



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

SECOND SECTION

CASE OF YORGIYADIS v. TURKEY

(Application no. 48057/99)

JUDGMENT

STRASBOURG

19 October 2004

FINAL

30/03/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yorgiyadis v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 28 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 48057/99) 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, Ms Efrosini Yorgiyadis (“the applicant”), on 5 April 1999.

2. The applicant was represented by Mr C. Eren and Ms N. Kepođlu, lawyers practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 January 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the remainder of the application at the same time as its admissibility.

THE FACTS

4. The applicant, Ms Efrosini Yorgiyadis, was born in 1964 and lives in Istanbul.

5. On 25 October 1982 by signing a contract of adoption before a notary public in Bakırköy, Semiramis Gradlekova adopted the applicant. Semiramis Gradlekova died on 18 November 1982. The applicant was left as the only legal heir to her property.

6. On 17 May 1983 the Treasury filed an action with the Şişli First Instance Court in Civil Matters requesting the annulment of the above-

mentioned contract of adoption. The Treasury alleged that the contract did not comply with the necessary requirements and was not therefore a valid contract of adoption. They requested that Mrs Gradlekova's property be transferred to the State.

7. On 3 August 1983 the public prosecutor filed an indictment with the Bakırköy Assize Court accusing the applicant and four other persons of fraudulent misrepresentation and forgery.

8. On 10 October 1983 experts in handwriting analysis produced a report in which they concluded that the signature of Semiramis Gradlekova appearing on the contract of adoption was authentic. The applicant submitted this report to the Şişli First Instance Court in Civil Matters. The court requested the opinion of another group of experts. On 27 November 1985 the second group of experts confirmed the findings contained in the first report.

9. On 17 December 1986 the Şişli First Instance Court in Civil Matters held that the contract satisfied the necessary requirements of a valid contract of adoption and rejected the Treasury's claims.

10. The Treasury appealed. On 20 December 1987 the Court of Cassation quashed the decision of the Şişli First Instance Court. It held that the first-instance court should have adjourned the examination of the case pending the decision of the Bakırköy Assize Court in the criminal proceedings. The applicant requested rectification of the Court of Cassation's ruling. On 17 October 1988 the Court of Cassation rejected her request.

11. On 21 April 1989 the Şişli First Instance Court in Civil Matters decided not to follow the decision of the Court of Cassation. The Treasury lodged an appeal with the Joint Civil Chambers of the Court of Cassation (*Yargıtay Hukuk Genel Kurulu*), which quashed the decision of the Şişli First Instance Court in Civil Matters on 21 February 1990.

12. On 4 February 1991, at the request of the Bakırköy Assize Court, the Forensic Medicine Institute drew up a report which concluded that the signature of Semiramis Gradlekova on the contract of adoption was authentic. However, in a further report dated 28 August 1991 the Forensic Medicine Institute noted that its examination of 4 February 1991 had been based on a comparison between the signature of Semiramis Gradlekova on the contract of adoption and her signature on documents submitted in furtherance of her request for permission to draw up and conclude a contract of adoption. The examination of other materials bearing the signature of Semiramis Gradlekova revealed in fact that the signature on the contract of adoption was not her signature.

13. On 13 May 1992 five experts from the Forensic Medicine Institute prepared another report. According to the experts, the signature of Semiramis Gradlekova on the contract of adoption was not authentic.

14. The applicant sought the opinion of another group of handwriting experts. On 20 May 1993 the experts, a graphologist and two professors, finalised their analysis and drafted a report. According to the experts, the reports submitted by the Forensic Medicine Institute experts were contradictory. In their opinion, the signature of Semiramis Gradlekova on the contract of adoption was genuine.

On 16 July 1993 the Bakırköy Assize Court requested the Forensic Medicine Institute to clarify whether or not the signature of Semiramis Gradlekova on the contract of adoption was authentic. On 10 August 1993 seven experts belonging to the Forensic Medicine Institute, having considered the findings contained in the previous expert reports, concluded that the signature of Semiramis Gradlekova on the contract of adoption was authentic. Five of the experts who signed this report had also signed the report dated 13 May 1992.

