



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

SECOND SECTION

CASE OF BUHUR v. TURKEY

(Application no. 24869/05)

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 Buhur 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. 24869/05) 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 Mehmet Buhur (“the applicant”), on 9 June 2005.

2. The applicant was represented by Mr S. Güzel, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 30 January 2009 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 was born in 1954 and lives in Diyarbakır.

5. On 4 September 1997 the applicant brought an action before the Diyarbakır Civil Court of First Instance against the National Water Board for compensation for the damage suffered due to a flood.

6. On 12 February 1998 the Diyarbakır Civil Court of First Instance issued a decision of non-jurisdiction.

7. On 25 May 1998 the applicant lodged a case with the Diyarbakır Administrative Court against the National Water Board for compensation.

8. On 12 May 2000 that court dismissed the case.

9. On 5 December 2001 the Supreme Administrative Court upheld the judgment of 12 May 2000.

10. On 14 March 2005 the Supreme Administrative Court dismissed the applicant's rectification request.

THE LAW

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

A. Admissibility

11. The Court observes that, initially having lodged his claim for damages before non-competent civil court, the applicant then initiated proceedings before the competent administrative court in compliance with the domestic law. According to Section 193 of the Code of Civil Procedure, non-competent civil courts in Turkish law do not *ex officio* refer the case to competent administrative courts. The complainant may appeal against the decision of the civil court and subsequently choose to initiate new proceedings before the competent courts. Given that the initiative to introduce new proceedings rested with the applicant, the Court considers that the two sets of proceedings should be examined separately (see, *Çakmak and Others v. Turkey*, no. 53672/00, § 30, 25 January 2005; *mutatis mutandis*, *Rezgui v. France* (dec.), no. 49859/99, 7 November 2000). In this connection, the Court observes that the proceedings before the Diyarbakır Civil Court of First Instance ended on 12 February 1998. The present application was introduced on 9 June 2005. The Court finds, therefore, that this part of the applicant's complaint has been lodged outside the six-month time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

12. The Court concludes that the complaint concerning the length of proceedings before the Diyarbakır Administrative Court 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

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

14. The period to be taken into consideration began on 25 May 1998, when the applicant lodged the action with the Diyarbakır Administrative Court, and ended on 14 March 2005 when the Supreme Administrative Court dismissed the applicant's rectification request. It thus lasted six years and nine months for two levels of jurisdiction.

15. The Court has frequently found violations of Article 6 § 1 of the Convention in cases disclosing comparable lengthy periods before the Supreme Administrative Court (see, for example, *Hayrettin Kartal v. Turkey*, no. 4520/02, § 20, 20 October 2005; *Narin v. Turkey*, no. 18907/02, § 60, 15 December 2009, and *Karakullukçu v. Turkey*, no. 49275/99, § 36, 22 November 2005). Having regard to the overall length of the proceedings, the Court finds no reason to reach a different conclusion in the instant case.

16. In view of the above, the Court finds 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.

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

17. The applicant complained under Article 1 of Protocol No. 1 of the Convention that his right to the peaceful enjoyment of his possessions had been infringed as the court failed to assess the facts of the case correctly while dismissing his compensation request.

18. The Court notes that this complaint essentially concerns the interpretation of the domestic jurisprudence by the national courts and therefore it should be examined under Article 6 § 1 of the Convention (see *Namlı v. Turkey* (dec.), n° 51963/99, 8 March 2005).

19. Having regard to the material in the case file, the Court considers that there is nothing to suggest that the decision reached by the domestic courts was manifestly unreasonable or in any way arbitrary to such an extent as to call into question the adequacy of that court's consideration of the case before it (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

20. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 250,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage. The Government contested these claims.

23. 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.

B. Costs and expenses

24. The applicant also claimed EUR 4,100 for the legal fees, costs and expenses incurred before the Court. In support of his claims, the applicant submitted a time sheet prepared by his legal representative. The Government contested these claims.

25. 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 finds it reasonable to award the applicant EUR 500 in respect of costs and expenses.

C. Default interest

26. 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*
 - (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 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President