



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

SECOND SECTION

CASE OF AZİZ AYDIN ARSLAN v. TURKEY

(Application no. 28353/02)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

02/03/2009

This judgment may be subject to editorial revision.

In the case of Aziz Aydın Arslan 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

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

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 28353/02) 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, Mr Aziz Aydın Arslan (“the applicant”), on 23 May 2002.

2. The Turkish Government (“the Government”) were represented by their Agent.

3. On 19 March 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 1957 and lives in Istanbul.

5. In 1988 the applicant was recruited by *Türkiye Emlak Bankası A.Ş.*, a state-owned bank (hereinafter “the Bank”). In 1991 he was appointed to the post of deputy director in charge of credit cards.

6. On an unspecified date, an investigation was carried out as a result of fraudulent acts in the Topkapı branch of the Bank.

1. The compensation proceedings against the applicant

7. On 27 January 1994 the Bank brought an action in the 9th Chamber of Istanbul Court of Commerce claiming compensation from the applicant and seven other employees for having caused losses as a result of irregular transactions.

8. In June 1995 the Bank filed another action in the 4th Chamber of the Istanbul Court of Commerce claiming more compensation.

9. On an unspecified date, the two actions were joined at the 9th Chamber of Istanbul Court of Commerce.

10. On 18 November 1999 the 9th Chamber of Istanbul Court of Commerce decided that it had no jurisdiction *ratione materiae* and that the case fell within the jurisdiction of the labour courts since it concerned a dispute between the employer and employees. This decision was upheld by the Court of Cassation on 10 May 2000.

11. On 23 October 2001 the Istanbul Labour Court dismissed the action in respect of the applicant and six other employees considering that no fault could be attributed to them. The court however found that the director of the Topkapı branch of the Bank was responsible for the losses in question. It therefore ordered him to pay a certain amount of compensation to the Bank.

2. The criminal proceedings against the Director of the Bank

12. Meanwhile, criminal proceedings were brought against the director of the Topkapı branch of the Bank and three other persons for having committed a fraud. The applicant and the Bank intervened in these proceedings as a third party. On 9 July 1999 the Bakırköy Assize Court in Istanbul convicted the director and sentenced him to one year's imprisonment for having abused his duty. It however acquitted the other accused. The applicant appealed against this judgment arguing that the punishment imposed on the director was lenient.

13. On 29 May 2001 the Court of Cassation quashed the above judgment.

14. On 31 December 2004 the Bakırköy Assize Court terminated the criminal proceedings against the director since they were time-barred.

THE LAW

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

15. The applicant complained that the length of the compensation 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...”

16. The Government contested that argument.

17. The period to be taken into consideration began on 27 January 1994 and ended on 23 October 2001. It thus lasted approximately seven years and nine months for one level of jurisdiction.

A. Admissibility

18. The Government maintained that the applicant had failed to exhaust domestic remedies since he had failed to raise the substance of his complaint before the domestic authorities.

19. The applicant argued that the application should be declared admissible.

20. The Court reiterates that it has already examined and rejected, in previous cases, similar objections of the Government as regards the alleged failure to exhaust domestic remedies (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instant case, which would require it to depart from its findings in the above-mentioned application. It therefore rejects the Government’s objection on non-exhaustion

21. In view of the above, the Court considers 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).

23. 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).

24. 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

25. 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

26. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He claimed a further 2,000 new Turkish Liras for the pecuniary damage which he incurred during the proceedings before the domestic courts.

27. The Government contested these claims.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,000 under that head.

B. Costs and expenses

29. The applicant also claimed EUR 750 for the costs and expenses incurred before the Court.

30. The Government submitted that the amount claimed was unsubstantiated.

31. 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 600 for costs and expenses incurred for the proceedings before the Court.

C. Default interest

32. 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) 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 sums, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and
 - (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, for 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's claim for just satisfaction.

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

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President