



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

FOURTH SECTION

CASE OF NAMLI AND OTHERS v. TURKEY

(Application no. 51963/99)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

23/05/2007

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 Namlı and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr R. TÜRMEK,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 51963/99) 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 six Turkish nationals, Mr Lami Daim Namlı, Mrs Sabiha Namlı, Mr Turan Namlı, Ms Ümit Namlı, Mrs Muhterem Tuncay and Mrs Münise Tepebaşı ("the applicants"), on 28 June 1999.

2. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. On 8 March 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the 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.

THE FACTS

4. The applicants were born in 1958, 1923, 1949, 1961, 1955 and 1950 respectively and live in Tokat.

5. On 21 November 1957 the Koruluk village administration, the Ministry of Treasury and the Forest Directorate requested the annulment of the record in the title deed registry of the applicants' father's and other persons' (hereinafter "the defendants") ownership of four plots of land (nos. 49, 50, 51 and 52) situated in the village of Koruluk.

6. On 4 November 1971, 2 December 1975 and 16 March 1989 the Bafra Cadastre Court gave a decision on the merits of the case. Each of these decisions was in turn quashed by the Court of Cassation.

7. In the course of the proceedings several defendants including Mr Esat Namlı, who was the husband of the second applicant and the father of the remaining applicants, died. Shortly thereafter, in 1990, the applicants became parties to the proceedings.

8. On 28 November 1996 the Bafra Cadastre Court decided to annul the record in the title deed registry except for a part of plot no. 49 which remained under the name of the defendants.

9. On 10 March 1998 the Court of Cassation upheld the judgment of the first-instance court.

10. On 18 December 1998 the Court of Cassation dismissed the applicants' request for rectification of its decision. This decision was not served on the applicants. However, it was sent to the registry of the Bafra Cadastre Court on 4 January 1999.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

11. 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

12. The Government asked the Court to dismiss the application for the failure of the applicants to exhaust domestic remedies, as required under Article 35 § 1 of the Convention. In this regard, they maintained that the applicants did not raise the substance of their complaint before the domestic courts and did not rely on the Convention. The Government further maintained that the applicants had failed to comply with the six-month rule. They submitted that the applicants should have lodged their complaint with the Court within six months following the Court of Cassation's decision of 18 December 1998.

13. The applicants refuted the Government's claims.

14. As regards the first limb of the Government's objections, the Court reiterates that it has already examined and rejected the Government's

similar objections in previous cases (see, in particular, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005). The Court finds no particular circumstances in the instant 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.

15. As to whether the applicants have complied with the six-month rule, the Court reiterates that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33). The Court observes that, in civil cases, it is the practice of the Court of Cassation to serve their decisions on the parties. However, in the instant case, the applicants were never served with the Court of Cassation's decision dated 18 December 1998. The Government did not provide any explanation for this. In the Court's opinion, the earliest date on which the applicants could have been informed about the content of the Court of Cassation's decision was on 4 January 1999, the date on which the Court of Cassation's decision arrived at the registry of the first-instance court. The application was lodged with the Court on 28 June 1999. In view of the above, the Court considers that the application was introduced within the six-month time-limit provided in Article 35 § 1 of the Convention. It therefore rejects the Government's objection under this head also.

16. 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

17. The Government requested the Court to take into account solely the proceedings which 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. They further maintained that the period to be taken into consideration in the instant case began when the applicants became parties to the proceedings.

18. The applicants disputed the Government's arguments.

19. The Court reiterates that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date,

whereas if the applicant has declared his or her intention to continue the proceedings as an heir, he or she can complain of the entire length of the proceedings (see, in particular, *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-...).

20. The period to be taken into consideration therefore began on 21 November 1957 when the Koruluk village administration, the Ministry of Treasury and the Forest Directorate contested the title-deed registry records and ended on 18 December 1998, when the Court of Cassation dismissed the applicants' request for rectification of its decision. They therefore lasted approximately forty-one years before the first-instance court and the Court of Cassation, which each examined the case four times.

21. The Court's jurisdiction *ratione temporis* permits it to consider only the period of eleven years and ten 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 v. Turkey*, no. 29279/95, § 22, ECHR 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 twenty-nine years and two months.

2. Reasonableness of the length of the proceedings

22. The Government maintained that the case was a complex one concerning a dispute over ownership of a property and involving a substantial number of defendants, some of whom had died in the course of the proceedings and had been replaced by their heirs. On this point, the Government argued that the length of the proceedings was mainly caused by the time spent by the domestic authorities in finding the heirs of the deceased defendants.

23. The applicants maintained their allegations.

24. 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).

25. The Court considers that there were substantial delays throughout the proceedings which lasted approximately forty-one years - eleven years and ten months of which fall within the Court's jurisdiction *ratione temporis*. It can accept that the case was complex owing to the number of parties and the nature of the dispute. However, it cannot be said that this in itself justified the entire length of the proceedings. In the Court's opinion, the length of the proceedings, in the instant case, can only be explained by

the failure of the domestic courts to deal with the case diligently. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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, costs and expenses

28. The applicants claimed 1,808,000 United States dollars (USD) (approximately 1,463,968 euros (EUR)) in respect of pecuniary damage and USD 2,000,000 (approximately EUR 1,619,433) in respect of non-pecuniary damage. The applicants did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court.

29. The Government contested these claims.

30. 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 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 applicants, jointly, EUR 30,000.

B. Default interest

31. 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 in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of the settlement and free of any taxes or charges that may be payable;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President