



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

SECOND SECTION

CASE OF GÜNGİL v. TURKEY

(Application no. 28388/03)

JUDGMENT

STRASBOURG

10 March 2009

FINAL

10/06/2009

This judgment may be subject to editorial revision.

In the case of Güngil 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 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 28388/03) 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, Ms Nurcan Güngil (“the applicant”), on 30 July 2003.

2. The applicant was represented by Mrs İ. İlimoğlu, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 20 November 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the civil proceedings. 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 2 and 3 May 1995 the applicant deposited a total of 1,537,000,000 Turkish liras (TRL) with Global A.Ş., a private brokerage firm, and requested the firm to buy Treasury bonds for her.

6. In September 1995 the applicant contacted B.G., the broker to whom she had given the money, and asked her whether she had bought the

Treasury bonds on her behalf. B.G. informed the applicant, by way of a handwritten document, that she had.

7. On 15 March 1996 when the applicant went to the office of Global A.Ş., she learned that B.G. had used her money not to buy Treasury bonds but to buy stocks, which had lost their value and therefore the firm had caused her to lose money.

8. On 30 September 1996 the applicant brought a case against Global A.Ş. and B.G. before the Ankara Commercial Court (*Asliye Ticaret Mahkemesi*), requesting the defendants to reimburse the money which she had deposited with the firm.

9. On 27 May 1998 the Ankara Commercial Court partially granted the applicant's request and ordered the defendants to pay her TRL 942,000,000 with simple interest.

10. Both the applicant and the defendants appealed.

11. On 26 October 2000 the Court of Cassation quashed the judgment of 27 May 1998. The case was subsequently remitted to the Ankara Commercial Court.

12. On 7 November 2001 the Ankara Commercial Court once again partially granted the applicant's request and ordered Global A.Ş. and B.G. to pay her TRL 1,512,000,000 with simple interest.

13. The applicant and Global A.Ş. appealed.

14. On 10 October 2002 the Court of Cassation upheld the judgment of 7 November 2001.

15. On 13 January 2003 the applicant requested rectification of the Court of Cassation's decision of 10 October 2002.

16. On 11 April 2003 the Court of Cassation dismissed the applicant's request.

THE LAW

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

17. The applicant complained that the length of the 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..."

18. The Government contested that argument.

19. The period to be taken into consideration began on 30 September 1996 when the applicant lodged an action with the Ankara Commercial Court and ended on 11 April 2003 when the Court of

Cassation dismissed the applicant's request for rectification of its decision. It thus lasted six years and six months before two levels of jurisdiction which examined the case five times.

A. Admissibility

20. The Court notes that this complaint 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

21. The Government maintained that the proceedings could not be considered to have been unreasonably long in total or to have been prolonged unnecessarily due to a fault attributable to the State.

22. The applicant maintained her allegations.

23. 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).

24. The Court notes that although the period in question does not *prima facie* appear to be excessive in view of the number of examinations and the complexity of the case, it observes that the first appeal examination conducted by the Court of Cassation took two years and five months. Following the second judgment given by the first-instance court on 7 November 2001, the Court of Cassation once again examined the appeal request in eleven months and the request for rectification of the decision in three months. Thus, for more than half of the total period of time, the proceedings were pending before the Court of Cassation, which carried out its examinations by way of a written procedure.

25. 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, among other examples, *Hayrettin Kartal v. Turkey*, no. 4520/02, §§ 18-21, 20 October 2005).

26. 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 finds 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

27. 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

28. The applicant claimed 12,500 euros (EUR) in respect of pecuniary damage. The applicant maintained that the amount which had been reimbursed to her by the Ankara Commercial Court did not compensate her for her financial loss as a result of the low interest rate applied despite the high inflation in Turkey. She further claimed EUR 2,500 in respect of non-pecuniary damage.

29. The Government contested the claim.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore rejects this claim. However, the Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her full claim of EUR 2,500 under that head.

B. Costs and expenses

31. The applicant also claimed 680.44 new Turkish liras (TRY) (approximately EUR 355) for the costs and expenses incurred before the domestic courts and TRY 2,377.7 (approximately EUR 1,235) for those incurred before the Court. The costs and expenses claimed by the applicant consisted of domestic court fees, legal fees based on the Turkish Bar Association's recommended fee list, as well as stationery and postal expenses. She submitted various invoices to substantiate her expenses but provided no additional documentation regarding her legal costs, such as a contract, a fee agreement or a breakdown of the hours spent by her lawyer on the case.

32. The Government contested these claims.

33. According to the Court's case-law, an applicant is entitled to reimbursement of 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, the applicant has not substantiated that she has actually incurred much of the costs so claimed. The Court therefore awards only EUR 35 in respect of her documented costs and expenses.

C. Default interest

34. 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 applicant's right to a fair hearing within a reasonable time admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the civil proceedings;
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 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - ii) EUR 35 (thirty-five 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 10 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President