



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

SECOND SECTION

CASE OF EZEL TOSUN v. TURKEY

(Application no. 33379/02)

JUDGMENT

STRASBOURG

10 January 2006

FINAL

10/04/2006

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 Ezel Tosun 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. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 6 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 33379/02) 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 Ezel Tosun (“the applicant”), on 22 July 2002.

2. The applicant was represented by Mr Tüfek, Mr Ahmetođlu and Ms Ünal, lawyers practising in Bursa. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 7 October 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the applicant’s right to the peaceful enjoyment of her possessions. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant lives in Ankara.

5. In 1973 the authorities conducted a land registry survey in Mudanya and revised the local plans. Following this revision, 25 plots belonging to the applicant were registered in the Land Registry under the title of 23 other persons. In June 1973 the applicant challenged this decision and applied to the Land Registry Council to have this decision annulled. However, on 26 May 1974 the Council rejected the applicant’s request.

6. On 20 June 1974 the applicant brought an action in the Mudanya Land Registry Court against 23 defendants. She alleged that the land in dispute had belonged to her before the revision, and requested that the records in the Land Registry be corrected.

7. In 1982 the case was transferred to the Mudanya Cadastre Court.

8. On 14 May 2002 the Mudanya Cadastre Court rejected the applicant's claims.

9. On 25 March 2004 the Court of Cassation quashed the judgment of the Mudanya Cadastre Court.

10. The proceedings are still pending before the Mudanya Cadastre Court.

THE LAW

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

11. The applicant complained that the length of the proceedings was incompatible with the "reasonable time" requirement of 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..."

12. The Government argued that the case was complex.

13. The period to be taken into consideration began on 20 June 1974, when the applicant initiated proceedings before the Mudanya Land Registry Court. The proceedings are still pending before the Mudanya Cadastre Court. They have thus lasted well over 31 years.

14. The Court's jurisdiction *ratione temporis* only permits it to consider the period of 18 years that has 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. It must nevertheless take account of the state of the proceedings at that time (see *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001 IX). On that crucial date, the proceedings had already lasted more than 12 years.

A. Admissibility

15. The Government first submitted that the application was outside the Court's competence *ratione temporis*.

16. The Court notes that it has already dismissed such an objection in its *Şahiner* judgment (cited above, § 21). It finds no particular circumstances in

the instant case which would require it to depart from that finding. Accordingly, the Court rejects this objection by the Government.

17. The Government further asked the Court to dismiss the application for failure to exhaust domestic remedies, under Article 35 § 1 of the Convention. They maintained that the applicant should have complained to the national authorities prior to her application to the Court. They stated that at no stage of the domestic proceedings did the applicant question their length.

18. The Court reiterates that the obligation to exhaust domestic remedies requires only that an applicant make normal use of effective and sufficient remedies that are capable of remedying the situation at issue and affording redress for the breaches alleged (see *Karashev v. Finland* (dec.), no.31414/96, ECHR 1999-II.)

19. The Court observes that the Turkish legal system does not provide any remedies to accelerate proceedings. Nor does it award any compensation for delays in the proceedings. Accordingly, the Court concludes that there was no appropriate, effective remedy which the applicant should have exercised for the purposes of Article 35 § 1 of the Convention (see *Hartman v. the Czech Republic*, no.53341/99, § 69, 3 December 2003). It therefore rejects the Government's objection.

20. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. 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).

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

23. In the present case, the proceedings have been pending before the national courts since 1974; i.e. for more than thirty one years. During this time, the domestic courts have delivered only two decisions. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

25. The applicant further complained that the length of the proceedings had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

26. The Government argued that the applicant did not have the status of a victim in respect of her complaint. They maintained that, as the proceedings were still pending before the domestic court, it was not established whether or not the applicant was the owner of the disputed land.

27. The Court notes that this complaint is closely linked to the one examined above and must therefore likewise be declared admissible.

28. However, having regard to its finding of a violation of Article 6 § 1 (see paragraph 24 above), the Court does not consider it necessary to examine the merits of this complaint separately (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 15,000 US Dollars (the equivalent of 12,820 euros – EUR) in respect of pecuniary damage and USD 10,000 (EUR 8,545) in respect of non-pecuniary damage.

31. The Government contested these claims.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it 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 full sum claimed – EUR 8,545 - in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed USD 15,000 (EUR 12,820) for her lawyers' fees and USD 300 (EUR 256) for the costs and expenses incurred before the Court.

34. The Government contested these claims.

35. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 under this head.

C. Default interest

36. 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* that no separate issue arises under Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,545 (eight thousand five hundred and forty-five euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, which sums are to be converted into New Turkish liras at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President