CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ORMANCI AND OTHERS v. TURKEY

(Application no. 43647/98)

JUDGMENT

STRASBOURG

21 December 2004

FINAL

21/03/2005

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 Ormancı and Others 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. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 27 November 2003 and on 30 November 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 43647/98) 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 five Turkish nationals, Fatma Ormancı, Mehmet Ormancı, Gönül Ormancı, Cengiz Ormancı and Bilgen Ormancı ("the applicants"), on 13 July 1998.

2. The applicants were represented by Mr Dinçer Söğütlü, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Convention institutions.

3. The applicants complained under Article 6 § 1 of the Convention about the length of compensation proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

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

7. By a decision of 27 November 2003 the Court declared the application admissible.

8. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

9. On 1 November 2004 the case was transferred to the newly composed Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants were born in 1952, 1979, 1981, 1983 and 1985 respectively and live in Kahramanmaraş.

11. On 15 April 1991 terrorists raided the applicants' village in Kahramanmaraş and killed the men of the village, including the first applicant's husband and the father of the other applicants, A. O.

12. On 15 April 1992 the applicants brought an action before the Ankara Administrative Court against the Ministry of Internal Affairs, (hereinafter "the defendant"), claiming a breach of the State's responsibility to protect the life and security of its citizens. They requested the court to award them compensation for pecuniary and non-pecuniary damage in respect of A.O's death.

13. On 29 April 1992 the case was notified to the defendant.

14. On 28 May 1992 the defendant submitted its observations to the court. On 16 June 1992 the observations were sent to the applicants.

15. On 22 June 1992 the applicants submitted their response to the observations of the defendant. On 20 August 1992 the applicants' reply was sent to the defendant.

16. On 15 September 1992 the defendant submitted additional observations. They were notified to the applicants on 29 September 1992.

17. On 21 February 1994 the Ankara Administrative Court, after examining the parties' observations, declared itself incompetent *ratione loci* and sent the case file to the Gaziantep Administrative Court.

18. On 10 August 1994 the applicants paid an advance on the court fees.

19. On 22 December 1994 the Gaziantep Administrative Court gave an interim decision in which it requested information from different administrative authorities. The court also appointed an expert to calculate the amount of pecuniary damage the applicants had sustained as a result of the death of A.O.

20. Between 20 and 28 February 1995 documents requested from the Land Registry, the Elbistan Social Aid, the security forces, the Social Security Institution and the Elbistan District Governor's Office were deposited with the court.

21. On 7 March 1995 documents concerning the investigations into the killing of the applicant's husband were sent to the court by the Kahramanmaraş Gendarmerie Command.

22. On 4 April 1995 the court requested the birth records of the Ormancı family from the Elbistan birth registry.

23. On 5 June 1995 the files pertaining to the birth records of the Ormancı family were submitted to the court.

24. On 4 September 1995 the case file was sent to an expert.

25. On 22 September 1995 the expert's report was submitted to the court.

26. On 10 November 1995 the defendant objected to the report.

27. On 19 June 1996 the Gaziantep Administrative Court awarded the applicants compensation for non-pecuniary and pecuniary damage together with interest from the date of the action.

28. On 30 July 1996 the court requested the applicants to pay the fee for the communication of the decision to the parties.

29. On 27 September 1996 the court was informed that the applicants had paid the necessary fee.

30. On 9 December 1996 the defendant appealed to the Supreme Administrative Court against the decision of the Gaziantep Administrative Court.

31. On 13 February 1997 the applicants submitted their observations to the Supreme Administrative Court.

32. On 28 March 1997 the case file was received by the Supreme Administrative Court. The case was allocated to the 10th Division.

33. On 10 November 1997 the public prosecutor at the Supreme Administrative Court gave his opinion.

34. On 10 March 1998 the Supreme Administrative Court upheld the decision of the first-instance court.

35. The applicants were paid the amount awarded to them on 5 November 1997 and 30 April 1998.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. The relevant provision of the Administrative Procedure Code is as follows:

Article 14

Preliminary examination of petitions

"1. Following registration of the petitions ..., they are transferred ...to the competent chambers.

2. ...

