as before.

12. On 23 January 1996 the Court of Cassation quashed the judgment. It held that, although the Söke Labour Court had decided to conform to the Court of Cassation's previous decision, it had reached the same conclusion as before.

13. On 29 November 1996 the applicant lodged an additional claim with the same court, requesting further damages. These two cases were later joined.

14. The Söke Labour Court issued its third judgment on 12 June 1997. It upheld the applicant's additional claim lodged on 29 November 1996 and granted TRL 1,574,919,236 for pecuniary damage and TRL 30,000,000 for non-pecuniary damage, plus interest at the statutory rate, running from the date of the judgment and from the date of the incident respectively.

15. The defendant appealed.

16. On 21 October 1997 the Court of Cassation quashed the Labour Court's decision for the third time on the same ground as before.

17. On 3 November 1998 the Söke Labour Court issued its fourth judgment, dismissing the applicant's pecuniary damage claims as a whole. In its reasoning, the court held that the Court of Cassation's assessment method was inapplicable to the incident. It also pointed out that its previous decision regarding the applicant's non-pecuniary damage claims had become final on 3 February 1994 as the defendant had not challenged it.

18. The applicant appealed.

19. On 4 May 1999 the Court of Cassation quashed the first instance court's decision on the ground that it had not calculated the applicant's damage in compliance with the principles stated in its judgment of 11 November 1994.

20. On 17 May 2001 the Söke Labour Court awarded the applicant TRL 1,579,135,521 for pecuniary damage plus interest at the statutory rate, running from the date of the judgment.

21. Both parties appealed.

22. On 8 November 2001 the Court of Cassation quashed the Söke Labour Court's judgment for the fifth time, criticising the method of calculation applied by the Labour Court.

23. On 16 February 2006 the Labour Court awarded the applicant 1,579 New Turkish liras (YTL) for his pecuniary damage claims, plus interest at the statutory rate, running from the date of the judgment.

24. The applicant appealed.

25. On 12 June 2006 the Court of Cassation upheld the Söke Labour Court's judgment in full without giving any reasons of its own.

THE LAW

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

26. 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..."

27. The Government contested that claim.

28. The period to be taken into consideration began on 16 September 1991 and ended on 12 June 2006. It thus lasted fourteen years and nine months for two levels of jurisdiction, which delivered twelve judgments in all.

A. Admissibility

29. 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

30. 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).

31. In the present case Court notes that the issue was the assessment of damages in a labour accident, a matter of priority (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17) but not complex.

32. The Court acknowledges that there appear to be no significant delays between hearings and the domestic courts delivered a total of twelve judgments in a period approaching fifteen years. However, the Court observes that there was a dispute between the first instance court and the

Court of Cassation on the damage assessment method, which led both tribunals to deliver repetitive judgments, confirming the same views several times. The Court further notes that the Söke Labour Court initially accepted to conform to the Court of Cassation's judgments, but then proceeded to ignore them in its three judgments of 12 June 1997, 17 May 2001 and 16 February 2006, awarding the same amounts which it had originally determined.

33. 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).

34. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 250,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government contested this claim.

39. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,000 under that head.

B. Costs and expenses

40. The applicant also claimed EUR 690,088.23 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. The applicant did not submit a claim for his lawyer's fee but left the matter to the Court's discretion.

41. The Government contested these claims.

42. 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 rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

43. 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 6,000 (six thousand euros) in respect of non-pecuniary damage,
 - (ii) 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 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President