



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

SECOND SECTION

CASE OF EVRİM İNŞAAT A.Ş. v. TURKEY

(Application no. 19173/03)

JUDGMENT

STRASBOURG

9 February 2010

FINAL

09/05/2010

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

In the case of Evrim İnşaat A.Ş. 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 19 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 19173/03) 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 company, Evrim İnşaat A.Ş. (“the applicant company”), on 20 April 2003.

2. The applicant company was represented by Mr M.A. Erol, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 8 December 2008 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant company, Evrim İnşaat A.Ş., is a construction firm operating in Istanbul.

5. On 10 June 1987 the applicant company signed a contract with a cooperative called Ülkü Kent Yapı Kooperatifi (“the cooperative”) for the construction of dwellings on land belonging to the latter.

6. In November 1991 the applicant company completed the construction of 65% of the project. However, following the election of a new board of

directors by the general assembly of the cooperative, the applicant company's contract was terminated by the cooperative.

1. Compensation proceedings before the Istanbul Commercial Court

7. On 22 July 1992 the cooperative brought an action in the 5th Chamber of the Istanbul Commercial Court ("the first case") claiming damages from the applicant company on the ground that it had failed to fulfil the terms of the contract. The cooperative argued that the construction of the dwellings should have been completed by 31 August 1991, whereas the applicant company had only done 65% of the work by November 1991.

8. On the same date the applicant company brought a counter action in the 7th Chamber of the Istanbul Commercial Court ("the second case") claiming damages from the cooperative. The applicant company argued that the cooperative had terminated the contract without giving any reasons.

9. On an unspecified date the two cases were joined by the 5th Chamber of the Istanbul Commercial Court. In the course of the proceedings the court sought expert opinions five times, which caused substantial delays. For example, on 23 June 1993 the court decided to obtain an expert opinion on the dispute. The case file was transmitted to the experts on 10 September 1993 but their report was not submitted to the court until 13 December 1995.

10. On 12 May 1999, in the first case, the Istanbul Commercial Court ruled in favour of the cooperative and allowed part of its claim for damages. The parties appealed.

11. On 22 December 1999, in the second case, the Istanbul Commercial Court dismissed the applicant company's claim for damages, holding that it had failed to prove the damage caused by the termination of the contract by the cooperative.

12. On 15 June 2000 the Court of Cassation upheld the lower court's judgment in the first case. The applicant company requested rectification of that decision.

13. On 8 December 2000 the Court of Cassation ruled in favour of the applicant company and quashed its decision of 15 June 2000. The case was remitted to the lower court.

14. On 19 March 2001 the Istanbul Commercial Court decided to obtain a new expert opinion on the matter. This opinion was submitted to the court on 3 May 2001.

15. On 12 December 2001 the Istanbul Commercial Court ruled in favour of the applicant company and ordered the cooperative to pay 1,806,424,884 Turkish liras. The cooperative appealed.

16. On 30 September 2002 the Court of Cassation upheld the above judgment. That decision was sent to the Istanbul Commercial Court on 30 October 2002 and was served on the applicant on 14 March 2003.

2. *Proceedings for additional compensation*

17. On 4 June 2003 the applicant company brought an action in the Istanbul Commercial Court (*Istanbul Asliye Ticaret Mahkemesi*) against the cooperative requesting additional compensation (*munzam zarar*), under Article 105 of the Code of Obligations, for the damage it had sustained as a result of the low interest rate applied to the debt.

18. On 30 December 2005 the Istanbul Commercial Court dismissed the action, holding that the applicant company had failed to prove the alleged damage. The applicant company appealed. On 20 June 2007 the Court of Cassation upheld the judgment. On 17 March 2008 the Court of Cassation dismissed a request by the applicant company for rectification.

THE LAW

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

19. The applicant complained that the length of the first set of compensation proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which insofar as relevant 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 22 July 1992 and ended on 30 September 2002. It thus lasted some ten years and two months at two levels of jurisdiction.

A. Admissibility

22. 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

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 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. 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.

26. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. In a letter dated 23 August 2004, the applicant company raised a further complaint under Article 13 of the Convention, alleging that there were no remedies in domestic law in respect of the complaint under Article 6 of the Convention.

28. The Government contested the complaint.

29. The Court notes that this complaint was introduced more than six months after the conclusion of the proceedings in question. It follows that it must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-compliance with the six-month rule.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

30. The applicant company complained that the excessive length of the proceedings had also infringed its right to the peaceful enjoyment of possessions, as guaranteed by Article 1 of Protocol No. 1.

31. The Government submitted that there had been no violation of this provision.

32. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

33. However, having regard to its finding under Article 6 § 1 (see paragraph 26 above), the Court considers that it is not necessary to examine separately whether there has also been a violation of Article 1 of Protocol No. 1 (see *Öztunç v. Turkey*, no. 74039/01, §32, 27 March 2007, and *Zanghi v. Italy*, 19 February 1991, § 23, Series A no. 194-C).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 287,180 euros (EUR) in respect of pecuniary damage and EUR 15,000 for non-pecuniary damage.

36. The Government submitted that the amounts claimed were excessive.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant company must have sustained some non-pecuniary damage. Accordingly, deciding on an equitable basis, it awards the applicant company EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant company also claimed EUR 10,000 for costs and expenses incurred before the Court. It did not however submit any documents in support of that claim.

39. The Government contended that request was unsubstantiated.

40. 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, regard being had to the above criteria and the applicant company’s failure to substantiate its claim, the Court makes no award under this head.

C. Default interest

41. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to make a separate examination of the merits of the complaint under Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 company's claim for just satisfaction.

Done in English, and notified in writing on 9 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President