



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

SECOND SECTION

CASE OF TAYLAN AND OTHERS v. TURKEY

(Applications nos. 9209/04, 40056/04 and 22412/05)

JUDGMENT

STRASBOURG

14 September 2010

FINAL

21/02/2011

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

In the case of Taylan and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in three applications (nos. 9209/04, 40056/04 and 22412/05) 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 twenty-one Turkish nationals, the names and birth years of whom are listed in the annex. The cases were introduced on 13 February 2004, 10 September 2004 and 15 June 2005 respectively. Ms Zehra Özkan, Ms Yasemin Özkan and Mr Mehmet Özkan in application no. 40056/04 are the heirs of Mr Naci Özkan who passed away on 7 December 2007, after the introduction of the present application before the Court. They subsequently expressed their wish to continue the application before the Court. For practical reasons, Mr Naci Özkan will continue to be referred to as an applicant in this judgment, although his family is now to be regarded as such (see *Ahmet Sadık v. Greece*, 15 November 1996, § 3, *Reports of Judgments and Decisions* 1996-V).

2. The applicant in application no. 9209/04 was not represented by a lawyer before the Court whereas the applicants in application no. 40056/04 were represented by Mr E. Eraslan and Ms G. Gedikoğlu, lawyers practising in Istanbul, and the applicant in application no. 22412/05 was represented by Mr S. Kuş, Mr A. Şahin and Mr H. Eğri, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 17 March 2009 the President of the Second Section decided to give notice of the application no. 9209/04 to the Government. On 16 December 2008 and 26 May 2009 the Court declared the applications nos. 40056/04 and 22412/05 partly inadmissible and decided to

communicate to the Government the complaints concerning the length of the civil and criminal proceedings. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASES

A. *Taylan v. Turkey* (9209/04)

4. The applicant worked for a Turkish company in Libya between 1992 and 1994. Following the termination of his contract by the company the applicant brought civil proceedings before the Libyan courts and requested compensation. On 3 October 1995 the Libyan courts partially awarded the applicant's claims. Upon his return to Turkey the applicant brought the following proceedings before the Turkish courts.

1. Proceedings regarding the recognition of the Libyan court order and damages

(a) Proceedings before an unspecified court

5. Without specifying before which court, the applicant stated that he instituted domestic proceedings on 29 April 1998 for the recognition of the Libyan court order. According to the applicant, these proceedings had later been abrogated. The applicant did not present any document regarding these proceedings.

(b) Proceedings before the Üsküdar 3rd Civil Court

6. On 20 October 1998 the applicant instituted proceedings before the Üsküdar 3rd Civil Court requesting the recognition of the Libyan court order. On 24 March 1999 the Üsküdar 3rd Civil Court rejected the applicant's request. The applicant appealed and on 4 October 1999 the Court of Cassation quashed the decision on the ground that the first instance court did not have jurisdiction. On 29 February 2000 the Court of Cassation further rejected the rectification request. On 29 March 2001 the Üsküdar 3rd Civil Court issued a decision of non-jurisdiction.

(c) Proceedings before the Istanbul 5th Labour Court

7. On 9 April 2001 the applicant requested the proceedings to be referred to the competent labour court. On 10 October 2002 the Istanbul 5th Labour Court held that the case before it concerned the recognition of the Libyan court order, the contents of which were the subject matter of the proceedings pending before the Istanbul 4th Labour Court that the applicant had introduced separately on 20 December 2000. Therefore there was no need to continue the proceedings. The applicant appealed. On 18 September 2003 the Court of Cassation upheld the judgment.

(d) Proceedings before the Istanbul 4th Labour Court

8. On 20 December 2000 the applicant initiated proceedings before the Istanbul 4th Labour Court and requested compensation for the same period that had been examined and concluded by the Libyan court as well as a number of other damages. After holding 24 hearings the Istanbul 4th Labour Court partially awarded the applicant on 31 May 2007. The applicant appealed. The Court of Cassation upheld the judgment on 17 February 2009.

2. Proceedings regarding the payment of five months' salary

9. The applicant also instituted proceedings before the Istanbul 6th Labour Court against the Libyan company and requested the payment of five months' salary. These proceedings which started on 22 April 1999 ended on 5 April 2001 when the court partially upheld the applicant's request. The applicant appealed and the Court of Cassation upheld the judgment on 16 October 2001. The sum awarded was paid to the applicant.

