



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

FOURTH SECTION

CASE OF ÖZDEN (no. 2) v. TURKEY

(Application no. 31487/02)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

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 Özden (no. 2) v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. TÜRMESEN,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 3 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 31487/02) 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 İzzet Cahit Özden (“the applicant”), on 12 June 2002.

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

3. The applicant complained in the first place about the length of domestic proceedings and further alleged that he had been deprived of his property. He invoked Article 6 and Article 1 of Protocol No. 1 to the Convention.

4. On 7 October 2005 the Court decided to give notice of the application 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1929 and lives in Istanbul.

6. In 1950, in accordance with Law no. 4753 regarding the distribution of lands to farmers in need, a plot of land measuring approximately

220,000 m² on Maden Island, in the Ayvalık District of the Balıkesir Province, was sold to R.K. by the State authorities and registered in his name.

7. In 1968, pursuant to Law no. 6831, the Forest Cadastral Commission conducted a boundary-marking exercise (*tahdit çalışması*) on the Maden Island. The purpose of this exercise was to detect the forest areas which had not been included on the cadastral map. The outcome of the evaluation was publicly announced and as no opposition was made, this decision became definitive in 1970. It was concluded that the whole of Maden Island had the characteristics of a forest and it therefore could not be the subject of private ownership. This conclusion was annotated in the title deed registry in 1978.

8. In 1985 R.K. signed an agreement with the applicant, promising to sell the land in question.

9. Between 1985 and 1987, the Forest Cadastral Commission conducted an evaluation (*aplikasyon çalışması*) of the area to detect the lands which had lost their characteristics as a forest and to remove their forest status. Its decision was announced on 27 January 1988. It was concluded that the plot of land in question had not lost its characteristics as a forest within the meaning of Article 2 of the Law no.4785.

10. On 20 September 1989 the applicant purchased the land in question and registered it in his name.

The proceedings brought by R.K. against the Forestry Directorate

11. On 10 June 1988 R.K. filed an action before the Ayvalık Civil Court of General Jurisdiction against the Forestry Directorate and the Forestry Ministry, objecting to the Cadastral Commission's decision of 27 January 1988.

12. On 15 June 1989 the Ayvalık Civil Court of General Jurisdiction held that it had no jurisdiction to examine the case and transferred the file to the Ayvalık Cadastral Court. The Forestry Directorate appealed against this decision. On 15 December 1989 the Court of Cassation quashed the judgment of the first-instance court on procedural grounds. The case was remitted to the Ayvalık Civil Court of General Jurisdiction. On 30 May 1990 the court declared that it had no jurisdiction to examine the case and transferred the file to the Ayvalık Cadastral Court. The proceedings resumed before the Cadastral Court.

13. On 9 December 1992 the Ayvalık Cadastral Court decided to annul the Forest Cadastral Commission's decision of 27 January 1988 and to remove the land's forest status. Furthermore, it ordered that the land be registered in the name of the Treasury.

14. Both parties appealed against the decision. On 15 February 1994 the Court of Cassation quashed the decision of the first-instance court. It held that forests could not be the subject of private ownership and therefore could not be distributed to landless farmers for agricultural purposes. Any

property claim over a forest was therefore considered legally invalid. The court found that R.K. was not entitled to request the removal of the land's forest status.

15. The case was resumed before the Ayvalık Cadastral Court. On 3 April 1995 the Cadastral Court maintained its initial decision of 9 December 1992.

16. The Forestry Directorate and the Forestry Ministry filed an appeal. On 3 April 1996 the Joint Civil Chambers of the Court of Cassation supported the reasoning of the relevant chamber of the Court of Cassation and quashed the decision of the Ayvalık Cadastral Court. The case file was sent back to the Cadastral Court.

17. On 26 November 1998 the Ayvalık Cadastral Court decided to abide by the decision of the Joint Civil Chambers of the Court of Cassation. It consequently dismissed R.K.'s case and held that there was no legal benefit for private persons to act as a plaintiff in cases concerning the revocation of forest status.

18. On 22 October 2001 the Court of Cassation upheld the decision of the Ayvalık Cadastral Court. This decision was served on the applicant on 14 December 2001.

