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

SECOND SECTION

CASE OF GÜNTER v. TURKEY

(Application no. 52517/99)

JUDGMENT

STRASBOURG

22 February 2005

FINAL

22/05/2005

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 Günter v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
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 16 September 2004 and 1 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 52517/99) 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 Hüseyin Hamit Günter ("the applicant"), on 5 August 1999.

2. The applicant was represented by Ms A.G. Hanyaloğlu, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that the length of the civil proceedings in his cases was not reasonable within the meaning of Article 6 of the Convention.

4. 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.

5. By a decision of 16 September 2004 the Court declared the application partly admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1920 and lives in Istanbul. He is the heir of Mr Mustafa Rıfat Günter and Mrs Rabia Günter.

9. On 27 March 1985 Mr Mustafa Rıfat Günter and Mrs Rabia Günter made an oral will, in the presence of two witnesses, in which they undertook to give the property rights of their house to the *Darülaceze* (the poor people's house in Istanbul) in exchange for life-long support. Following this agreement, they were taken to the *Darülaceze*, where they died on 3 May 1985 and 2 May 1985 respectively.

10. On 7 May 1985 the *Darülaceze* requested the Şişli First Instance Court in Civil Matters to grant probate on Mr and Mrs Günter's will. On the same day the court read out the will and recognised the *Darülaceze* as the legal heir to their property. The decision of the court was notified to the heirs, whose names and addresses were known to the court. The applicant was not personally notified of this decision. However, a further notification was made by way of a newspaper publication for those whose names and addresses were not known to the court.

11. On 29 December 1992 the applicant filed a petition with the Istanbul First Instance Court in Civil Matters requesting the issue of an inheritance certificate (*veraset ilamı*), indicating the legal heirs of Mr and Mrs Günter and determining the individual shares.

12. On 25 May 1993 the applicant brought an action against the *Darülaceze* before the Şişli First Instance Court in Civil Matters, requesting a declaration that Mr and Mrs Günter's oral will was null and void. He claimed that the will did not satisfy procedural requirements as Mr and Mrs Günter had lacked legal capacity due to their old age. The first hearing took place on 14 July 1993. The representative of the applicant requested time to submit the list of evidence.

13. On 10 October 1993 the Treasury filed an action with a different chamber of the same court, also requesting the court to declare Mr and Mrs Günter's will null and void.

14. On 21 October 1993 the applicant submitted his list of evidence to the Şişli First Instance Court in Civil Matters. The court gave time to the *Darülaceze* to submit its list of evidence.

15. On 16 December 1993 neither the applicant nor his representatives attended the hearing. As the *Darülaceze* stated that it did not wish to continue the case, the case was removed from the list. The applicant renewed the case on 28 January 1994.

16. On 14 April 1994 the applicant did not attend the hearing, but instead he sent a letter of excuse.

17. At the hearing on 28 April 1994, the applicant maintained that, as the case initiated before the Istanbul First Instance Court of General Jurisdiction concerning the certificate of inheritance of Mr and Mrs Günter was not

finalised, the court should postpone the case until after the judicial holidays. The court adjourned the hearing until September, considering that the issue of the inheritance certificate was a prerequisite question (*ön mesele)* for the present case.

18. On 20 September 1994 the applicant requested a further adjournment as the case concerning the certificate of inheritance was not finalised.

19. On 27 December 1994 the parties did not attend the hearing. The applicant sent a letter of excuse.

20. At the following two hearings, the applicant requested a further adjournment again because the case concerning the certificate of inheritance was not finalised.

21. On 11 July 1995 the court decided to join the Treasury's case to the applicant's.

22. On 3 October 1995 the court took the statements of one of the two witnesses named by the applicant. The court was unable to find the other witness as her name was misspelled. It corrected the name of the second witness and sent her a summons.

23. At the hearings of 26 December 1995 and 2 April 1996, the court postponed the case as the applicant did not attend but sent a letter of excuse.

24. On 27 June 1996 the second witness named by the applicant gave her statement before the court. As the case concerning the certificate of inheritance was not finalised, the court adjourned to a further date.

