



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

SECOND SECTION

CASE OF AKKAYA v. TURKEY

(Application no. 34395/04)

JUDGMENT

STRASBOURG

2 March 2010

FINAL

02/06/2010

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

In the case of Akkaya 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 9 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 34395/04) 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 Cemil Akkaya (“the applicant”), on 14 June 2004.

2. The applicant was represented by Mr G.C. Ekşioğlu, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 28 November 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 1964 and lives in Ankara.

5. On 22 October 1997 the applicant, who worked in a private company at the material time, had an accident during working hours that led to his partial disability.

6. On 19 June 1998 the applicant lodged an action with the Ankara Labour Court against his employer, requesting compensation for the pecuniary damage he had suffered as a result of the accident.

7. On 30 April 2003 the applicant lodged another action with the same court against his employer, this time requesting compensation for non-pecuniary damage.

8. On 27 May 2003 the court joined two cases.

9. During the proceedings the first-instance court postponed the hearings awaiting information and documents from a number of State authorities, such as the public prosecutor's office and the Social Security Institution, as well as the reports of experts appointed by the court.

10. On 21 June 2004 the Ankara Labour Court partially accepted the applicant's claims and awarded him compensation for non-pecuniary damage, plus interest at the statutory rate, running from the date of the incident.

11. On 4 November 2004 the Court of Cassation upheld the judgment of the first instance court.

12. In his submissions of 4 August 2008 and 29 May 2009, the applicant informed the Court that he had filed a case with the Ankara Labour Court against the company, requesting additional compensation (*munzam zarar*) for the damage he had sustained as a result of the delay in payment. This case was dismissed on 21 April 2009.

13. In his letter of 7 August 2009 to the Court, the applicant complained under Article 1 of Protocol No. 1 to the Convention that the courts' refusal to grant him additional compensation violated his right to property.

14. The applicant's complaint under Article 1 of Protocol No. 1 to the Convention was separated from the present application and was registered under application no. 53791/09.

THE LAW

15. The applicant 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.

16. The period to be taken into consideration began on 19 June 1998 when the applicant lodged the action with the Ankara Labour Court and ended on 4 November 2004 when the Court of Cassation upheld the judgment of the first instance court. It thus lasted six years and four months for two levels of jurisdiction.

17. The Court notes that the application 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.

18. As to the merits, the Court observes that there was a substantial delay in the proceedings before the first-instance court which took more than six years to render a decision on the case. During that time, the court requested information from the State authorities and suspended the hearings,

awaiting their replies. These authorities failed to deal with the case diligently and thereby caused a substantial delay.

19. In view of the above and having regard to its case-law (see, for example, *Bahçeyaka v. Turkey*, no. 74463/01, § 20, 13 July 2006, *Latif Fuat Öztürk v. Turkey*, no. 54673/00, § 38, 2 February 2006), the Court considers that the overall length of the proceedings in the present case was excessive and failed to meet the “reasonable time” requirement.

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

20. Relying on Article 41 of the Convention the applicant claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 75,000 in respect of non-pecuniary damage. The Government contested these claims.

21. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

22. The applicant also claimed EUR 30,000 for the costs and expenses incurred before the domestic courts and the Court. He also claimed EUR 40,000 in respect of his lawyer's fee. In support of his claims he submitted the receipts of expenses incurred before the domestic courts. The Government contested these claims.

23. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 500 in respect of costs and expenses.

24. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 500 (five hundred 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Sally Dollé
Registrar

François Tulkens
President