

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

SECOND SECTION

DECISION

Application no. 22551/05
by Libas ERDÖNMEZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 December 2011 as a Committee composed of:

Isabelle Berro-Lefèvre, *President,*
Guido Raimondi,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 June 2005,

Having regard to the declaration submitted by the respondent Government on 28 January 2011 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Libas Erdönmez, is a Turkish national who was born in 1962 and lives in Ankara. Her application was lodged on 13 June 2005. She was represented before the Court by Ms E. Poyraz and Ms A. Demir, lawyers practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 9 May 2001 the applicant brought proceedings against an off-shore bank, a bank ("Yurtbank"), the Savings Deposit Insurance Fund ("TMSF")

and the owner of Yurtbank, claiming compensation for the fact that her savings were transferred to the off-shore bank without her consent.

On 6 March 2003 the Ankara Commercial Court decided to register the case anew in so far it concerned the off-shore bank. The court dismissed the remainder of the case as it had been brought against the wrong entities.

On 13 April 2004 the Court of Cassation upheld the judgment of the court. It rejected the applicant's rectification request on 26 November 2004.

Subsequently, the proceedings against the off-shore bank continued before the Commercial Court. On 10 March 2005 the court held that the chamber, which had been evaluating the case until that time, had lacked jurisdiction and transferred it to another chamber.

The impugned proceedings had lasted for a period of eight years and ten months at the time of communication and are still pending before the Ankara Commercial Court as of November 2011.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that the compensation proceedings she had brought before the Ankara Commercial Court lasted for an unreasonably long period of time. She further maintained under the same provision that the domestic court had failed to give a reason for its decision to partially dismiss her case.

Relying upon Article 1 of Protocol No. 1, the applicant complained that she had been deprived of her savings in that the TMSF had failed to control the unlawful activities of certain banks.

THE LAW

1. As to the complaint about the length of proceedings

The applicant complained about the length of the civil proceedings brought by her. She relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

> "In the determination of his civil rights and obligations..., everyone is entitled to a... hearing within a reasonable time by [a] ... tribunal..."

After unsuccessful friendly-settlement negociations, by letter dated 28 January 2011, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this complaint. They further requested the Court to strike out this part of the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

"Je déclare que le Gouvernement de la République de Turquie offre de verser à la requérante, Mme Libas Erdönmez, la somme de 4 000 (quatre mille) euros, couvrant tout préjudice matériel et moral ainsi que 500 (cinq cents) euros, couvrant l'ensemble des frais et dépens, plus tout montant pouvant être dû à titre d'impôt par le requérant, sommes qu'il considère comme appropriées à la lumière de la jurisprudence de la Cour.

Cette somme sera convertie en livres turques au taux applicable à la date du paiement, et exemptes de toute taxe éventuellement applicable. Elle sera payée dans les trois mois suivant la date de la notification de la décision de la Cour rendue conformément à l'article 37 § 1 de la Convention européenne des droits de l'homme. A défaut de règlement dans ledit délai, le Gouvernement s'engage à verser, à compter de l'expiration de celui-ci et jusqu'au règlement effectif de la somme en question, un intérêt simple à un taux égal à celui de la facilité de prêt marginal de la Banque centrale européenne, augmenté de trois points de pourcentage. Ce versement vaudra règlement définitif de l'affaire.

Le Gouvernement considère que la procédure interne engagée par la partie requérante a connu une durée excessive au sens de la jurisprudence bien établie de la Cour (*Daneshpayeh c. Turquie*, n° 21086/04, 16 juillet 2009). Il invite respectueusement la Cour à dire qu'il ne se justifie plus de poursuivre l'examen de la requête et à la rayer du rôle conformément à l'article 37 de la Convention."

In a letter of 23 March 2011 the applicant expressed the view that the sum mentioned in the Government's declaration could not be considered adequate as it did not compensate her loss.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wish the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; also *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; *Sulwińska v. Poland* (dec.), no. 28953/03; *Stark and Others v. Finland* (striking out), no. 39559/02, § 23, 9 October 2007; *Silva Marrafa v. Portugal* (dec.), no. 56936/08, 25 May 2010; *Karal v. Turkey* (dec.), no. 44655/09, 29 March 2011; and *Barış İnan v. Turkey* (dec.), no. 20315/10, 24 May 2011).

The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example,

Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007; and *Daneshpayeh v. Turkey*, no. 21086/04, §§ 28-29, 16 July 2009).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

In view of the above, it is appropriate to strike this part of the application out of the list.

2. As to the other complaints

As regards the applicant's complaint under Article 6 § 1 of the Convention about the alleged lack of reasoning of the Commercial Court's decision to dismiss a part of her case, having examined all the material at its disposal and assuming the domestic remedies were exhausted, the Court finds that the complaint is wholly unsubstantiated as the domestic court reasoned its decision at length. It therefore concludes that this part of the application is inadmissible for being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

In so far as the applicant complained under Article 1 of Protocol No. 1 to the Convention that she had been deprived of her savings by the unlawful acts of the off-shore bank and the TMSF, the Court notes that the proceedings concerning the applicant's compensation claim are still pending before the Commercial Court. As a result, the complaint is premature and should be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, in so far as it concerns the complaint about the length of the proceedings;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Isabelle Berro-Lefèvre
President