15. On 6 September 1993, after requesting several reports from different handwriting experts and from the Forensic Medicine Institute, the Bakırköy Assize Court decided to discontinue the proceedings against the applicant and her co-accused on the ground that the offences of which they were charged had become time-barred since a period of ten years had elapsed since the date of the charges. The court further held that, having regard to the apparent inconsistency between the two reports of the Forensic Medicine Institute dated 13 May 1992 and 10 August 1993, the Bakırköy Public Prosecutor should open criminal proceedings against the five experts who had signed both reports.

16. The applicant lodged an appeal against the decision of the Bakırköy Assize Court. On 7 June 1994 the Court of Cassation rejected the applicant's appeal.

17. On 15 December 1994 the Şişli First Instance Court in Civil Matters held that the expert reports had established that the Treasury had failed to substantiate the allegations of forgery and thus rejected their claim. The Treasury appealed. On 20 April 1995 the Court of Cassation quashed the decision of the Şişli First Instance Court in Civil Matters.

18. On 18 April 1996 the Şişli First Instance Court in Civil Matters decided not to follow the decision of the Court of Cassation. The Treasury lodged an appeal with the Joint Civil Chambers of the Court of Cassation. On 12 March 1997 it quashed the decision of the Şişli First Instance Court in Civil Matters.

19. On 9 December 1997 the Şişli First Instance Court in Civil Matters decided to abide by the decision of the Joint Civil Chambers of the Court of Cassation. On 7 May 1998 the Court of Cassation upheld the decision of the Şişli First Instance Court in Civil Matters.

20. On 15 November 1998 the Court of Cassation rejected the applicant's request for rectification of the judgment.

THE LAW

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

21. The applicant complained that the length of the civil proceedings had been incompatible with the “reasonable time” requirement in Article 6 § 1 of the Convention, which reads as follows:

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

22. The Government disputed this allegation, submitting that the proceedings at issue had not exceeded a reasonable time.

A. Period to be taken into consideration

23. The civil proceedings were initiated on 17 May 1983 and ended on 15 November 1998. The proceedings in total thus lasted almost fifteen years and six months. The intervening criminal proceedings, which began on 3 August 1983 and ended with the Court of Cassation's rejection of the applicant's request for leave to appeal on 7 June 1994, cannot be the subject of a separate complaint under Article 6. However, given the impact of the length of the criminal proceedings on the overall length of the civil proceedings, the Court will have regard to the manner in which the criminal proceedings were conducted from the standpoint of the reasonable-time requirement.

24. Furthermore, the Court's jurisdiction *ratione temporis* only permits it to consider the period of just over eleven years and ten months that 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 (see *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001). It must nevertheless take account of the state of the civil proceedings at the time when the aforementioned declaration was deposited (*ibid*, § 25). On that date the civil proceedings had already lasted almost four years.

B. Admissibility

25. The Court notes that the remainder of the application 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.

C. Merits

26. The Court reiterates that the reasonableness of the length of the civil proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. *Complexity of the case*

27. The Government submitted that the case was complicated as it required the appointment of several experts in order to establish the authenticity of the signature found on the adoption contract. The expert reports gave rise to contradictory findings and this in turn required the domestic courts to seek further evidence.

28. The applicant contested the Government's argument that the case was complicated.

29. Even having regard to the factual dispute over the authenticity of signature on the adoption contract and to the need to have recourse to experts to clarify this matter, the Court considers that the overall length of the proceedings cannot be explained by the complexity of the case alone.

2. *Conduct of the applicant*

30. The Government argued that even though the applicant was entitled to make use of her right of appeal, she in fact appealed on five occasions and thereby prolonged the proceedings for a considerable time.

31. The applicant disputed this assertion and noted that the Treasury for its part had appealed against the judgments of the civil court on four occasions.