25. At the hearings on 5 November 1996 and 29 January 1997, the applicant did not attend, again sending excuses, and informing the court that the case concerning the inheritance certificate was before the Court of Cassation.

26. On 15 April 1997 the applicant submitted the inheritance certificate to the court.

27. On 19 June 1997 the applicant requested the Court to consult with the Forensic Medicine Institute before deciding on the legal capacity of Mr and Mrs Günter. The Forensic Medicine Institute informed the court that the documents in the case-file were insufficient to decide the matter. On 16 October 1997 the court requested the *Darülaceze* to submit all the medical reports concerning Mr and Mrs Günter. On 18 December 1997 the *Darülaceze* informed the court that they did not possess any such documents.

28. On 10 March 1998 the Forensic Medicine Institute drafted a report which concluded that it was impossible to decide the matter on the basis of the current file.

29. On 17 March 1998 the court held that an action for the annulment of a testamentary disposition (*ölüme bağlı tasarruf*) must be lodged within a year of the date on which the claimant becomes aware of the reason for nullity or, in any case, within five years after the will was notified to the heirs. It noted that, although the will of Mr and Mrs Günter was notified to

the heirs on 7 May 1985, the action was not brought by the applicant before 25 May 1993. It therefore concluded that the applicant's case must be dismissed for failure to comply with the statutory time-limit. The applicant appealed.

30. On 8 October 1998 the Court of Cassation upheld the decision of the first instance court. On 15 February 1999 the applicant's request for rectification of the decision was dismissed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

31. The applicant complained that the length of the civil proceedings was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention which, in so far as relevant, 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..."

A. Period to be taken into consideration

32. The civil proceedings were initiated on 25 May 1993 and ended on 15 February 1999. They therefore lasted almost five years and nine months before three court instances.

B. Applicable criteria

33. 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).

C. The Court's assessment

34. The Government disputed this allegation, submitting that the proceedings at issue had not exceeded a reasonable time. They submitted that the applicant's case was a complicated inheritance dispute. There were three parties to the case: the applicant, the Treasury and the *Darülaceze*.

There were other proceedings pending at the same time concerning the same inheritance (paragraphs 11 and 13). The domestic court had to wait for the outcome of these proceedings.

35. They further argued that the length of the proceedings was caused by the applicant's conduct since he did not attend all the hearings and he requested several adjournments in order to await the outcome of the proceedings concerning the certificate of inheritance. They therefore concluded that there were no delays attributable to the judicial authorities.

36. The applicant disputed the Government's contention.

37. The Court observes that the case concerned the applicant's attempts to have Mr and Mrs Günter's will annulled due to their alleged lack of legal capacity. It notes that, despite the factual dispute on this point which required expert evidence, the proceedings were neither complex nor required a thorough investigation.

38. As regards the conduct of the applicant, the Court observes that he failed to appear at several hearings and asked for adjournments. However, these incidents occurred whilst the certificate of inheritance was awaited, which the court considered a prerequisite (paragraph 17 above). The case could not therefore have been decided until the certificate had been issued. Accordingly, the applicant cannot be said to have contributed to the length of the proceedings.

39. As to the conduct of the authorities, the Court first notes that it took over four years and six months for the judicial authorities to issue the required certificate of inheritance. Furthermore the court did not take any significant action until the applicant was able to submit that certificate. It was only then that the court decided to consult the Forensic Medicine Institute for their opinion on the legal capacity of Mr and Mrs Günter (paragraph 27 above). It further observes that, at the end of the proceedings which lasted nearly six years, the case was dismissed on a simple formality - a failure to comply with the statutory time-limit (paragraph 29 above).

40. In the light of these circumstances, the Court finds 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

41. 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."

42. In a Registry letter dated 21 September 2004 informing the applicant that his application had been declared admissible, the applicant was

requested to indicate his claims for just satisfaction. However, he did not do so. Therefore, the Court makes no award under this provision.

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 22 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. Costa
President