B. *Yücel and Others v. Turkey* (40056/04)

10. In 1986 the applicants brought proceedings before the Çatalca Civil Court and requested additional compensation for their property that had been expropriated. Claiming that the additional compensation amount to be awarded by the court would not have met their actual loss, the applicants later stopped pursuing their case and on 11 August 1994 the court decided not to continue the proceedings. On 9 December 1997 the applicants initiated proceedings before the Büyükçekmece Civil Court and requested determination of the value of the expropriated property and their damages due to the expropriation. The court issued a decision of non-jurisdiction on the ground that the proceedings should have been instituted before the competent administrative court. The applicants' appeal was further dismissed by the Court of Cassation on 12 April 1999.

11. Consequently, the applicants instituted damage proceedings on 21 July 1999 before the Istanbul Administrative Court. On 14 February

2002 the Istanbul Administrative Court dismissed the applicants' claims. Referring to the previous proceedings before the Çatalca Civil Court which the applicants had stopped pursuing, the court declared that the State could not be held liable for the applicants' omission in not following the judicial procedure in due time. The applicants' appeal and rectification requests were rejected by the Council of State on 17 February 2004 and 28 March 2005 respectively.

C. *Nazsız v. Turkey* (22412/05)

12. On 11 December 2002 criminal proceedings were initiated against the applicant and six others who were allegedly involved in a bribery and forgery incident. On 22 October 2003, 12 May 2006 and 24 June 2008 the Çankırı Assize Court convicted the applicant as charged. The Court of Cassation quashed these judgments on 22 February 2005, 16 May 2007 and 16 July 2009. According to the information submitted by the applicant, the proceedings are still pending before domestic courts.

THE LAW

I. JOINDER

13. Given the similarity of the applications as regards the complaints, the Court deems it appropriate to join them.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PROCEEDINGS

14. The applicants alleged 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.

A. Admissibility

15. In respect of the applications nos. 9209/04 and 22412/05 the Government argued that the applicants had not exhausted all domestic remedies. As for the application no. 40056/04 the Government maintained that the proceedings before the Büyükçekmece Civil Court which ended on 12 April 1999 must be declared inadmissible for failure to comply with the six-month rule. The applicants contested these arguments.

1. Exhaustion of domestic remedies

16. The Court notes that it has already examined and rejected this objection raised by the Government in similar cases (see, among others, *Pekinel v. Turkey*, no. 9939/02, §§ 41-43, 18 March 2008). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Consequently, the Court rejects the Government's objection.

2. Compliance with the six-month time-limit

(a) Proceedings before the unspecified court and the Istanbul 6th Labour Court in application no. 9209/04

17. The Court observes that there were two main sets of proceedings in application no. 9209/04; the proceedings before the Istanbul 6th Labour Court concerned the applicant's request for the payment of five months' salary which had not been covered by the Libyan court order whereas the remaining proceedings before the other courts mainly concerned the recognition of the Libyan court order and the damages awarded thereby. The proceedings before the İstanbul 6th Labour Court ended on 16 October 2001 with the final decision of the Court of Cassation. As the present application was lodged on 13 February 2004, the Court notes that this part of the applicant's complaints is lodged outside the six-month time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

(b) Proceedings introduced before non-competent courts in applications nos. 9209/04 and 40056/04

18. The Court observes that, initially having lodged their claim for damages before non-competent civil courts, the applicants then initiated proceedings before the competent labour and administrative courts 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, as was the situation in the present applications, and subsequently choose to initiate new proceedings before the competent courts. Given that the initiative to introduce new proceedings rested with the applicants, the Court considers that the time taken during the proceedings lodged before the non-competent Üsküdar 3rd Civil Court and the Büyükçekmece Civil Court cannot interrupt the running of the six-month time limit in the calculation of the length of proceedings for the applicants' claims (see, *Çakmak and Others v. Turkey*, no. 53672/00, 25 January 2005; *mutatis mutandis*, *Rezgui v. France* (dec.), no. 49859/99, 7 November 2000).

