



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

SECOND SECTION

CASE OF SEBAHATTİN EVCİMEN v. TURKEY

(Application no. 31792/06)

JUDGMENT

STRASBOURG

23 February 2010

FINAL

23/05/2010

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

In the case of Sebahattin Evcimen 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 2 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 31792/06) 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 Sebahattin Evcimen (“the applicant”), on 1 August 2006.

2. The applicant was represented by Mr Z. Edebali, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent. The case was given priority under Rule 41 of the Rules of the Court.

3. On 15 January 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

4. The applicant was born in 1959 and lives in Istanbul.

5. In 1989 the applicant started working at a privately owned factory in the city of Ordu. On 4 February 1993 he had an accident in the factory and seriously injured his leg. Subsequently, on 13 August 1993 the applicant's employment at the factory was terminated on the ground that he had failed to report to work between 2 and 13 August 1993 without a reason.

6. On 4 June 1996, the applicant brought a legal action against the factory before the Ordu Civil Court of General Jurisdiction (“the Civil Court”) and claimed pecuniary compensation in respect of the accident. In

the meantime, in 1997 the applicant's leg had to be amputated following the diagnosis of a malignant tumour in his injured leg.

7. On 11 November 1998, while the proceedings were pending before the Civil Court, the applicant brought another action before the Ordu Labour Court (“the Labour Court”) against the factory and asked the court to issue a declaration to the effect that the incident had been an “occupational accident”.

8. On 5 February 1999, at the applicant's request, the Civil Court decided to adjourn its examination of the compensation claim pending the outcome of the proceedings before the Labour Court.

9. On 17 December 1999 the Labour Court, relying on two expert reports, decided that the accident had been occupational. Nevertheless, the decision of the Labour Court was quashed on 17 February 2000 by the Court of Cassation, which held that the Social Security Institution (*Sosyal Sigortalar Kurumu* “the SSK”) should also be a party to the proceedings.

10. Proceedings recommenced before the Labour Court, which found on 17 October 2000 that the applicant had introduced the same claim in 1994, and dismissed the case.

11. On 26 March 2001 the Court of Cassation quashed the decision of the Labour Court and pointed to the fact that the case which had been brought in 1994 had had different parties and its subject matter had also been different to that of the present one.

12. On 12 October 2001, after a further review of the case, the Labour Court gave a decision and held that the accident had been occupational.

13. On 1 February 2002 the Court of Cassation quashed the judgment once more and held that the Labour Court should have considered whether a causal link existed between the tumour in the applicant's leg and the accident. The Court of Cassation considered that this could be done by obtaining a report from the Forensic Medicine Institution (“the Institution”).

14. On 26 April 2002, after re-examining the case, the Labour Court confirmed its judgment of 12 October 2001. In its decision, the Labour Court maintained that any causal link between the tumour and the accident was irrelevant to the case at hand. It considered that this was a matter for the Civil Court to consider in its examination of the applicant's compensation claim.

15. On 3 July 2002 the Plenary Court of Cassation quashed the Labour Court's decision of 26 April 2002 and upheld the Court of Cassation decision of 1 February 2002.

16. On 18 October 2002 the Labour Court asked the Institution to draft a report as required by the Court of Cassation. On 8 November 2002 the Institution requested the Labour Court to forward to it all medical reports pertaining to the applicant's medical treatment. Following the failure of the Labour Court to comply with its request, the Institution repeated its request on two further occasions. The Labour Court, which did not comply with the

Institution's requests, asked the Institution to prepare its report on the basis of the reports already in its possession.

17. On 19 March 2004 the Institution prepared its report based on several medical reports on the applicant delivered by different hospitals between 1993 and 1997. It concluded that it was not possible to establish whether the tumour in the leg had been caused by the accident. In its report the Institution also noted that the applicant, although warned by the doctors about the gravity of his condition, had failed to have medical examinations between 1994 and 1997. It concluded that this could also have caused the tumour in the applicant's leg.

18. On 1 September 2004 the applicant submitted to the Labour Court written objections to the Institution's report. He argued, in particular, that the report was irrelevant to the examination of his claim and in any event was based on insufficient data. The applicant further argued that the Forensic Institution had prepared a negative report as he had lodged a complaint against the experts regarding the delay in the submission of their report.

19. Based on the report of the Institution, the Labour Court decided on 10 September 2004 that there was no causal link between the accident and the tumour in the applicant's leg, and dismissed the case. On 11 October 2004 the applicant appealed and repeated his objections, mentioned above, to the Institution's report. The applicant's appeal was rejected by the Court of Cassation 11 April 2005.

20. Following the decision of the Court of Cassation, the Civil Court resumed the proceedings. On 17 July 2005 the domestic court rejected the applicant's case based on the decision of the Labour Court dated 10 September 2004. In its decision, it stated that the Labour Court had had regard to all the documents in the case file, the submissions of the parties and the medical report of the Forensic Institution which held that there was no causal link between the tumour in the applicant's leg and the incident. As a result, by making reference to the decision of the Labour Court it dismissed the applicant's case. On 14 February 2006 the Court of Cassation rejected the applicant's appeal request.

THE LAW

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

21. The applicant complained that he did not have a fair hearing, arguing that the domestic courts had erred in the establishment of facts and interpretation of law. He further alleged that the length of the proceedings

had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention.