32. The Court notes that the applicant cannot be reproached for having made use of her procedural rights. In particular, there is nothing to indicate that she abused appeal procedures or wasted the courts' time with vexatious and purely self-serving motions.

3. *Conduct of the relevant authorities*

33. The Government claimed that there was no delay either on the part of the administration or of the judicial authorities. They maintained that twenty-seven hearings were held in total during the civil proceedings. The longest interval between these hearings was three months. The Şişli First Instance Court delivered five judgments, while the Court of Cassation delivered six and the Joint Civil Chambers of the Court of Cassation delivered four judgments. In total, fifteen judgments were delivered in

fifteen years during both the civil and criminal proceedings. Moreover, the higher courts had required the civil court to adjourn the proceedings pending the completion of the criminal proceedings.

34. The applicant submitted that the criminal proceedings took ten years, nine months and twenty-two days and the civil proceedings took fifteen years, five months and eighteen days in total. She argued that such long periods cannot be considered reasonable in a country where the life expectancy was sixty years.

35. The Court considers that the decision of the Court of Cassation of 20 December 1987 to stay the civil proceedings pending the outcome of the criminal case against the applicant cannot in principle be reproached. That being said, it cannot be overlooked, firstly, that the Şişli First Instance Court had to wait until 7 June 1994, the date on which the criminal proceedings were concluded, before resuming the civil action and, secondly, the criminal proceedings were in fact eventually discontinued since the ten-year prescription period had expired. Even having regard to the contradictory findings of the experts in the criminal proceedings as to the authenticity of the signature on the contract of adoption, it has not been explained to the Court's satisfaction why this issue could not have been resolved sooner. It must be concluded that the civil proceedings were prevented from pursuing their course by the slowness of the criminal proceedings.

36. The Court next notes that, given the failure of the criminal courts to reach any firm conclusion on the authenticity of the signature on the contract, the civil courts had to revert to this matter afresh. It must be observed that a period of almost four years elapsed between the date of the Şişli First Instance Court's first decision in the renewed civil case and the decision of the Court of Cassation finally disposing of the case. It is true that the case was examined at several instances. However, having regard to the date on which the civil proceedings were first initiated, and making an overall assessment, it can only be concluded that those proceedings were not determined within a reasonable time.

37. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant sought an award of 13,122,407.38 US dollars (USD) for pecuniary damage to cover the value of the property at issue, the taxes that she had paid and the expenses that she incurred in respect of the property during the proceedings. Moreover, she requested USD 200,000 in respect of non-pecuniary damage.

40. The Government argued that as the applicant's complaint concerning the alleged violation of her right to property had been declared inadmissible by the Court on 28 January 2003, her pecuniary claims had no causal link with her length of proceedings complaint. Moreover, the applicant's non-pecuniary claim was both unsubstantiated and exorbitant.

41. The Court reiterates that it can only award reparation in respect of its finding that there has been a violation of the Convention as regards the unreasonable length of the proceedings. No causal link has been shown between the violation found under Article 6 and the pecuniary loss alleged. It therefore disallows the applicant's claim. However, it considers that the applicant should be awarded some compensation for non-pecuniary damage since she must have suffered distress and anxiety due to the uncertainty created by the excessive length of the proceedings. Deciding on an equitable basis and having regard to its case-law, the Court awards her a total sum of 7,500 euros (EUR) for non-pecuniary damage.

B. Costs and expenses

42. The applicant claimed USD 2,059,260 for costs and expenses incurred before the domestic courts and USD 686,420 for those incurred in the Convention proceedings.

43. The Government refuted the applicant's claims. They contended that an award of just satisfaction should not cover any legal fees incurred in the domestic proceedings. Furthermore, they maintained that only those costs and expenses that can be proven with reference to supporting documents or bills should be reimbursed.

44. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, applying the principles laid down in its case-law and having regard to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 2,500.

C. Default interest

45. 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 remainder of 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 applicant, within three months from the date on which the judgment becomes final according to 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 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 19 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President