



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

SECOND SECTION

CASE OF ÇAKMAK AND OTHERS v. TURKEY

(Application no. 53672/00)

JUDGMENT

STRASBOURG

25 January 2005

FINAL

25/04/2005

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 Çakmak 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. TÜRMEK,

Mr K. JUNGWIERT,

Mr M. UGREKHEDIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 23 September 2003 and 4 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 53672/00) 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 two Turkish nationals, Mr Ayhan Çakmak and Mrs Süreyya Çakmak ("the applicants"), on 2 August 1999.

2. The applicants were represented by Mr O.K. Cengiz, a lawyer practising in Izmir. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

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

4. The application was allocated to the Second 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.

5. By a decision of 23 September 2003 the Court declared the application admissible.

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

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed Second Section.

THE FACTS

8. The applicants were born in 1952 and 1959 respectively and live in Izmir.

9. In 1987 the applicants' daughter, C.Ç., was severely injured in an accident. Her hair was burned and part of her scalp was damaged.

10. On 24 November 1992 C.Ç. underwent surgery at the Ege University Plastic Surgery Department to repair the damage to her scalp. Prior to the operation, the doctors informed the applicants about the risks involved. Following the operation, the applicants' daughter caught an infection.

11. On 13 January 1992 the doctors carried out a second operation on C.Ç. following a deterioration of her health. However, her physical appearance did not improve following the operation.

12. On 24 November 1993 the applicants filed an action with the Izmir Civil Court of First Instance against the doctors who performed the operation and claimed compensation for pecuniary and non-pecuniary loss sustained as a result of medical malpractice.

13. On 28 December 1993 the Izmir Court of First Instance issued a decision of non-jurisdiction on the ground that it was not competent to examine the acts of civil servants carried out in the exercise of their duties.

14. On 16 February 1994 the applicants filed an action with the Izmir Administrative Court against the Ege University Medical Department (hereinafter "the defendant") and claimed compensation for medical malpractice.

15. On 8 March 1994 the Izmir Administrative Court conducted a preliminary examination of the case file.

16. On 6 April 1994 the defendant submitted its observations to the court.

17. On 8 July 1994 the applicants submitted their response.

18. On 27 January 1995 the Izmir Administrative Court held a hearing and gave an interim decision ordering the defendant to submit all the files concerning the operation performed on the applicants' daughter.

19. On 20 March 1995 the defendant submitted additional observations.

20. On 7 April 1995 the defendant submitted thirty-seven documents concerning the operation.

21. On 7 November 1995 the Izmir Administrative Court appointed three experts to provide a medical opinion on C.Ç.'s operation. They were given thirty days for submission of their report.

22. On 23 November 1995 the experts' report was submitted to the court.

23. On 18 March 1996 the Izmir Administrative Court, relying on the experts' conclusions, found that there was no indication of any negligence on the part of the Medical Department in the treatment given to C.Ç. The court therefore dismissed the applicants' claim for compensation.

24. On 5 September 1996 the applicants appealed against the judgment of the first-instance court.

25. On 4 October 1996 the defendant submitted its observations to the Administrative Court.

26. On 13 November 1996 the case file was sent to the Supreme Administrative Court together with the applicant's appeal and the defendant's response thereto.

27. On 28 October 1998 the Supreme Administrative Court, without holding a hearing, dismissed the applicants' appeal.

28. On 3 February 1999 the decision of the Supreme Administrative Court was served on the applicants.

THE LAW

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

29. 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 which provides:

“ 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...”

30. 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 16 February 1994 when the applicants filed their action with the Izmir Administrative Court, and ended on 28 October 1998 when the Supreme Administrative Court upheld the judgment of the first-instance court. The period under consideration thus lasted four years and eight months before two instances.

31. The Government submitted that the case was complicated as it raised a number of medical issues which needed to be clarified by medical experts. They contended that there was no delay attributable either to the administrative or judicial authorities.

32. The applicants claimed that the case was not complex since it concerned the determination of a compensation claim. It was noteworthy in this connection that the administrative court required only one hearing and one expert opinion to reach its decision. Moreover, the nature of the case demanded that the proceedings be conducted expeditiously.

33. 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).

34. The Court considers that the case could be considered somewhat complex as it concerned allegations of medical malpractice. However, it also observes that the first-instance court only required one expert opinion to reach its decision and only needed to hold one hearing. For that reason, it is not convinced that the length of the proceedings can be explained by the complexity of the case alone.

35. As regards the conduct of the applicants, the Court observes that it does not appear that they contributed to the prolongation of the proceedings. The Government have not argued the contrary.

36. As to the conduct of the domestic authorities, the Court finds that the Izmir Administrative Court's handling of the case was not beyond reproach, given the existence of several unexplained periods of inactivity, in particular between 8 July 1994 and 27 January 1995, 7 April 1995 and 7 November 1995 as well as between 23 November 1995 and 18 March 1996. Nonetheless, it does not find that the proceedings before this instance warrant the conclusion that the case was processed with unreasonable delay.

37. The Court further notes that the applicants' case lay dormant before the Supreme Administrative Court for a little less than two years after the case-file had been sent to it, together with the parties' observations. The Court has repeatedly held that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. This obligation applies also to higher courts. Nonetheless, when so applied it cannot be construed in the same way as for a first-instance court. Higher courts sometimes have to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case or the urgency it requires. Furthermore, while Article 6 requires that judicial proceedings be conducted expeditiously, it also lays emphasis on the more general principle of the proper administration of justice (see, for example, *Gast and Popp v. Germany*, no. 29357/95, p. 487, § 75, ECHR 2000-II).

38. Accordingly, the Court does not consider that, in the circumstances of the present case, the proceedings before this instance can be said to have exceeded the "reasonable time" requirement (see, *mutadis mutandis*, *Mehmet Kaya and Others v. Turkey*, no. 54335/00, § 25, 24 June 2004, *a contrario*, *Caillot v. France*, no. 36932/97, § 26, 4 June 1999, *Lambourdière v. France*, no. 37387/97, § 32, 2 August 2000, *Domańska v. Poland*, no. 74073/01, § 32, 25 May 2004, and *Nuri Özkan v. Turkey*, no. 50733/99, § 22, 9 November 2004).

39. The Court has also given consideration to what was at stake for the applicants in the domestic litigation. Although the outcome of the case was of importance to them, it nevertheless finds that the length of the proceedings was in the circumstances commensurate with their interest in having a speedy determination of their compensation claim.

40. Having regard to the particular circumstances of the case, and taking into account in particular the overall duration of the proceedings, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was complied with in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 25 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President