



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

THIRD SECTION

CASE OF ÖCAL v. TURKEY

(Application no. 30944/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

10 October 2002

This judgment is final but it may be subject to editorial revision.

In the case of Öcal v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŒ,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 19 September 2002,

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

PROCEDURE

1. The case originated in an application (no. 30944/96) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Abdullah Öcal (“the applicant”), on 28 March 1996.

2. The applicant was represented by Ms Z. Aşçıoğlu, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings for the determination of his title to a piece of land.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 18 January 2000, having obtained the parties' observations, the Court (Third Section) declared the application admissible.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1) . This case was assigned to the newly composed Third Section.

6. On 25 March 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 19 June and on 17 May 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicant inherited a piece of land along with three other persons in Seydişehir. He holds a title deed to the land as a joint owner.

8. In 1976 the authorities conducted a land registry survey in Seydişehir and revised the local plans. Following this revision, the land in question was registered in the Land Registry with the title of six other persons (Zehra Özden and five others: 'the defendants') along with the applicant's and the three other persons' title ('the plaintiffs') as the heirs of Mr Kara Beşe Ahmet Bin-i Ali Efendi (A.E.).

9. On 3 August 1977 the applicant and the three other plaintiffs brought an action in the Seydişehir Civil Court of General Jurisdiction (*Asliye Hukuk Mahkemesi*) against Zehra Özden and five defendants. The applicant and his co-plaintiffs stated that the land in question had belonged to their and the defendants' testator (*muris*), A.E. They alleged, however, that A.E. was not the owner of the land before his death since he had transferred the land to their mother in 1953. In support of this allegation they submitted a title deed dated 21 December 1953 bearing their mother's name as well as invoices indicating that their mother used to pay taxes in respect of the land.

10. The applicant and his co-plaintiffs requested the court to order the revision of the Land Registry and to determine that Zehra Özden and her five co-defendants had no rights to the land since they were not the heirs of their mother. They further asked the court to order that the land in question be registered under their title alone.

11. In the proceedings before the court, three of the defendants acknowledged the applicant's and his co-plaintiffs' claim and agreed that the land should be registered under their title.

12. On 6 November 1978 an expert and a judge, Mr Orhan Gündem, from the Seydişehir Civil Court of General Jurisdiction, conducted a survey of the land.

13. On 4 October 1984 an expert and a judge, Mrs Canan Karcı, from the same court, conducted a second survey of the land.

14. On 12 December 1988 the Seydişehir Civil Court of General Jurisdiction issued a decision finding that it lacked jurisdiction, following the entry into force of Law no. 3402 abolishing the jurisdiction of the Civil Courts of General Jurisdiction on land registry matters.

15. On 26 January 1994 the applicant lodged a petition with the Ministry of Justice complaining that the impugned proceedings lasted unreasonably long.

16. On 14 September 1994 the Seydişehir Chief Public Prosecutor, with reference to the applicant's petition to the Ministry of Justice, sent a letter to the applicant explaining the reasons for the length of the proceedings. He stated that the heavy workload of the court, the change in the composition of the court on sixteen occasions, the resignation or dismissal of the parties'

representatives on three occasions, the death of two of the defendants, the parties' requests for an extension of time-limits on three occasions, the parties' failure to attend the trials and other legal reasons had delayed the proceedings. He further stated that the courts had held seventy-nine hearings and had conducted two surveys of the land.

17. On 17 May 1996 the judge of the Seydişehir Cadastre Court and an expert conducted a third survey of the land.

18. On 20 March 1998 the Seydişehir Cadastre Court dismissed the case brought by the applicant and his co-plaintiffs. The court held that their mother did not have a title to the land since the land to which she had a title was not the same as the land in question. The court ruled that the applicant and his co-plaintiffs were the joint owners of the land in question along with Zehra Özden and her five co-defendants, being the heirs of A.E. The applicant and his co-plaintiffs appealed.

19. On 9 October 1998 the Court of Cassation quashed the Seydişehir Cadastre Court's judgment. The court held that the Seydişehir Cadastre Court had failed to consider that three of the heirs had acknowledged the claim of the applicant and his co-plaintiffs. It ruled that their shares should have been registered with the applicant's and his co-plaintiffs' title. The Court of Cassation remitted the case to the first-instance court.

20. On an unspecified date the Seydişehir Cadastre Court ruled that the applicant's and his co-plaintiffs' shares be registered with their title. The defendants lodged an appeal with the Court of Cassation against this decision.

21. On 8 February 2001 the Court of Cassation upheld the decision of the Seydişehir Cadastre Court.

THE LAW

22. On 17 May 2002 the Court received the following declaration from the Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Turkey offer to pay EUR 10,000 (ten thousand euros) to Abdullah Öcal. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

23. On 19 June 2002 the Court received the following declaration signed by the applicant's representative:

“I note that the Government of Turkey are prepared to pay the sum of EUR 10,000 (ten thousand euros) covering pecuniary and non-pecuniary damage and costs to Abdullah Öcal with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Turkey in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I/the applicant have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment.”

24. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

25. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 10 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President