



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

SECOND SECTION

CASE OF ZÖHRE AKYOL v. TURKEY

(Application no. 28668/03)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Zöhre Akyol v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 28668/03) 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, Mrs Zöhre Akyol (“the applicant”), on 23 July 2003.

2. The applicant was represented by Ms S. Tutgun, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 September 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1958 and lives in Ankara.

5. On 1 November 1990 the applicant had an accident while entering a lift in the Balıkçioğlu Business Centre in Ankara. The applicant subsequently learned that the lift had been under repair at the material time, despite the lack of any warning signs to this effect in the building, and that the accident had been caused by her attempt to operate the lift under those circumstances.

6. Following the accident the applicant was taken to the Ankara Numune Hospital where she received medical treatment. According to the report drawn up by an orthopaedist in that hospital on 20 August 1991, the applicant suffered a thoracic vertebral fracture as a result of the accident, was unfit for work for 45 days and was required to undergo 180 days of treatment.

7. Criminal proceedings were subsequently brought against the two workers who had been repairing the lift at the time (case no. 1990/986), on charges of causing injury through professional negligence.

8. On 11 March 1993 the Ankara Criminal Court acquitted the workers, holding that they were not responsible for the injuries which the applicant had suffered.

9. The Ankara public prosecutor then brought criminal proceedings before the Ankara Criminal Court of First Instance against the manager and the concierge of the Balıkçioğlu Business Centre, on charges of causing injury through negligence (case no. 1993/678).

10. Meanwhile, on 8 April 1992 the applicant brought civil proceedings (case no. 1992/284) before the Ankara Civil Court against the management of the Balıkçioğlu Business Centre and *Elmas Elektrik Sanayi Ticaret A.Ş.* (the lift maintenance company), seeking compensation for the pecuniary and non-pecuniary damage that she had suffered as a result of the accident.

11. On 4 February 1993 the first-instance court dismissed the case in so far as it concerned the management of the Balıkçioğlu Business Centre, as the latter had no legal status.

12. Following the decision of 4 February 1993, on 24 May 1993 the applicant brought a second case before the Ankara Civil Court against the owners of the apartments in the Balıkçioğlu Business Centre and its manager (case no. 1993/452).

13. Case no. 1993/452 was subsequently joined to case no. 1992/284.

14. On 2 February 1994 the Ankara Civil Court ordered that the file concerning case no. 1993/678 be obtained from the Ankara Criminal Court.

15. Between 2 February 1994 and 22 March 1995 the Ankara Civil Court postponed the hearings pending receipt of the aforementioned file.

16. On 22 March 1995, after receiving the file in question, the first-instance court decided to await the outcome of the criminal proceedings.

17. On 3 March 2000 the applicant's representative informed the first-instance court that on 2 November 1999 the criminal proceedings had been terminated as the statutory time-limit under Article 102 of the Criminal Code had expired.

18. Between 3 March 2000 and 21 March 2001, the Ankara Civil Court collected further evidence in the case.

19. On 21 March 2001 the first-instance court decided to send the case file to an expert for an assessment of the amount of pecuniary damage allegedly sustained by the applicant as a result of the accident.

20. On 25 April 2001 the expert submitted his report.

21. Subsequently, on 17 October 2001 the applicant filed a petition with the first-instance court, amending the amount of compensation she had previously claimed, in order to reflect the expert's findings in his report of 25 April 2001.

22. On 21 May 2002 the Ankara Civil Court ordered *Elmas Elektrik Sanayi Ticaret A.Ş.* and the owners of the apartments in the business centre to pay compensation to the applicant for the pecuniary and non-pecuniary damage she had suffered.

23. On 12 May 2003 the Court of Cassation quashed the judgment of 21 May 2002. It noted that one of the persons ordered to pay compensation was not an apartment owner in the business centre at the time of the accident and that the first-instance court should have duly established the names of the owners before rendering its judgment. The Court of Cassation further noted that the applicant's petition of 17 October 2001 should have been served on all the defendants.

24. On 10 December 2003 the Court of Cassation dismissed the parties' requests for rectification of its decision of 12 May 2003.

25. On 22 March 2005 the Ankara Civil Court rendered a new judgment in the light of the Court of Cassation's decision of 12 May 2003, ordering *Elmas Elektrik Sanayi Ticaret A.Ş.* and seven persons who were apartment owners at the time of the accident to pay the applicant compensation in the amount of 3,145,941,990 Turkish liras (TRL)¹, with interest running from 1 November 1990.

