



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

THIRD SECTION

CASE OF BAHÇEYAKA v. TURKEY

(Application no. 74463/01)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

13/10/2006

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 Bahçeyaka v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 22 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 74463/01) 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 Feriřtah Bahçeyaka, on 8 June 2001.

2. The applicant was represented by Mr E. Kuloğlu, a lawyer practising in Aydın. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 14 June 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the applications at the same time.

4. The applicant and the Government each filed observations on the admissibility and the merits.

THE FACTS

5. The applicant was born in 1958 and lives in Wesel, Germany.

6. On 12 February 1980 the applicant and her husband established a joint bank account with a German bank.

7. On an unspecified date, the applicant’s husband withdrew all of the money from their joint account without the applicant’s consent and placed it into another account in a Turkish bank.

8. On 23 October 1992 the applicant filed an action with the Aydın Civil Court of first-instance to recover half the money that her husband had withdrawn from their joint bank account.

9. On 14 September 1999 the Aydın Civil Court of first-instance dismissed the applicant's case on the ground that she had failed to substantiate her claims. The court reasoned that the applicant had not furnished any bank document, such as receipts indicating withdrawal of money, capable of supporting her allegations. It also noted that the documents kept by the bank had been destroyed at the end of six years' retention period and that therefore there was no document available on which to conclude that the applicant was right in her assertions.

10. On 27 December 1999 the applicant appealed.

11. On 5 April 2000 the Court of Cassation dismissed the applicant's request for appeal. It opined that the applicant had failed to prove that her husband had withdrawn all the money from their joint bank account and placed it into another bank account.

12. On 16 November 2000 the Court of Cassation dismissed the applicant's request for rectification.

13. On 15 December 2000 the Court of Cassation's decision was served on the applicant.

THE LAW

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

14. The applicant complained that the length of the proceedings at issue 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

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

16. The Court notes that the period to be taken into consideration began on 23 October 1992 and ended on 16 November 2000, when the Court of Cassation dismissed the request for appeal. The proceedings lasted approximately eight years before three levels of jurisdiction.

17. The Government maintained that the case was of a complex nature given that the first-instance court had to examine all the evidence provided by the parties. Upon the applicant's request, the court had asked the Ministry of Justice to obtain the affidavits of a number of witnesses living in Germany. After receiving the statements, the court had asked their translation into Turkish. Furthermore, the applicant had contributed to the length of the proceedings in question since she had failed to attend eight hearings. The Government therefore concluded that there were no delays attributable to the judicial authorities.

18. 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 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

19. As regards the conduct of the applicant, the Court observes that, it does not appear from the case-file that she contributed to the prolongation of the proceedings.

20. As to the conduct of the authorities, the Court observes that there is a substantial delay at the proceedings before the first-instance court. In this connection it points out that the first-instance court took more than six years to render a decision on the case. During this period, the court requested information from the authorities and suspended the hearings in order to wait for their replies. The authorities had failed to deal with the case diligently and had caused a substantial delay. In the Court's opinion, six years before one instance is an excessively long period which cannot be justified with reference to the considerations of complexity. The Court therefore considers that no convincing justification for these excessive delays had been offered by the respondent Government.

21. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

23. The applicant further complained that there had been no effective remedy in domestic law whereby she could challenge the excessive length of the civil proceedings in question. She relied on Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

24. The Government submitted that the applicant had filed an action for her pecuniary damage raised from a civil dispute. However, her case had been dismissed by the national courts. They submitted that the effectiveness of a remedy for the purposes of Article 13 did not entail the certainty of a favourable outcome for the applicant.

25. The Court notes that this objection is closely linked to an examination of the merits of the complaint, thus it joins it to the merits.

B. Merits

26. The Court observes that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time.

27. For the purposes of Article 13, it is necessary to determine in each case whether the means available to the applicant in domestic law are “effective” in the sense that they either prevent an alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, §§ 156-158, ECHR 2000-XI). Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigants with adequate redress for delays that have already occurred (see *Hartman v. Czech Republic*, no. 53341/99, § 81, ECHR 2003-VIII (extracts)).

28. The Court observes that the Turkish legal system does not provide any remedy to accelerate the proceedings or to provide litigants with adequate redress for the delays that have already occurred. In the present case, the applicant did not have personal rights to compel any other authority to exercise its supervisory jurisdiction over the trial court to expedite the proceedings (see *Hartman*, cited above, § 66).

29. The Court therefore concludes that Turkish law does not provide an effective remedy whereby the applicant could have contested the length of the proceedings.

30. There has accordingly been a breach of Article 13.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant complained under Article 17 of the Convention and Article 1 of Protocol No. 1 that the national courts had abused her rights and unjustly denied awarding her the amount of money that she had had requested. She further submitted under Article 5 of Protocol No. 7 that the decisions of the national courts were in violation of her right to equality between spouses.

32. The Government contended that the applicant's complaints under Article 17 of the Convention and Article 1 of Protocol No.1 did not raise any separate issue apart from her complaints under Articles 6 and 13 of the Convention. The Government further maintained that Turkey had not ratified Protocol No. 7 and that therefore the applicant's complaint under this heading should be declared inadmissible.

33. As to the applicant's complaint under Article 17 the Court notes that the applicant has failed to substantiate her allegation and to lay the basis of an arguable claim of a breach of Article 17 of the Convention.

34. As to the applicant's complaint under Article 1 of Protocol No. 1 the Court reiterates that the future income constitutes a "possession" only if the income has been earned or where an enforceable claim to it exists (see *Ian Edgar (Liverpool) Ltd v. the United Kingdom* (dec.), no. 37683/97, ECHR 2000-I, p. 475; *Alfredo Casotti and Others v. Italy*, no. 24877/94, Commission decision of 16 October 1996, Decisions and Reports (DR) 87-A, p. 63; *Storksén v. Norway*, no. 19819/92, Commission decision of 5 July 1994, DR 78-A, p. 89). Having regard to the facts and documents submitted by the applicant, the Court observes that the applicant did not have a "possession" within the meaning of Article 1 of Protocol No. 1 since she was not awarded the amount of money that she had claimed.

35. In the light of the above considerations, the Court concludes that the complaints under Article 17 of the Convention and Article 1 of Protocol No. 1 are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

36. As regards the applicant's complaint under Article 5 of Protocol No. 7 the Court notes that Turkey has not ratified this Protocol. It follows that the applicant's complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 200,000 German marks (DM), [EUR 102,258], in respect of pecuniary damage. She further claimed a total of 20,000 Euros (EUR) for non-pecuniary damage.

39. The Government contested this claim.

40. The Court considers that there is no causal link between the violation found and the pecuniary damage claimed before the Court. However, the Court considers that the applicant must have sustained non-pecuniary damage. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 3,400 under that head.

B. Costs and expenses

41. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and the Court.

42. The Government contested this claim too.

43. On the basis of the material in its possession and having regard to the details of the claims submitted by the applicant the Court awards the applicant EUR 1,000 for the cost and expenses.

C. Default interest

44. 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 complaints concerning the excessive length of the proceedings and the lack of effective remedy before a national authority admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
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, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 3,400 (three thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;

- (iii) any taxes that may be chargeable on the above amounts;
- (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 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President