



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

FIRST SECTION

CASE OF LATİF FUAT ÖZTÜRK AND OTHERS v. TURKEY

(Application no. 54673/00)

JUDGMENT

STRASBOURG

2 February 2006

FINAL

02/05/2006

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 Latif Fuat Öztürk and Others v. Turkey,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr R. TÜRMEEN,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 54673/00) 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 a Turkish national, L.F.Ö, on 26 November 1999. The applicant subsequently agreed to the disclosure of his name.

2. By a letter of 6 April 2004, the Registry was informed of the death of the applicant, Mr Latif Fuat Öztürk on 23 November 2003. His wife, Mrs Kevser Öztürk, and his children, Mr İnsan Tuğaç Öztürk, Mr Cihangir Öztürk, Mr Mehmet Tamer Öztürk, Ms Zerrin Öztürk, Mrs Zaide Berrin Öztürk (Kutluk), and Mrs Mukadder Öztürk (Şeker) declared their intention to pursue the application.

3. The applicant’s heirs were represented by Mr Vahit Özsoy, a lawyer practising in Izmir. The Turkish Government did not designate an Agent for the purpose of the proceedings before the Court.

4. The applicant complained that the length of civil proceedings exceeded the reasonable time requirement of Article 6 § 1 of the Convention.

5. On 13 June 2002 the Court decided to communicate the application to the respondent Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

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

7. The applicant and the Government each filed observations on the admissibility and merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1930 and was living in Izmir. Following his death on 23 November 2003, his wife and children on 6 April 2004 expressed their intention to pursue the application.

9. On an unspecified date, the applicant had signed contracts with the Izmir Municipality concerning a road construction. While the construction was in progress, the Municipality annulled the contracts by decisions of 2 and 5 April 1984.

10. By a judgment of 16 March 1992, the Izmir Commercial Court decided that the cancellations of the contracts were unlawful and therefore invalid.

11. On 2 October 1992 the applicant approached the Municipality and requested that it followed the court order. By a letter of 20 November 1992, the Municipality declined the applicant's request.

12. On 4 March 1993, relying on the judgment of 16 March 1992, the applicant brought an action against the Municipality before the Izmir Commercial Court claiming compensation for the damages he incurred on account of the annulment of the contract.

13. On 12 October 1993, the court appointed an expert commission in order to determine the amount of the damage incurred by the applicant. On 3 May 1994 the expert report was admitted to the case-file, and the Court decided that the report should be communicated to the parties following payment of the experts' additional fee by the applicant.

14. On 1 June 1994 the applicant disputed the conclusions of the expert report regarding the suggested sum and requested a new report.

15. At the hearing of 15 December 1994 the lawyers of the Municipality failed to appear before the court. Following the hearing, the court issued a letter to the Izmir 2nd Commercial Court asking the latter to transfer the case-file concerning the cancellations of the contracts. On 7 March 1995 the parties were granted time to comment on this file.

16. On 7 July 1995 the court changed its composition and the case-file was deposited with the new panel of judges for examination.

17. At the hearing of 18 July 1995, the lawyers of the parties failed to appear before the court. The court decided to obtain an additional report from the experts as both parties had disputed the previous report.

18. Six hearings were held between 16 November 1995 and 16 May 1997. On that date the court noted that the case-file had not been transmitted to the experts in order them to submit an additional report. The court also noted that the failure to obtain an additional report was due to the fact that one of the experts could not be reached and thus a commission be formed. The parties requested that a new expert commission be appointed. Accordingly, the court designated a new expert commission of three experts to this end.

19. On 23 December 1997 the court acknowledged receipt of the second report and it was communicated to the parties in order for them to comment on it.

20. On 30 April 1998 the court accepted the applicant's claim in part and ordered that the Municipality pay him a certain amount of money.

21. On 3 September 1998 the applicant appealed to the Court of Cassation against the judgment of the first-instance court.

22. On 14 December 1998 the Court of Cassation, upholding the judgment, rejected the applicant's appeal. The applicant was notified of this decision on 12 February 1999.

23. On 26 February 1999 the applicant requested rectification of this decision. On 7 June 1999 the Court of Cassation rejected the request for rectification.

