



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

1959 · 50 · 2009

SECOND SECTION

CASE OF DİKİCİ v. TURKEY

(Application no. 18308/02)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dikici v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 18308/02) 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 two Turkish nationals, Mr Hasan Dikici and Mrs Satike Dikici (“the applicants”), on 1 February 2002.

2. The applicants, who had been granted legal aid, were represented by Ms A. Bozdoğan, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 May 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicants were born in 1949 and 1955 respectively and live in İzmir.

5. On 3 July 1995 the applicants' son, Ercan Dikici, who was an electrician, had an occupational accident and died from an electric shock.

6. The same day, the Aliğa Public Prosecutor started an investigation into the incident. Subsequently, on 17 August 1995 he initiated criminal proceedings in the Aliğa Criminal Court against three persons, including the employer of Ercan Dikici and another employee who had been working with him on the day of the accident. They were charged with involuntary manslaughter under Article 455 of the Criminal Code. On 4 July 1996 the Aliğa Criminal Court acquitted the accused persons of the charges against

them. On 12 May 1997 the Court of Cassation quashed the judgment of the Aliğa Criminal Court.

7. On 17 December 1998 the Aliğa Criminal Court found the employer of Ercan Dikici and the other employee who had been working with him guilty of involuntary manslaughter and sentenced them to six months' imprisonment. Their sentence was converted into a fine. On 16 February 2000 the Court of Cassation upheld this judgment.

8. While the criminal proceedings were pending, on 20 November 1995 the applicants initiated compensation proceedings in the İzmir Labour Court against the employer of their son. They requested 50,000,000 Turkish liras (TRL) in respect of pecuniary damage and TRL 1,500,000,000 (approximately 28,000 US Dollars (USD)) in respect of non-pecuniary damage.

9. On an unspecified date, the İzmir Labour Court adjourned the proceedings pending the outcome of the criminal proceedings.

10. When the criminal proceedings ended, the trial before the İzmir Labour Court resumed. The court ordered further expert reports and heard evidence from witnesses. Subsequently, on 24 May 2001 the court decided to award TRL 600,000,000 to the applicants in respect of non-pecuniary damage with statutory interest running from 3 July 1995. It further found that the applicants had not been in any way financially dependent on their deceased son and therefore rejected their claim for compensation for pecuniary damage.

11. On 5 July 2001 the Court of Cassation decided that the amount of compensation for non-pecuniary damage should be increased to TRL 1,000,000,000 (approximately USD 790) with statutory interest running from 3 July 1995¹. Holding that there was no other reason to quash the judgment of the İzmir Labour Court, it rejected the remainder of the applicants' appeal requests. This decision was served on the applicants on 22 August 2001. The same day, the defendant party paid TRL 2,677,533,000 to the applicants (approximately USD 1,850).

THE LAW

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

12. Relying on Article 6 § 1 of the Convention the applicants alleged in the first place that by rejecting their claims for compensation for pecuniary damage, the national courts had failed in the evaluation of the facts and interpretation of the domestic law. They also maintained under the same

1. TRL 1,000,000,000 was equivalent to USD 22,660 on 3 July 1995.

provision that the length of the compensation proceedings had exceeded the reasonable time requirement.

A. The Government's preliminary objection

13. The Government argued that the application had been introduced outside the six-month time-limit. In this respect, they maintained that the final decision of the domestic courts had been delivered on 5 July 2001, whereas the application had been lodged on 1 February 2002.

14. The Court observes that the final decision of the Court of Cassation was served on the applicants on 22 August 2001 and therefore the application was lodged with the Court within the six-month time-limit, as required by Article 35 § 1 of the Convention. Consequently, the Government's objection cannot be upheld.

B. Fairness of proceedings

15. The applicants complained that, by rejecting their claims for compensation for pecuniary damage, the national courts had erred in their decision.

16. The Court reiterates that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B).

17. In the present case, the Court observes that the national courts' decisions were given on the basis of domestic law and the particular circumstances of the case. The Court finds no element which might lead it to conclude that the domestic courts acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the domestic law. There is therefore no appearance of a violation of Article 6 § 1 in this respect.

18. In the light of the foregoing, the Court finds that this complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

C. The length of the proceedings

19. The applicants maintained that the length of the compensation proceedings had exceeded the reasonable time requirement. They further claimed that, because of the length of the proceedings, the compensation awarded by the domestic court did not cover the monetary depreciation which had occurred between 1995 and 2001.

