



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

SECOND SECTION

CASE OF BİÇER AND OTHERS v. TURKEY

(Application no. 19441/04)

JUDGMENT

STRASBOURG

20 July 2010

FINAL

20/10/2010

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

In the case of Biçer and Others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos,

Guido Raimondi, *judges*,

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

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 19441/04) 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 five Turkish nationals, Mrs Züleyha Biçer, Mrs Birsan Ergünhan, Mr Ahmet Karaçakıl, Mrs Hacer Dalgıç and Mrs Hayriye Savruk (“the applicants”), on 4 May 2004.

2. The applicants were represented by Ms S.E. Altaş and Mr N. Altaş, lawyers practising in İstanbul. 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 applicants were born in 1933, 1938, 1952, 1948 and 1945 respectively, and live in Balıkesir and İstanbul.

5. On 8 December 1972 the applicants' mother lodged a case with the Gönen Civil Court against the Treasury and the Office of the Headman of the Paşaçiftlik village (muhtarlık), requesting that plots of land nos. 117, 130, 135, 168, 274, 438, 494, 497 and 578 be registered in her name. Six other persons intervened in the case, laying claim to the same plots.

6. On 28 March 1977 the Gönen Civil Court delivered a decision of non-jurisdiction and transferred the case to the Gönen Cadastre Court.

7. On an unspecified date the applicants' mother died. On 24 October 1984 the applicants informed the first-instance court that they wished to become parties to the proceedings, as heirs.

8. On 18 March 2005 the court dismissed the applicants' case and held that the land should have been registered in the name of the interveners' heirs.

9. On 22 June 2006 the Court of Cassation quashed the judgment of the first-instance court.

10. On 4 March 2007 the first-instance court resumed the examination of the case following its remittal by the Court of Cassation.

11. On 28 January 2009 the last hearing was held.

12. According to the information submitted to the case file in June 2009, the proceedings are currently pending before the Gönen Cadastre Court.

THE LAW

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

13. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention.

14. The Government argued that the case was complex.

15. The period to be taken into consideration began on 8 December 1972, when the applicants' mother initiated proceedings before the Gönen Civil Court. The proceedings are still pending before the Gönen Cadastre Court. They have thus lasted well over 36 years.

16. The Court's jurisdiction *ratione temporis* only permits it to consider the period of 23 years that has elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights. It must nevertheless take account of the state of the proceedings at that time (see *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX). On that crucial date, the proceedings had already lasted more than 14 years.

A. Admissibility

17. The Government first submitted that the whole application was outside the Court's competence *ratione temporis*.

18. The Court notes, apart from the considerations above, that it has already dismissed such an objection in its *Şahiner* judgment (cited above, § 16). It finds no particular circumstances in the instant case which would

require it to depart from that finding. Accordingly, the Court rejects this objection.

19. The Government further argued that the applicant could not be considered to have exhausted domestic remedies as the civil proceedings were still pending before the first-instance court.

20. The Court notes that, according to its case-law, complaints concerning the length of proceedings can be brought before it prior to the final termination of the proceedings in question (see, among many others, *Plaksin v. Russia*, no. 14949/02, §§ 34-35, 30 April 2004). Accordingly, the Government's objection regarding non-exhaustion must be dismissed. It further notes that this part of the application is not inadmissible on any other grounds. It must, therefore, be declared admissible.

B. Merits

21. The Government submitted that the length of the proceedings had not exceeded the reasonable time requirement. They argued that the applicants' case had been a complex one, having included several interveners and parcels, whose owners had to be determined. The Government further stated that the conduct of the parties had contributed to the undue delays in the proceedings.

22. The applicants maintained their allegations.

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Ezel Tosun v. Turkey*, no. 33379/02, 10 January 2006). 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 finds that the length of the proceedings is excessive and has failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicants claimed 200,000 euros (EUR) for pecuniary, and EUR 300,000 for non-pecuniary damage.

25. The Government contested these claims.

26. 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 applicants, jointly¹, EUR 15,600 for non-pecuniary damage.

¹ See *Serçinoğlu v. Turkey*, no. 7755/05 § 21-23, 20 October 2009.

27. Furthermore, according to the information submitted by the parties, the proceedings are still pending before the first-instance court. In these circumstances, the Court considers that an appropriate means for putting an end to the violation of Article 6 § 1 of the Convention would be to conclude the civil proceedings in issue as speedily as possible, while taking into account the requirements of the proper administration of justice (see, *mutatis mutandis*, *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007).

28. The applicants claimed EUR 20,000 in respect of the costs and expenses and 68 Turkish liras (TRY)¹ for postal expenses. In support of their claims, the applicants submitted the receipts of legal expenses incurred before the domestic courts and an invoice in respect of postal expenses. The Government disputed these claims. 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 are reasonable as to quantum. In the present case, given the information in its possession and the above criteria, the Court, ruling on an equitable basis, awards the applicants, jointly, EUR 500 in respect of costs and expenses.

29. 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 applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, at the rate applicable at the date of settlement;
 - (i) EUR 15,600 (fifteen thousand six hundred 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 applicants, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

1. Approximately 35 EUR.

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

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President