24. This final decision was served on the applicant on 29 July 1999.

THE LAW

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

25. The applicant complained that the length of the 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..."

A. Admissibility

26. The Government submitted that the case should be struck out of the Court's list of cases on the ground that the applicant's widow and children were not affected of the alleged violation, and thus they could not claim to be victims within the meaning of Article 34 of the Convention.

27. The Court notes that the applicant died on 3 November 2003. On 6 April 2004 his wife and children expressed their wish to continue the application. The Court reiterates that in a number of cases in which an applicant died in the course of the proceedings it has taken account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court. In the present case, the Court considers that, apart from explicitly expressing their wish to do so, the widow of the applicant and his children have sufficient legitimate interests in obtaining a ruling that the proceedings against their relative have lasted for an excessive period in breach of Article 6 § 1 of the Convention.

Consequently, the Government's objection that the case to be struck out should be rejected (see, among many others, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI).

28. The Government further argued that the application be rejected for failure to comply with the six-month rule. In this respect they maintained that the applicant should have lodged his application within six months from the date on which he was notified of the decision of the Court of Cassation whereby it rejected his request for appeal and upheld the decision of the first-instance court, namely on 12 February 1999.

They further maintained that the applicant failed to comply with the requirement of exhaustion of domestic remedies under Article 35 of the Convention as he did not invoke his complaint about the length of the proceedings before the domestic courts prior to his application to the Court.

29. The Court reiterates that the present case concerns civil proceedings, and that the remedy of rectification of judgments in Turkey constitutes an effective domestic remedy within the meaning of generally recognised international law principles (see *Molin İnşaat v. Turkey*, no. 23762/94, Commission decision of 7 September 1995). Thus, the date of notification of the Court of Cassation's decision upon appeal cannot be taken as the starting point for the determination of the six-month time-limit. In the present case, it started running from the date the applicant was notified of the outcome of his request for rectification, namely on 29 July 1999. The Government's objection of the non-compliance of the six-month rule should therefore be rejected.

30. The Court further reiterates that it has already examined similar preliminary objections of the Government in respect of the non-exhaustion of domestic remedies and has rejected them (see, among others, *Mete v. Turkey*, no. 39327/02, § 19, 4 October 2005).

31. In light of the foregoing, the Court considers that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

32. The Court notes that the period to be taken into consideration began on 4 March 1993 and ended on 7 June 1999, when the Court of Cassation rejected the applicant's request for rectification. It thus lasted nearly six years and three months, a period during which the first-instance court and the Court of Cassation delivered one and two decisions respectively.

33. The Government submitted that the length of the proceedings had not exceeded the reasonable time requirement. They argued that the

applicant's case was a complex one, which required technical expertise on the calculation of damages. The conduct of the parties had contributed to the prolongation since they were requesting adjournments and repeated expert reports.

34. The applicant maintained his allegations.

35. 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).

36. The Court considers that the present case was not particularly complex. As regards the applicant's conduct, there is no indication in the case-file that he contributed noticeably to the length of the proceedings. In so far as the conduct of the judicial authorities is concerned, the Court observes that the case was examined in two levels of jurisdiction concerning three sets of proceedings. It is true that although the court ordered an additional expert report on 18 July 1995 as both parties had disputed the previous report, it was not until 16 May 1997, i.e. almost two years later, that the court acknowledged that the additional expert report was impossible to obtain since an expert commission could not be formed (see paragraphs 19 and 21 above). The Court cannot overlook this lengthy period of inactivity.

37. The Court notes that although there were no substantial delays before the appeal proceedings, the proceedings before the first-instance court lasted more than five years. In the absence of a plausible explanation from the Government for this delay, or 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 proceedings (see, *mutatis mutandis*, *Günter v. Turkey*, no. 52517/99, 22 February 2005, *Nuri Özkan v. Turkey*, no. 50733/99, § 21, 9 November 2004).

38. In light of the foregoing and having regard to its case-law on the subject, the Court considers that the total length of the proceedings (in particular the period of more than five years before the first-instance court) cannot be considered to have complied with the "reasonable time" requirement.

39. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed approximately 214,000 US dollars in respect of pecuniary and non-pecuniary damage.

42. The Government contested the claim.

43. 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 considers that the applicant must have sustained non-pecuniary damage, such as distress, on account of the duration of the proceedings. Ruling on an equitable basis, it awards him EUR 3,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* 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 heirs of the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable 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 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 2 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President