20. The Government contested the allegations.

21. 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.

22. As regards the merits, the Court observes that the proceedings in dispute started on 20 November 1995 and ended on 5 July 2001. They therefore lasted for five years and seven months at two levels of jurisdiction.

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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

24. It 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).

25. Turning to the particular circumstances of the case, the Court observes that the İzmir Labour Court suspended the compensation proceedings pending the outcome of the criminal case which had been initiated against the employer of the applicants' son. However, under Turkish law, civil courts are not bound by the finding of the criminal courts. In any case, according to the case file, the İzmir Labour Court ordered its own expert report on the issue in 2001 – after the criminal proceedings were terminated – and delivered its decision on the basis of that report which was drafted in March 2001. Having regard to its case-law on the subject, the Court considers that by staying the compensation proceedings for five years, the domestic court failed in its obligation to decide cases within a reasonable time.

26. In view of the above, the Court concludes that, in the present 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 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

27. Relying on Article 1 of Protocol No. 1 to the Convention, the applicants alleged that they had suffered financial loss because of the length of the proceedings. In their view, the interest rate applied by the domestic courts did not compensate for the depreciation of the national currency between 1995 and 2001.

28. The Government argued in the first place that the applicants had failed to exhaust domestic remedies in respect of this complaint since they had not initiated additional proceedings against the defendant party based on Article 105 of the Code of Obligations. In the alternative, they claimed that

the applicants could not be considered victims since they had received compensation plus interest running from the date of the incident.

29. The Court notes that this complaint is closely linked to the one examined above (paragraphs 22-26) and must therefore likewise be declared admissible.

30. However, having regard to its finding of a violation under Article 6 § 1 of the Convention on account of the length of the proceedings, the Court does not consider it necessary to examine separately whether, in the present case, there has been a violation of Article 1 of Protocol No. 1 to the Convention. It recalls that the eventual negative repercussions on an applicant's property rights caused by the excessive length of the proceedings may be seen as a consequence of the violation of Article 6 § 1 of the Convention and taken into account for the award of just satisfaction under the latter provision (see *Varipati v. Greece*, no. 38459/97, § 32, 26 October 1999; *Michailidou and Others v. Greece*, no. 21091/07, § 12, 12 March 2009; *Mianowicz v. Germany* (no. 2), no. 71972/01, § 52, 11 June 2009).

31. As a result, the Court concludes that there is no need to make a separate ruling on the applicants' complaints under Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. The applicants claimed 10,000 euros (EUR) each in respect of pecuniary damage. The applicants further requested EUR 15,000 and EUR 25,000 respectively for non-pecuniary damage. Based on a legal fee agreement, they further claimed EUR 2,000 for legal fees and EUR 500 in respect of costs and expenses.

33. The Government contested these claims.

34. The Court refers to its finding above (paragraph 26) that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the domestic proceedings. The Court further takes note of the fact that, at the end of those proceedings, the domestic courts fixed a certain amount of compensation without taking into account the monetary depreciation which had occurred between the date when the case was lodged and the date of the decision. While the domestic courts applied the statutory interest rate to the amount of compensation, this clearly failed to cover the financial loss of the applicants. In this respect, the Court observes that while TRL 1,000,000,000 was equal to USD 22,600 in July 1995, it was equal to USD 790 in July 2001 and the applicants received USD 1,850 at the end of the proceedings, covering the compensation award plus interest running from July 1995. The Court therefore concludes that the length of the proceedings in the instant case caused financial loss to the applicants as well as distress and frustration. Having regard to the above, and deciding on an equitable basis, the Court grants a total of EUR 15,000 to the applicants, jointly, covering both pecuniary and non-pecuniary damage.

35. According to its relevant case-law, in respect of costs and expenses the Court considers it reasonable to award the sum of EUR 1,000 to the applicants, less the sum of EUR 850 received in legal aid from the Council of Europe.

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 concerning the fairness of the proceedings inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
3. *Holds* that there is no need to examine separately the applicants' complaint raised under Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay to the applicants, jointly, 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 Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) less the EUR 850 (eight hundred and fifty euros) received in legal aid, plus any tax that may be chargeable to the applicants, in respect of 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President