



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

THIRD SECTION

CASE OF ŞENOL ULUSLARARASI NAKLİYAT, İHRACAT VE
TİCARET LİMİTED ŞİRKETİ v. TURKEY

(Application no. 75834/01)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Şenol Uluslararası Nakliyat, İhracat ve Ticaret Limited Şirketi v. Turkey,

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

Josep Casadevall, *President*,

Rıza Türmen,

Bostjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 75834/01) 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 Şenol Uluslararası Nakliyat, İhracat ve Ticaret Limited Şirketi (*Şenol International Transport, Export and Commerce Limited Company*; “the applicant company”) on 11 June 2001. The applicant company was represented before the Court by Ms Berrin Ergen, a lawyer practising in Ankara.

2. The Turkish Government (“the Government”) did not designate an agent for the purposes of the proceedings before the Court.

3. Relying on Article 6 of the Convention the applicant company alleged, in particular, that the principle of equality of arms had not been respected in the course of the administrative proceedings by which it sought to annul a decision of the Ministry of Transport revoking its transportation licence. It also alleged that the administrative proceedings had not been concluded within a reasonable time.

4. On 21 October 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a Turkish company specialising in international highway transportation.

6. On 1 June 1992 at Trieste port the Italian police discovered thirty kilograms of heroin stashed in a lorry which had been hired by the applicant company for the purpose of transporting walnut logs from Turkey to Italy. The driver of the vehicle escaped. As soon as they found out about the incident the applicant company informed the Istanbul Police Headquarters and submitted all the documents in their possession concerning the transportation.

7. On 31 December 1992 the applicant company's licence for international highway transportation was extended until 31 December 1994.

8. On 23 June 1994 the Ministry of Transport ("the Ministry") revoked the applicant company's licence pursuant to Article 53 (g) of International Highway Transportation Regulations, on account of the incident in Italy.

9. On 12 July 1994 the applicant company brought an action before the Ankara Administrative Court ("the Administrative Court") and requested the annulment of the Ministry's decision of 23 June 1994. It also requested the Administrative Court to grant an interim decision to suspend the execution of the Ministry's decision.

10. The Ministry submitted written defence arguments, together with a number of supporting documents, to the Administrative Court on 12 August 1994. The Administrative Court forwarded the Ministry's written defence arguments to the applicant company. The documents attached to the Ministry's written defence arguments, however, were not forwarded to the applicant company but were placed in the case file of the Administrative Court.

11. On 31 August 1994 the applicant company submitted observations in response to those of the Ministry. In their observations the lawyers for the applicant company referred to a number of documents which had been appended to the Ministry's written defence arguments of 12 August 1994 but which had not been communicated to them.

12. The applicant company's request for the interim measure was refused by the Administrative Court on 14 September 1994.

13. On 13 April 1995 the Administrative Court dismissed the case. In the proceedings the applicant company had submitted that the drug trafficking had been carried out by the driver of the hired vehicle and that the company could not, therefore, be held responsible for the driver's actions. In its decision the Administrative Court held, inter alia, that since the impugned transportation had been undertaken by the applicant company

under its licence, it was responsible for the transportation and therefore the Ministry had acted lawfully when revoking the licence.

14. An appeal lodged by the applicant company on 13 October 1995 was dismissed by the Supreme Administrative Court on 8 October 1997.

15. On 19 October 2000 the Supreme Administrative Court refused the applicant company's request of 6 February 1998 for a rectification of the decision. That decision was served on the applicant company on 11 December 2000.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6, 7, 13, 17 AND 18 OF THE CONVENTION

16. The applicant company complained that the documents submitted to the Administrative Court by the Ministry had not been communicated to it. It further alleged that the administrative proceedings had not been completed within a reasonable time.

17. The applicant company further complained that it had been denied a fair trial before an independent and impartial tribunal. In this connection, it alleged that the domestic courts had misinterpreted the domestic law. According to the applicant company, the domestic courts had not taken the evidence into consideration and had taken the State's side. Moreover, the authorities had an unlimited margin of appreciation and the administrative courts did not provide an effective domestic remedy. Finally, the applicant company alleged that its right to work had been restricted as a result of the unlawful application of the International Highway Transportation Regulations. In respect of these complaints the applicant company relied on Articles 6, 7, 13, 17 and 18 of the Convention, the relevant parts of which read as follows:

Article 6

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

Article 7

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 17

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

Article 18

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

A. Admissibility

18. In relation to the complaint under Article 6 of the Convention concerning the non-communication of a number of documents to the applicant company by the Administrative Court, the Government submitted that the documents had not been communicated to the applicant company because the domestic court was not under an obligation to do so under the applicable procedure. In any event, those documents had been placed in the case file, to which the applicant company’s legal representatives had had access.

19. The Court notes that the applicant company, contrary to its claim, was in fact aware of the documents in question. Lawyers representing the applicant company took cognisance of their contents and referred to them in their observations of 31 August 1994 (see paragraph 11 above).

20. It follows that the complaint concerning the non-communication of the documents to the applicant company is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must, therefore, be declared inadmissible pursuant to Article 35 § 4.

21. As for the complaint under Article 6 § 1 of the Convention concerning the length of the administrative proceedings, the Court considers that it raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds

for declaring it inadmissible have been established. It must therefore be declared admissible.

22. Concerning the applicant company's remaining complaints under Articles 6, 7, 13, 17 and 18 of the Convention, the Court finds that, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

23. The applicant company complained that the administrative proceedings had not been concluded within a reasonable time, contrary to Article 6 § 1 of the Convention.

24. The Government contested the allegation.

25. The Court observes that the proceedings began on 12 July 1994 when the applicant company brought an action before the Ankara Administrative Court, and ended on 19 October 2000 when the Supreme Administrative Court refused the applicant company's request for rectification. The proceedings thus lasted just over six years and three months, during which three decisions were rendered. In this connection the Court would point out that it took the Supreme Administrative Court two years to render its decision of 8 October 1997. Furthermore, the Supreme Administrative Court did not decide on the request for rectification for a period in excess of two years and eight months. These delays contributed substantially to the total length of the proceedings.

26. 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).

27. 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).

28. 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

29. 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

30. The applicant company claimed 7,054,290 euros (EUR) in respect of pecuniary and EUR 25,567 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim in respect of pecuniary damage. On the other hand, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and Expenses

33. The applicant company also claimed EUR 28,120 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

34. The Government submitted that the sum claimed was excessive.

35. 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 are 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 covering costs under all heads.

C. Default interest

36. 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 under Article 6 § 1 of the Convention concerning the 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 company, 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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of its 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;
4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President