19. The Court observes for application no. 9209/04 that the proceedings before the non-competent Üsküdar 3rd Civil Court ended on 29 March 2001. The present application was introduced on 13 February 2004. As for application no. 40056/04 the proceedings before the Büyükçekmece Civil Court ended on 12 April 1999 with the final decision of the Court of Cassation. As the present application was lodged on 10 September 2004, the Court notes that this part of the applicants' complaints is lodged outside the six-month time-limit and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

3. Admissible complaints

20. The Court concludes that the complaints concerning the length of proceedings as to the recognition of the Libyan court order and the damages awarded thereby in application no. 9209/04 as well as the proceedings before the Istanbul Administrative Court in application no. 40056/04 and before the Çankırı Assize Court in application no. 22412/05, are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

21. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. The Government contested that argument.

22. Given that the applicant in application no. 9209/04 failed to submit any document regarding the proceedings he allegedly started on 29 April 1998 and that he then initiated proceedings before a non-competent court on 20 October 1998, the Court will take 20 December 2000 as the beginning date of the proceedings with regard to the applicant's request for the recognition of the Libyan court order and the damages awarded thereby.

23. The periods to be taken into consideration therefore began on 20 December 1998 for application no. 9209/04, on 21 July 1999 for application no. 40056/04 and on 11 December 2002 for application no. 22412/05. They ended on 17 February 2009 and 28 March 2005 respectively for the first two applications and have not yet ended for the third application. The proceedings thus lasted ten years and two months for application no. 9209/04, five years and eight months for application no. 40056/04 and have already lasted seven years and four months for application no. 22412/05, at two levels of jurisdiction for each application.

24. 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 applicants and the relevant authorities and what was at stake

for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present cases (see *Frydlender*, cited above).

26. 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 cases. Having regard to its case-law on the subject, the Court considers that in the instant cases the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. In his observations on the admissibility and merits, the applicant in application no. 9209/04 further complained under Article 6 of the Convention that the İstanbul 6th Labour Court had erred in the establishment of facts and interpretation of law in its judgment.

28. Even assuming that this complaint was duly raised, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols in the light of all the material in its possession, and in so far as the matters complained of are within its competence. It observes that the applicant's claims had been examined at two levels of jurisdiction. The proceedings were adversarial in nature and the applicant was provided with ample opportunity to state his arguments, to challenge the submissions made by his opponent and to submit whatever he found relevant for the outcome. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant in application no. 9209/04 claimed 99,743 US Dollars (USD) in respect of pecuniary damage. This amount covered his contractual claims in Libya such as his and his family's return expenses to Turkey and various indemnities, as well as the amounts awarded by the Libyan courts and their interests. He further claimed USD 13,480 for non-pecuniary damage and maintained that USD 6,740 of this sum corresponds to the non-pecuniary damage amount awarded by the Libyan courts whereas the remaining USD 6,740 was the amount of non-pecuniary damage he had requested before the domestic courts.

31. The applicants in application no. 40056/04 claimed USD 3,119,965.60 in respect of pecuniary damage. They maintained that this amount corresponds to the value of immovable property on their expropriated land. In the alternative they claimed USD 3,117,283.60 in respect of the expropriation and additional compensation amounts. The applicants further claimed USD 50,000 in respect of non-pecuniary damage.

32. The applicant in application no. 22412/05 claimed 964,860 euros (EUR) in respect of pecuniary damage and EUR 9,035,140 for non-pecuniary damage. EUR 810,110 of the former amount represented the reductions from the applicant's wages and the income as well as his retirement pension he had been deprived of due to removal from his office. The remaining EUR 154,750 represented the costs and expenses which will be examined separately below.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damages alleged; it therefore rejects these claims. On the other hand the Court considers that the applicants must have sustained non-pecuniary damage.

35. In the light of the Court's jurisprudence and ruling on an equitable basis, it awards the applicant in application no. 9209/04 EUR 6,100 and the applicant in application no. 22412/05 EUR 4,100 for their non-pecuniary damage. As for application no. 40056/04 the Court awards EUR 2,000 each to the first eighteen applicants in the attached list (see *Arvanitaki-Roboti and Others v. Greece* [GC], cited above, § 29, and *Kakamoukas and Others v. Greece* [GC]). As for Ms Zehra Özkan, Ms Yasemin Özkan and Mr Mehmet Özkan, the heirs of Mr Naci Özkan who passed away on 7 December 2007, the Court awards them jointly EUR 2,000 (see *Serçinoğlu v. Turkey*, no. 7755/05, § 22, 20 October 2009).