3. A rapporteur appointed by the president of the chamber in administrative courts examines the petitions:

a) Jurisdiction and Competence

...

4. ...the examination of the petitions should be concluded at the latest within fifteen days of receiving the petition...

5. If the preliminary examination does not reveal any illegality, the notification procedure shall be undertaken..."

THE LAW

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

37. The applicants complained that the length of the compensation proceedings exceeded the "reasonable time" requirement under Article 6 § 1 of the Convention. The relevant part of Article 6 § 1 provides as follows:

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

38. The Court notes that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable time" requirement laid down by Article 6 § 1 began on 15 April 1992 when the applicants filed their action with the Ankara Administrative Court and ended on 10 March 1998 when the Supreme Administrative Court upheld the judgment of the first-instance court. The period under consideration thus lasted five years and ten months before three instances.

39. The Government submitted that the case was complicated as the domestic courts had to investigate the truth of the allegations, the occupation of the deceased and his income and whether the family had any other income. The Government contended that the applicants prolonged the

proceedings by lodging an application with the Ankara Administrative Court when they should have applied to the Gaziantep Administrative Court pursuant to the provisions of domestic law. They pointed out that the applicants further prolonged the proceedings by not paying the exact amount of the court fees on at least two occasions. Moreover, the proceedings before administrative courts were mainly written and it was time-consuming to collect documents from the relevant authorities. The Government concluded that there was no excessive delay attribuable to the administration or the judicial authorities.

40. 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 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 others, *Sekin and Others v. Turkey*, no. 26518/95, § 35, 22 January 2004, and *Kranz v. Poland*, no. 6214/02, § 33, 17 February 2004).

41. As regards the complexity of the case, the Court does not consider that the case presented any exceptional legal or factual difficulties since the impugned proceedings concerned an action for compensation in respect of the loss sustained by the applicants as a result of the death of A. O. The mere fact that the domestic courts had to investigate the truth of the applicants' allegations is not in itself sufficient to conclude that the case was complex.

42. As regards the conduct of the applicants, the Court considers that the applicants contributed to the prolongation of the proceedings by lodging an action for compensation with the wrong court despite the provisions of domestic law. However, it observes that, according to Article 14 of the Administrative Procedure Code, a preliminary examination of whether a petition has been filed with a competent court is examined *ex officio* by the domestic administrative court within fifteen days of the transfer of the petition to the relevant chamber of that court. The Court points out that, in the present case, it took the Ankara Administrative Court one year and ten months to take a decision of incompetence *ratione loci* after the petition had been submitted to it.

43. Even assuming that the incompetence *ratione loci* of the court only became apparent following the submission of the observations of the parties, the Court observes that the case lay dormant before the Ankara Administrative Court for one year, four months and twenty-four days. In these circumstances, it cannot be concluded that the applicants were responsible for the totality of this delay. In respect of the down payment of the court fees, the Court considers that the applicants were responsible for the prolongation of the proceedings by about five months between

21 February and 10 August 1994 and by one month between 30 July and 27 September 1996.

44. As to the conduct of the domestic authorities, while the Court notes that the Gaziantep Administrative Court's conduct was not beyond reproach, it does not find that the proceedings before this instance warrant a conclusion that there were unreasonable delays in the processing of the case. Nor does it find that there were any excessive delays before the Supreme Administrative Court. However, the Court considers that the period of one year and ten months before the Ankara Administrative Court was unreasonable. The Court notes that, apart from stating that the applicants contributed to the prolongation of the proceedings by filing a petition with the wrong court, the Government's observations do not explain this period of inactivity.

45. Finally, the Court considers that what was at stake for the applicants in the domestic litigation was of considerable importance to them.

46. Consequently, the Court finds that, in the particular circumstances of the instant case and, having regard to the fact that it took one year and ten months for the Ankara Administrative Court to reach a decision of incompetence *ratione loci*, the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with.

47. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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."

49. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

50. In the instant case, on 4 December 2003, after the application was declared admissible, the applicants were requested to submit their claims for just satisfaction. They did not submit any such claims within the specified time-limit.

51. In view of the above, the Court makes no award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President