



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

FIFTH SECTION

CASE OF NALBANT v. TURKEY

(Application no. 61914/00)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

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 Nalbant v. Turkey,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 61914/00) 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, Mr Mahmut Nalbant, on 7 August 2000.

2. By a letter of 15 August 2005, the Registry was informed of the death of the applicant, Mr Mahmut Nalbant on 28 March 2005. His wife, Mrs Selime Nalbant, and his children, Mehmet Nalbant, Münevver Bozdemir and Havva Nalbant Tekin, declared their intention to pursue the application (“the applicants”).

3. The applicants were represented by the fourth applicant, Mrs Havva Nalbant Tekin, a lawyer practising in Tekirdağ. The Turkish Government did not designate an Agent for the purpose of the proceedings before the Court.

4. On 12 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning length of the civil proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The application was initially introduced by Mahmut Nalbant who was born in 1936 and was living in Kırklareli. Following his death on 28 March 2005, his wife and his children (hereinafter “the applicants”) expressed their intention to pursue the application on 15 August 2005. The applicants were born in 1943, 1961, 1963 and 1973 respectively. Selime Nalbant, and Mehmet Nalbant live in Kırklareli and Münevver Bozdemir and Havva Nalbant Tekin live in Tekirdağ.

7. In 1927 Mahmut Nalbant’s father arrived as an immigrant from Bulgaria. The applicants allege that in 1934 Mahmut Nalbant’s father was given, together with other people, plot no. 4086 for settlement (*iskan*). However, the plot of land was not registered in their names in the Land Registry.

8. On 13 September 1961 the Land Registry Commission (*Tapulama Komisyonu*) attached to the General Directorate of Land Registration (*Tapu ve Kadastro Genel Müdürlüğü*) conducted a land registry survey (*tapulama tespiti*) and considered that the plot of land (“plot no. 4086”) in the Evrensekiz village should be registered in the name of the Treasury.

9. On an unspecified date twenty-eight complainants objected to the results of the survey. It is to be noted that Mahmut Nalbant does not figure in the list of complainants. The applicants claimed that he was not notified of this decision.

10. On 20 November 1970 the Land Registry Commission declared that it lacked competence *rationae materie* and transferred the case to the Cadastre Court. The latter sent the case-file to the Land Registry Commission and on 3 September 1971 the Land Registry Commission dismissed the objections of the complainants.

11. In 1972 twenty-six persons including Mahmut Nalbant (hereinafter “the plaintiffs”) filed an action with the Lüleburgaz Cadastre Court and requested the latter to set aside the decision of the Land Registry Commission. The date of petition submitted by Mahmut Nalbant is 8 August 1972.

12. On 9 November 1978 the proceedings before the Lüleburgaz Cadastre Court commenced.

13. On 3 February 1981 the court requested the Kırklareli Land and Settlement Directorate to investigate whether any plots of land were given as settlement in the Evrensekiz village and if so, whether the names of the plaintiffs figured in the registries.

14. On 20 May 1981 the Kırklareli Land and Settlement Directorate informed the court that only three families figured in the settlement records as having been given a settlement in the Evrensekiz village.

15. On 10 July 1981, 14 October 1981 and 23 November 1981 the Kırklareli Land and Settlement Directorate informed the court that the names of the plaintiffs did not figure in any of the registers relating to settlement.

16. On 31 May 1983 the court conducted an onsite inspection. According to the experts' report of 6 June 1983, the impugned land together with plot no. 3584, 3585 and 3587, was divided into twenty-nine parts, on which the plaintiffs were farming. Mahmut Nalbant was using 16000 square metres of this land.

17. On 7 May 1993 the court conducted an onsite inspection. On 14 May 1993 an expert report was submitted to the court.

18. On 22 September 1993 the court requested the Land Directorate to send a sketch of the land together with its surroundings.

19. On 22 December 1993 the court requested the Land Directorate to submit the files concerning the plot of land together with fourteen neighbouring plots of land. On 28 February 1994 the Land Directorate submitted the requested files.

20. On 23 May 1996 the court conducted an onsite inspection. According to the expert report drafted on 29 May 1996 it was impossible to determine whether the land was previously a meadow since it was being used as farmland.

21. On 24 May 1996 Lüleburgaz Land Registry Directorate submitted additional documents concerning title-deeds and registry records.

22. On 29 June 2001 the court conducted an onsite inspection. According to the report prepared by an expert who took into account witness statements and expert testimony, the plot of land was previously a meadow but that the plaintiffs were using the land as farmland.

23. On 18 July 2001 Mahmut Nalbant submitted his comments on the results of the onsite inspection and his observations on the merits.

24. Between 8 April 1987 and 18 July 2001 the court held numerous hearings. During this time, the court adjourned the onsite inspection twenty-three times, either due to adverse weather conditions (6 times) or the plaintiffs' failure to attend the onsite inspection (14 times). On at least three occasions the onsite inspection could not take place because another onsite inspection was being conducted. In the course of the proceedings, several hearings were adjourned pending the intervention of the heirs of some of the plaintiffs to the proceedings. During this time, Mahmut Nalbant and his lawyer did not participate in the hearings held on 16 September and 25 November 1987 and on 9 September 1996.

25. On 18 July 2001 the Lüleburgaz Cadastre Court dismissed the case and held that the plot of land should be registered in the name of the

Treasury. It considered that the land in question was public property because it was meadowland and that therefore, the plaintiffs could not acquire ownership of it by *de facto* possession. It further noted that no official document was found supporting the plaintiffs' arguments that they were given the plot of land for settlement.

