



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

SECOND SECTION

CASE OF NURI ÖZKAN v. TURKEY

(Application no. 50733/99)

JUDGMENT

STRASBOURG

9 November 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 Nuri Özkan 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 R. TÜRMEK,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

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

Having deliberated in private on 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 50733/99) 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, Mr Nuri Özkan (“the applicant”), on 14 May 1999.

2. The Turkish Government (“the Government”) did not designate an Agent for the purpose 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 administrative proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the remainder of the application at the same time.

THE FACTS

4. The applicant was born in 1950 and lives in the district of Kuşadası in the province of Aydın.

5. On 9 June 1989 the Kuşadası District Council (hereinafter “the Council”) and the applicant signed an agreement. By virtue of this agreement the Council unconditionally allocated part of the historic castle in Kuşadası to the applicant to open and run a museum for an indefinite period. On 18 July 1989 the applicant was issued with a special title deed to the property enabling him to open the museum.

6. On 26 May 1990 the museum was opened to the public following the grant of a licence by the Ministry of Culture.

7. On 22 April 1991 the Council annulled the agreement of 9 June 1989 on the ground that the applicant had not signed a protocol with the Mayor of Kuşadası within 15 days from the date of the opening of the museum. Pursuant to such a protocol the applicant would have undertaken to pay the Council 40% of the money generated from the sale of the entrance tickets to visitors to the museum. Items displayed in the museum were removed from the museum by the Council's employees.

8. On 27 June 1991 the applicant brought an action before the Aydın Administrative Court requesting the annulment of the Council's decision of 22 April 1991.

9. On 12 November 1991 the Aydın Administrative Court annulled the decision on the ground that the Council had never informed the applicant about the protocol or warned him about its intention to rescind the agreement. The Council appealed against the decision.

10. On 2 May 1995 the Supreme Administrative Court quashed the Aydın Administrative Court's decision of 12 November 1991.

11. On 28 September 1995 the Aydın Administrative Court acceded to the Supreme Administrative Court's decision and rejected the applicant's request to annul the Council's decision. The court noted that a clause in the initial agreement between the Council and the applicant had stipulated that 40% of the income would be handed over to the Council. The court further observed that the applicant had been reminded by the Council about this clause on 24 May 1990 and had been urged to sign the protocol.

12. On 27 February 1997 the Supreme Administrative Court rejected the applicant's appeal.

13. On 3 April 1997 the applicant applied to the Supreme Administrative Court and requested the rectification of the latter's decision of 27 February 1997.

14. On 23 December 1998 the Supreme Administrative Court refused the applicant's request for rectification.

THE LAW

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

15. The applicant complained that the length of the administrative proceedings had been incompatible with the “reasonable time” requirement provided 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...”

16. The Government contested that argument.

17. The period to be taken into consideration began on 27 June 1991 and ended on 23 December 1998. It thus lasted seven years and six months.

A. Admissibility

18. 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.

B. Merits

19. 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 applicant and 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).

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

21. It is true that the domestic courts delivered five decisions in the proceedings during a period of seven years and six months. However, the Court cannot overlook the fact that a lengthy period - three years and six months - elapsed between the date of the decision of the Aydın Administrative Court (12 November 1991) and the date of the Supreme Administrative Court's determination of the Council's appeal against that decision (2 May 1995). The Government have not offered any explanation for this state of affairs. Failing such an explanation, and in the absence of any indication that the applicant was to blame, the delay must be considered to be attributable to the domestic court's handling of the appeal proceedings. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 50,296,780,000,000 Turkish liras (TRL), equivalent to 29,458,863 euros (EUR), in respect of pecuniary damage. He further requested TRL 1,000,000,000,000 (EUR 584,530) for non-pecuniary damage.

25. The Government contested these claims, considering them excessive.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicant must have suffered non-pecuniary damage, such as distress and frustration, on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant a total sum of EUR 1,800 under this head.

B. Costs and expenses

27. The applicant did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court.

C. Default interest

28. 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, EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement and free of any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President