26. On 23 June 2005 the Court of Cassation upheld the judgment of 22 March 2005.

27. On 6 December 2007 the applicant received a payment of 21,032.60 new Turkish liras (TRY)².

THE LAW

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

28. The applicant complained under Article 6 § 1 of the Convention that the length of the civil proceedings had been incompatible with the "reasonable time" requirement. She further maintained under Article 13 of

¹ Equivalent to approximately 1,800 euros (EUR) at the material time.

² Equivalent to approximately EUR 12,100 at the material time.

the Convention that she had not had an effective domestic remedy for her compensation claims, as the length of the proceedings had been excessive.

The Court notes that the applicant's allegations under Article 13 of the Convention do not constitute a complaint regarding the lack of an effective remedy against the length of proceedings but essentially concern her right to a hearing within a reasonable time. For this reason, the Court considers that the complaint under Article 13 should be examined from the standpoint of Article 6 § 1 of the Convention alone. That Article provides:

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

29. The Government contested that argument. They maintained that the length of the proceedings in the instant case could not be considered to be unreasonable in view of the complexity of the proceedings and the difficulty in establishing liability. The Government further submitted that the national court had postponed the hearings at the applicant's request in order to await the outcome of the criminal proceedings before the Ankara Criminal Court, and that there were no periods of inactivity attributable to the national courts.

30. The period to be taken into consideration began on 8 April 1992, when the applicant brought the case before the Ankara Civil Court, and ended on 23 June 2005, when the Court of Cassation rendered its final decision in the case. It thus lasted over thirteen years and two months, before two levels of jurisdiction.

A. Admissibility

31. 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

32. 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).

33. The Court observes that in the instant case the hearings were postponed for a period of five years in order to await the result of the criminal proceedings before the Ankara Criminal Court (case no. 1993/678). The Court notes, however, that neither the complexity of the case nor the

five-year postponement explains the length of the proceedings. It points out, in particular, that the Ankara Civil Court gave its judgment over ten years after the initiation of the civil proceedings and that the Government did not supply any satisfactory explanation to account for this delay, which seems manifestly excessive. The Court notes in any event that, under Turkish law, the first-instance court was not bound by the findings of the criminal courts and therefore did not have to suspend the proceedings for such a long period of time in order to await the outcome of the criminal proceedings (see *Mustafa Türkoğlu v. Turkey*, no. 58922/00, § 40, 8 August 2006).

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 that, in the instant case, the length of the proceedings was not excessive and failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

36. The applicant argued under Article 1 of Protocol No. 1 that her right to property had been breached as a result of the excessive length of the civil proceedings. The applicant contended in particular that, had the proceedings been concluded within a reasonable time, her entitlement to compensation would have materialised earlier, enabling her to benefit from it sooner.

37. The Court reiterates that Article 1 of Protocol No. 1 only enshrines the right to the peaceful enjoyment of existing possessions (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 23, § 50). The Court also notes that it has consistently held that a “claim” can only constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Poltorachenko v. Ukraine*, no. 77317/01, § 45, 18 January 2005).

38. In the present case, the applicant’s claim to compensation only became a “possession” within the meaning of Article 1 of Protocol No. 1 when it was established by a final and enforceable court judgment (see, *mutatis mutandis*, *Pravednaya v. Russia*, no. 69529/01, §§ 37-39, 18 November 2004), that is, by the Court of Cassation decision of 23 June 2005. Prior to this date, the applicant had no “possession” that could be the subject of an interference. The applicant’s inability to benefit from compensation at an earlier date cannot, therefore, be considered to have deprived her of any property rights within the meaning of Article 1 of Protocol No. 1.

39. It follows that this complaint 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

40. 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

41. The applicant claimed EUR 250,000 in respect of pecuniary damage. She further claimed EUR 50,000 in respect of non-pecuniary damage.

42. The Government contested these claims as excessive and unsubstantiated.

43. With regard to the alleged pecuniary damage sustained by the applicant, the Court notes that she has failed to substantiate her claim under this head, and accordingly dismisses it. However, the Court finds that the applicant must have suffered distress which cannot be compensated solely by its finding of a violation. Having regard to the nature of the violation found in the present case and ruling on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed TRY 670 (approximately EUR 350) for the costs and expenses incurred before the Court, such as stationery, photocopying, translation and postal costs. The applicant submitted invoices disclosing that she had incurred expenses in the overall amount of TRY 170 (approximately EUR 90).

45. The Government submitted that the applicant had failed to substantiate her claims.

46. 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 finds it reasonable to award the sum of EUR 90 to cover her costs and expenses.

C. Default interest

47. 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, the following amounts, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 90 (ninety euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President