



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

SECOND SECTION

CASE OF ZEYTİNLİ v. TURKEY

(Application no. 42952/04)

JUDGMENT

STRASBOURG

26 January 2010

FINAL

26/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zeytinli 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 5 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 42952/04) 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 Murat Zeytinli (“the applicant”), on 24 September 2004.

2. The applicant was represented by Mr Ç. Yüksel, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 21 October 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the administrative proceedings with regard to the applicant's compensation claim and the alleged insufficiency of the interest payable on the compensation the applicant received. 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 1965 and lives in İstanbul.

5. On 2 July 1998 the applicant initiated compensation proceedings before the İstanbul Administrative Court against the İstanbul Stock Exchange (“the IMKB”). He requested 47,000,000,000 Turkish liras (TRL) in respect of pecuniary damage and TRL 5,000,000,000 in respect of non-

pecuniary damage for the period between November 1990 and 16 December 1996 during which, as had previously been established by the domestic courts, he ought to have been recruited by the IMKB.

6. On 18 July 1998 the IMKB unsuccessfully challenged the jurisdiction of the İstanbul Administrative Court. On 8 February 1999 the IMKB repeated its challenge and requested that the matter be referred to the Jurisdiction Disputes Court. On 7 July 1999 the Court of Cassation confirmed the public corporative nature of the IMKB and held that the matter fell within the jurisdiction of the administrative courts.

7. On 30 November 2001 the İstanbul Administrative Court dismissed the applicant's claim in respect of non-pecuniary damage and awarded him TRL 3,117,228,526¹ in respect of pecuniary damage, plus default interest running from the date on which the debt arose until the date of payment. Both parties appealed.

8. On 11 May 2005 the IMKB paid the applicant TRL 17,275,000,000².

9. On 24 May 2005 the Council of State upheld the judgment. On 9 September 2005 the applicant requested rectification. On 10 December 2007 the Council of State dismissed the applicant's request. The applicant was notified of this on 7 February 2008.

THE LAW

10. The applicant alleged that the length of the administrative proceedings exceeded the reasonable time requirement, in breach of Article 6 of the Convention. He further maintained, under Article 1 of Protocol No. 1, that the default interest paid on the compensation awarded by the İstanbul Administrative Court was insufficient. The Government submitted that the case had been complex and that there had been no delay in the proceedings which could be attributed to the authorities. The Government further submitted that the amount of compensation paid to the applicant had sufficiently compensated him for the damage he had suffered.

11. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

12. With respect to the applicant's complaint under Article 6 of the Convention the Court observes that the period in question started on 2 July 1998 and ended on 10 December 2007. The proceedings thus lasted some nine years and five months at three levels of jurisdiction.

1. Approximately 2,361 euros (EUR).

2. Approximately EUR 9,777.

13. 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).

14. The Court observes in the present case that the proceedings before the first-instance court which collected the evidence lasted nearly three years and five months, in spite of a jurisdiction issue, whereas the subsequent proceedings before the Council of State lasted over six years, including the unsuccessful rectification procedure.

15. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to those of the present application (see *Frydlender*, cited above). 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. The Court concludes that the length of the proceedings in the instant case was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

16. As for the applicant's complaints under Article 1 of Protocol No. 1, the Court notes that it is not disputed between the parties that the domestic courts retroactively recognised the applicant's right to a “possession” (see *Baş v. Turkey*, no. 49548/99, §§ 58, 59, 24 June 2008) by awarding compensation with statutory interest running from the date on which the debt arose. The compensation was paid on 11 May 2005. The Court reiterates that it has found a violation of Article 1 of Protocol No. 1 in a number of applications in which the applicants complained about the insufficiency of the statutory interest rates *vis-a-vis* the high monetary inflation rates at a given period in Turkey (see *Okçu v. Turkey*, no. 39515/03, § 55, 21 July 2009, *Aka v. Turkey*, 23 September 1998, § 48, *Reports of Judgments and Decisions* 1998-VI). Having regard to the economic data for the period between the years 1990 and 2005, in particular the fact that the statutory interest rate applied between the years 1990 and 1997 was 30% whereas the actual inflation rate varied between 60% and 96%, the Court finds in the present case that the difference between the statutory interest rates applied to the compensation amount and the actual inflation rate must have caused the applicant to sustain financial loss. Consequently the applicant had to bear an individual burden that has upset the fair balance which must be maintained between the demands of the general interest and protection of the right to the peaceful enjoyment of possessions. There has accordingly been a breach of Article 1 of Protocol No. 1 to the Convention.

17. Concerning the award of just satisfaction under Article 41 of the Convention, the applicant requested 300,000¹ Turkish liras (TRY²) in respect of pecuniary damage and TRY 100,000³ in respect of non-pecuniary damage, plus a total of TRY 20,728⁴ for costs and expenses. In support of his claim the applicant presented a number of receipts and two contracts made with his lawyer. The Government contested these claims.

18. Making its assessment on an equitable basis and taking into account the retroactive nature of the original domestic court award of default interest on 30 November 2001 (paragraph 7 above), the Court awards the applicant EUR 70,000 in respect of pecuniary damage.

19. The Court further considers that the applicant has suffered certain non-pecuniary damage as a result of the violations found. Making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 1,000 under this head.

20. As for the applicant's claims regarding costs and expenses, the Court reiterates that 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, regard being had to the documents in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,000 covering costs and expenses under all heads.

21. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *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

¹ Approximately EUR 141,000

² On 1 January 2005 the Turkish Lira (TRY) entered into circulation, replacing the former Turkish Lira (TRL). TRY = TRL 1,000,000.

³ Approximately EUR 47,000

⁴ Approximately EUR 9, 758

Article 44 § 2 of the Convention, the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:

- (i) EUR 70,000 (seventy thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage,
- (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
- (iii) EUR 1,000 (one thousand euros), plus any tax chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President