



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

1959 · 50 · 2009

SECOND SECTION

**CASE OF SEVAL TEKSTİL SANAYİ VE MÜMESSİLLİK
DIŞ TİCARET LTD. ŞTİ. v. TURKEY**

(Application no. 8476/05)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Seval Tekstil Sanayi ve Mümessillik Dış Ticaret Ltd. Şti. 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 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 8476/05) 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 company, Seval Tekstil Sanayi ve Mümessillik Dış Ticaret Ltd. Şti. (“the applicant company”), on 31 January 2005. The applicant company was represented by Mr A. Akpınar, resident in Kocaeli. The Turkish Government (“the Government”) were represented by their Agent. On 24 June 2008 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

2. On 3 December 1997 the applicant company instituted compensation proceedings before the Istanbul 8th Commercial Court against a private bank (“the bank”) and claimed that it had suffered financial loss as the bank had applied high interest rates. Subsequently the bank filed a counterclaim and the two proceedings were joined on 22 September 1998.

3. On 20 January 2004 the court awarded the applicant company compensation. Both parties appealed. On 18 April 2005 the Court of Cassation quashed the judgment on procedural grounds.

4. On 17 November 2005 the Istanbul 8th Commercial Court made the procedural corrections and ordered the bank to pay compensation to the

applicant company. Both parties appealed. On 13 March 2006 the Court of Cassation dismissed the applicant company's appeal for having been lodged outside the statutory time-limit. However, the Court of Cassation quashed the judgment in respect of the bank, both on the procedure and the merits. On 30 June 2006 the applicant company requested rectification of the judgment. On 19 June 2006 the Court of Cassation dismissed the applicant company's request.

5. On 21 June 2007 the İstanbul 8th Commercial Court issued a decision of non-jurisdiction. On 25 January 2008 the applicant company appealed.

6. According to the information in the case file submitted by the parties to date, the proceedings are still pending before the domestic courts.

THE LAW

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

7. The applicant company complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government contested that argument.

8. The period to be taken into consideration began on 3 December 1997 and has not yet ended. It has thus lasted nearly 11 years and 9 months for two levels of jurisdiction, six decisions having been delivered so far.

9. The Government asked the Court to dismiss the application for the failure of the applicant company to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. In this regard, they maintained that the applicant company did not raise the substance of its complaint before the domestic courts.

10. The Court reiterates that it has already examined and rejected similar objections by the Government in previous cases (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 earlier findings. It therefore rejects the Government's objection.

The Court concludes 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.

11. As for the merits of the complaint, 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 many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). 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 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 of the Convention.

12. Regarding just satisfaction under Article 41 of the Convention, the applicant company has failed to comply with Rule 60 of the Rules of Court, as well as Article 5 of the related Practice Direction, no just satisfaction claim having been submitted when requested. Therefore, the Court considers that there is no call to award any sum under this head (see *Marčić and Others v. Serbia*, no. 17556/05, § 63, 30 October 2007).

However, having regard to the fact that the proceedings in question are still pending before the domestic courts, the Court considers that the most appropriate form of redress would be to bring them to a conclusion as speedily as possible, while taking into account the requirements of the proper administration of justice and Article 6 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the civil proceedings admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President