36. Furthermore, having regard to the fact that the proceedings in question in application no. 22412/05 are apparently still pending before the domestic courts, the Court considers that the most appropriate form of redress would be to bring them to a conclusion as soon as possible, whilst respecting the requirements of Article 6 § 1 of the Convention (see *Ali Kemal Uğur and Others v. Turkey*, no. 8782/02, § 45, 3 March 2009).

B. Costs and expenses

37. The applicant in application no. 9209/04 claimed EUR 22,168.50 for the costs and expenses incurred mainly before the domestic courts. He stated that, not having been represented by a lawyer, his expenses for the proceedings before the Court had been related to postal costs, a sum of approximately EUR 100. In support of his claim the applicant submitted, *inter alia*, various receipts concerning domestic proceedings, notification forms of several judgments and a number of postal receipts.

38. The applicants in application no. 40056/04 claimed USD 71,952.86 for their costs and expenses. They maintained that USD 50,000 of this amount corresponded to the period before they were represented by their current lawyers and could not be documented. The remaining USD 21,952.86 was the costs and expenses mainly incurred before the domestic courts and before the Court including transportation, photocopy and postal costs. The applicants submitted a number of receipts and documents in support of the latter claim.

39. The applicant in application no. 22412/05 claimed EUR 154,750 for costs and expenses incurred before the domestic courts and before the Court. In this respect he presented a legal fee agreement of EUR 150,000 but failed to submit any invoice regarding the expenses.

40. The Government contested these claims.

41. 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 considers it reasonable to award the sum of EUR 1,000 to the applicant in application no. 9209/04, EUR 2,000 to the applicant in application no. 22412/05 who presented a legal fee agreement, and EUR 1,000 jointly to the applicants in application no. 40056/04. These amounts cover costs under all heads.

C. Default interest

42. 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the excessive length of the proceedings as to the recognition of the Libyan court order and the damages awarded thereby in application no. 9209/04, the proceedings before the Istanbul Administrative Court in application no. 40056/04, and the proceedings before the Çankırı Assize Court in application no. 22412/05 admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay 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 on the date of settlement:
 - (i) EUR 6,100 (six thousand one hundred euros) to the applicant in application no. 9209/04, EUR 2,000 (two thousand euros) to each of the applicants in application no. 40056/04 except the three heirs of Naci Özkan, EUR 2,000 (two thousand euros) jointly to the heirs of Naci Özkan (namely Zehra Özkan, Yasemin Özkan and Mehmet Özkan), and EUR 4,100 (four thousand one hundred euros) to the applicant in application no. 22412/05 in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 1,000 (one thousand euros) to the applicant in application no. 9209/04, EUR 2,000 (two thousand euros) to the applicant in application no. 22412/05, and EUR 1,000 (one thousand euros) jointly to the applicants in application no. 40056/04, in respect of costs and expenses, plus any tax that may be chargeable to any of them;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

ANNEX

Applicants' List

Vesim Taylan v. Turkey (9209/04)

Vesim Taylan, 1957

Yücel and others v. Turkey (40056/04)

Abdullah Yücel, 1937,
Zarife Çahan, 1939
Cemil Koşar, 1920
Cemal Koşar, 1959
Mehmet Koşar, 1952
Remziye Yönel, 1954
Sakine Bingöl, 1946
Namık Kemal Özkan,
Macide Cediz, 1958
Fatma Müjgan Gündüz, 1951
Esra Coşkun, 1956,
Faruk Ömer Özkan, 1967
Fikriye Özkan, 1954
Funda Özkan Turanlı, 1953
Fatih Özkan, 1978
Uğur Özkan, 1979
Onur Özkan, 1980,
Nazmiye Biten, 1983

Heirs of Naci Özkan
Zehra Özkan, 1939
Yasemin Özkan, 1949
Mehmet Özkan, 1973

Nazsız v. Turkey (22412/05)

Hakkı Nazsız, 1966