26. On 2 September 2001 Mahmut Nalbant appealed against the decision of the first-instance court. In his petition, Mahmut Nalbant submitted that the length of the proceedings had breached Article 6 of the European Convention on Human Rights.

27. On 20 October 2003 the Court of Cassation upheld the judgment of the first-instance court. It further dismissed Mahmut Nalbant's request for a rectification of its judgment on 29 April 2004.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

28. The applicants complained that the length of the civil proceedings exceeded the "reasonable time" requirement under Article 6 § 1 of the Convention. The relevant part of Article 6 § 1 provides 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

29. The Government asked the Court to dismiss the application for failure to exhaust domestic remedies, under Article 35 § 1 of the Convention. In this regard, the Government maintained, in particular, that Mahmut Nalbant did not raise the substance of his complaint before the domestic courts and did not rely on the Convention.

30. The applicants disputed the allegations of the Government. In particular, they pointed out that during the proceedings Mahmut Nalbant had requested the domestic court to speed up the proceedings and had relied on the Convention.

31. The Court reiterates that it has already examined and rejected the Government's preliminary objections in similar cases (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instance case, which would require it to depart from its findings in the above-mentioned application. It therefore rejects the Government's objection under this head.

32. Moreover, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

33. The Government requested the Court to take into account solely the proceedings occurred 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.

34. The applicants refuted the Government's argument. In particular, they maintained that the domestic proceedings began on 1961 and ended on 29 April 2004.

35. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable time" requirement laid down by Article 6 § 1 began on 8 August 1972 when Mahmut Nalbant filed an action with the Lüleburgaz Cadastre Court and ended on 29 April 2004, when the Court of Cassation dismissed his request for a rectification of its decision. They therefore lasted approximately thirty one years and nine months before the Lüleburgaz Cadastre Court and the Court of Cassation, which examined the case twice.

36. The Court's jurisdiction *ratione temporis* permits it to only consider the period of seventeen years and three months that 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 the time when the aforementioned declaration was deposited (see *Şahiner c. Turquie*, n° 29279/95, § 22, CEDH 2001-IX, and *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001). On that critical date the proceedings had already lasted more than fourteen years and six months.

2. Reasonableness of the length of the proceedings

37. The Government maintained that the case was a complex one concerning a dispute over title to a large area of land and involving a substantial number of plaintiffs, some of whom had died in the course of the proceedings and had been replaced by their heirs. They submitted that there was no delay attributable to the authorities and that the length of the proceedings was caused by the number of adjournments sought by the plaintiffs concerning an onsite inspection of the court. The Government noted that Mahmut Nalbant failed to attend a number of hearings, that his

representative requested several extensions in order to submit documents and information and also to pay the charges for an onsite inspection. Finally, they maintained that Mahmut Nalbant did not object to the adjournment requests of the other plaintiffs.

38. The applicants maintained their allegations. In particular, they pointed out that the first hearing was held in 1978, i.e. six years after Mahmut Nalbant filed an action and that the first onsite inspection was conducted in 1982. Moreover, they submitted that there was no fault attributable to Mahmut Nalbant for the prolongation of the proceedings.

39. 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).

40. The Court considers that even though the case was a complex one owing to the large number of plaintiffs and the nature of the dispute, it cannot be said that this in itself justified the entire length of the proceedings.

41. As regards the conduct of Mahmut Nalbant, while the Court notes that his conduct was not beyond reproach due to his failure to attend few hearings and onsite inspections, it does not find that Mahmut Nalbant contributed significantly to the prolongation of the proceedings.

42. As to the conduct of the domestic authorities, the Court does not find that there were any excessive delays before the Court of Cassation when it upheld the judgment of the first-instance court and dismissed the applicant's request for a rectification of its decision. However, the Court cannot overlook the fact that it took the court of first instance approximately twenty-nine years - fourteen years and six months of which fall within the Court's jurisdiction *ratione temporis* - to give a judgment on the merits. Admittedly, the Court notes that the proceedings were prolonged due to a number of adjournments in particular for onsite inspections either due to adverse weather conditions or the plaintiffs' failure to attend them, the death of some of the plaintiffs and collecting evidence from various authorities. However, reiterating that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see *Arvelakis v. Greece*, no. 41354/98, § 26, 12 April 2001), the Court considers that the domestic court could have applied stricter measures to speed up the proceedings. Neither the complexity of the case nor the conduct of the plaintiffs is sufficient to explain the delay in which the case was processed by the first-instance court. Therefore, the Court considers the delay must be considered to be attributable to the domestic court's handling of the proceedings.

43. Finally, the Court considers that what was at stake for Mahmut Nalbant in the domestic litigation was of considerable importance to him and to the applicants.

44. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicants claimed 3,620 New Turkish Liras (YTL) (approximately 2,276 euros (EUR)) for pecuniary damage. This sum included representation fees and expenses incurred both before the domestic courts and before the Court. They also claimed YTL 15,000 (approximately EUR 9,432) in respect of non-pecuniary damage.

48. The Government contested the amounts requested by the applicants considering them excessive and unsubstantiated. In particular, they disputed the representation fees requested by the applicants due to the fact that they were represented before the Court by the fourth applicant.

49. The Court considers it appropriate to deal with the question of pecuniary damage under costs and expenses below.

50. The Court further considers that the applicants 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 amount claimed by the applicants.

B. Costs and expenses

51. 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 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 covering costs under all heads.

C. Default interest

52. 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*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to 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 9,432 (nine thousand four hundred and thirty two euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
 - (iii) any tax 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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President