CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF TAMAR v. TURKEY

(Application no. 15614/02)

JUDGMENT

STRASBOURG

18 July 2006

FINAL

18/10/2006

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 Tamar 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. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Regisrar*,

Having deliberated in private on 27 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 15614/02) 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, Mr Mehmet Tamar, on 2 April 2002.

2. The applicant was represented before the Court by Mr Y. Baysal, a lawyer practising in Istanbul. In the instant case, the Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 13 May 2004 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 application at the same time.

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

5. 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).

THE FACTS

6. The applicant was born in 1944 and lives in Istanbul.

7. The applicant and his brother are the only successors of their mother, who died in 1983. The applicant's mother was the co-owner of certain plots of land in Eminönü, Istanbul. Following her demise, the applicant had conflicts with his brother regarding the distribution of her estate.

8. On 28 December 1994 the applicant initiated civil proceedings against his brother before the Üsküdar Civil Court and claimed pecuniary damage resulting from the unjust distribution of his mother's estate.

9. On 6 March 2003 Üsküdar Civil Court requested the registry records of the title deeds to the land in question from the Eminönü Land Registry.

10. On 17 December 2003, in order to establish the prevailing market value of the plots, the court appointed a committee of experts to conduct an evaluation study on location and submit reports to the court.

11. On 6 May 2004 the committee of experts conducted this study and submitted a report to the court.

12. On 13 May 2004 as the applicant and his brother had reached a settlement, after holding fifty-five hearings, the Üsküdar Civil Court ordered the defendant to pay 500,000,000 Turkish liras to the applicant, together with the interest accruing from 28 December 1994.

THE LAW

13. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention. He further complained of the fact that in Turkey there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

14. The aforementioned Convention provisions read as follows:

Article 6

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

Article 13

"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."

I. ADMISSIBILITY

15. The Court considers that these complaints raise 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.

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

16. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

17. The period to be taken into consideration began on 28 December 1994 and ended on 13 May 2004. It has thus lasted nine years and four months for one level of jurisdiction.

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

19. Having examined all the material submitted to it and 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.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

21. The applicant complained under Article 13 of the Convention that in Turkey there was no court to which application could be made to complain of the excessive length of proceedings.

22. The Government stated that the applicant could have filed a complaint with the Public Prosecutor or directly to the Ministry of Justice against the judge before the Üsküdar Civil Court if he had not fulfilled his obligations. They submitted that, after such complaint, an inspector is nominated to examine the file and, if there is negligence, the judge would be liable to a disciplinary punishment. The Government contended that, for this reason, the applicant cannot be considered to have exhausted domestic remedies.

23. The Court reiterates that Article 13 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see among many other authorities, *Bouilly v. France (no. 2)*, no. 57115/00, § 22, 24 June 2003, and *Granata v. France (no. 2)*, no. 51434/99, §§ 36-37, 15 July 2003) and sees no reason to reach a different conclusion in the present case.

24. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a clear remedy under domestic law whereby the applicant could have obtained

a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court considers that the applicant must have sustained some non-pecuniary damage. Having regard to the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 6,000 under this head.

B. Costs and expenses

29. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts and the Court.

30. The Government contested the claim.

31. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and they 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 global sum of EUR 1,500 under this head.

C. Default interest

32. 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 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, together with any tax that may be applicable, to be converted into New Turkish liras at the rate applicable on the date of settlement:
      (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
   (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 18 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President