A. The proceedings before the Ordu Labour Court

22. The Court observes that these proceedings ended on 11 April 2005 with the final decision of the Court of Cassation. As the present application was lodged on 1 August 2006, the Court notes that the complaints concerning these proceedings are lodged outside the six-month time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention

B. The proceedings before the Ordu Civil Court of General Jurisdiction

1. Fairness of proceedings

23. The applicant complained under Article 6 § 1 of the Convention that the proceedings in his case were unfair in that, in rejecting his compensation claim, the Ordu Civil Court had had regard to the medical report of the Forensic Medicine Institution, which was allegedly based on insufficient data.

24. The Government contested the applicant's allegations. In the first place they stated that the domestic courts had not violated the equality of arms principle as the findings of the medical report were disclosed to the applicant during the labour court proceedings, who in return had the opportunity to submit his counter-arguments. Furthermore, the Government stated that, in preparing its report, the Forensic Medicine Institution had regard to the medical history of the applicant and examined several medical reports issued by a number of different hospitals between 1993 and 1997. According to the Government, after a thorough examination, the Forensic Medicine Institution concluded that no causal link could be established between the applicant's fall in 1993 and the amputation of his leg in 1997. The Government finally stated that there was no indication of arbitrariness during the domestic proceedings.

25. The Court reiterates in the first place 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). The Court further reiterates that the principle of equality of arms, one of the broader concepts of a fair hearing, requires each party to be given a reasonable opportunity to

present their case under conditions that do not place them at a substantial disadvantage *vis-à-vis* the opponent. The right to adversarial proceedings means in principle the opportunity for the parties to have knowledge of and to comment on all evidence adduced or observations submitted, with a view to influencing the court's decision (see *K.S. v. Finland*, no. 29346/95, § 21, 31 May 2001).

26. Turning to the facts of the case, the Court observes that the applicant's complaint about the reliance of the Labour Court on a medical report, which had allegedly been based on an incomplete file, concerns the proceedings which ended on 11 April 2005 and thus falls outside the six months time-limit laid down in Article 35 § 1 of the Convention. It is clear from the case file that, in delivering its decision dated 17 July 2005, the Ordu Civil Court of General Jurisdiction solely referred to the decision delivered by the Labour Court and did not order any new expertise during this set of proceedings. As the Labour Court refused to give a declaratory decision certifying that the applicant had had an occupational accident, the Ordu Civil Court of General Jurisdiction did not hold the applicant's former employer financially responsible and refused to award compensation to the applicant. Following a thorough examination of the case file, the Court finds no element which might lead it to conclude that the domestic court acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the domestic law.

27. In the circumstances of the case, the Court is of the view that the proceedings before the Ordu Civil Court of General Jurisdiction complied with the fairness requirement of Article 6 § 1 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As to the length of proceedings

28. The Court observes that the proceedings before the Ordu Civil Court began on 4 June 1996 and ended on 14 February 2006. They thus lasted nine years and eight months at two levels of jurisdiction.

29. 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.

30. 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). The Court further reiterates that special diligence is necessary in employment

disputes (see, *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

31. 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).

32. Turning to the particular circumstances of the present case, the Court observes that the applicant initiated compensation proceedings before the Ordu Civil Court on 4 June 1996. Subsequently, while the proceedings were still pending, he initiated another set of proceedings, this time before the Ordu Labour Court, seeking a declaratory decision to the effect that the incident in dispute had been an occupational accident. He also lodged a request that the Ordu Civil Court await the outcome of the proceedings before the Ordu Labour Court. As a result, the Civil Court awaited the outcome of the Labour Court proceedings for approximately seven years. While the Court notes that it was the applicant himself who had requested the adjournment, it nevertheless bears in mind that it is the role of the domestic courts to manage their proceedings so that they are expeditious and effective (see, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II; *Tibbling v. Sweden*, no. 59129/00, § 32, 11 October 2005; *Mustafa Türkoğlu v. Turkey*, no. 58922/00, § 40, 8 August 2006 and *Zöhre Akyol v. Turkey*, no. 28668/03, § 33, 4 November 2008). Thus the Court cannot but conclude that the national courts did not act with due diligence overall, having regard to what was at stake for the applicant.

33. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant further claimed that there had been no effective remedy in domestic law whereby he could challenge the excessive length of the proceedings in dispute. He relied on Article 13 of the Convention.

36. 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.

37. The Court has examined similar cases on previous applications and has found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicant could have

contested the length of the proceedings at issue (see, most recently, *Daneshpayeh v. Turkey*, no. 21086/04, §§ 35-38, 16 July 2009).

38. It finds no reason to depart from that conclusion in the present case. There had accordingly been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant complained that, as a result of the domestic proceedings, he had been deprived of compensation and had had to endure dire living conditions. In this regard he invoked Articles 3, 8, and Article 1 of Protocol No. 1 to the Convention.

40. However, the Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. The applicant claimed 105,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage. He also requested EUR 16,000 for legal fees and EUR 60 for costs and expenses.

42. The Government contested these claims.

43. 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 must have suffered some non-pecuniary damage. Therefore, taking into account the circumstances of the present case, and what was at stake for the applicant, it awards him EUR 8,100 in respect of non-pecuniary damage. Furthermore, the Court finds it reasonable to award the applicant EUR 1,000 for his legal fees, costs and expenses.

44. 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 complaints concerning the excessive length of the proceedings before the Ordu Civil Court of General Jurisdiction and the right to an effective remedy 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 there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 8,100 (eight thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) plus any tax that may be 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 23 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President