The proceedings brought by the Forestry Directorate to annul the registration of title

19. On 12 August 1986 the Forestry Directorate initiated proceedings before the Ayvalık Magistrate's Court against R.K. to annul the registration of title and for an order preventing further use of the land by R.K. On 23 February 1987 the applicant intervened in the proceedings. On 25 June 1987 the Ayvalık Magistrate's Court decided that it had no jurisdiction to examine the case and transferred the file to the Ayvalık Civil Court of General Jurisdiction.

20. In 1988 the court decided to stay the proceedings as the determination of the case depended on the outcome of the case pending before the Ayvalık Cadastral Court (see paragraphs 11-18 above).

21. Following the decision of the Joint Civil Chambers of the Court of Cassation, the proceedings before the Ayvalık Civil Court of General Jurisdiction resumed (see paragraph 16 above). On 5 June 1998, in view of the decision of the Joint Civil Chambers of the Court of Cassation, the first instance court held that the plot of land in dispute was designated as part of a forest area and could not be the subject of private ownership. It therefore decided to annul the applicant's title and register the land in question in the name of the Treasury. The applicant appealed.

22. On 21 May 2002 the Court of Cassation found the applicant's grounds for appeal unfounded and upheld the decision of the first instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

23. The applicant complained that he had been deprived of his land in circumstances that were incompatible with the requirements of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

24. The Government argued in the first place that the applicant had not exhausted domestic remedies in respect of his complaint, as he had failed to request compensation before the domestic courts.

25. The Government further referred to the fact that R.K. had lost possession of his land in 1968 when his land was designated as part of a forest area. They therefore maintained that the transaction between the applicant and R.K. was not valid.

26. The Court does not consider it necessary to decide whether the applicant has exhausted domestic remedies since this complaint should in any case be declared inadmissible for the following reasons.

27. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, 11 January 2007).

28. The Court further recalls that Article 1 of Protocol No. 1 applies only to a person's existing possessions. Thus, the hope that a long-

extinguished property right may be revived cannot be regarded as a “possession”; nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35 (c), ECHR 2004-IX).

29. However, in certain circumstances, a “legitimate expectation” of obtaining an “asset” may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a “legitimate expectation” if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence. On the other hand, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (*Anheuser-Busch Inc.*, cited above, § 65 and *Kopecký*, cited above, § 50).

30. In the instant case, the Court is called upon to determine whether the applicant had a legitimate expectation of obtaining the enjoyment of the property in question in view of the above principles. In this respect, the Court notes that following the evaluation made by the Forest Cadastral Commission, the whole of Maden Island was designated as forest area in 1968. Since no opposition was made, the decision became definitive in 1970 and this conclusion was annotated in the title deed registry (see paragraph 7 above). The Court also takes note of the fact that the applicant signed an agreement with R.K. in 1985, by which R.K. promised to sell the land in question to the applicant (see paragraph 8 above). Thereafter, on 12 August 1986 the Forestry Directorate initiated proceedings before the Ayvalık Civil Court of General Jurisdiction against R.K. to annul the registration of his title. The applicant intervened in these proceedings on 23 February 1987 (see paragraph 19 above). It was only on 20 September 1989 that the applicant purchased the land in question and registered it in his name (see paragraph 10 above). Having regard to the above, the Court concludes that the applicant was aware that the land in question bore the characteristics of a forest. It is also an undisputed fact, that under Turkish law, private occupation of forests is prohibited.

31. At this point, the Court also notes that the applicant complains mainly about the manner in which the domestic courts interpreted and applied domestic law. The Court reiterates that it has only limited power to deal with alleged errors of fact or law committed by the national courts (see *García Ruiz v. Spain* [G.C.] no. 30544/96, § 28, ECHR 1999-I and *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1988-II, p. 540, § 59), and it cannot substitute its view for that of the domestic authorities establishing the physical characteristics of the land in question. It is true that on 9 December 1992 and 3 April 1995 respectively the Ayvalık Cadastral Court, which decided the case at first

instance, ordered the annulment of the Forest Cadastral Commission's decision of 27 January 1988 and the removal of the land's forest status, ordering that the land in dispute be registered in the name of the Treasury. However, these judgments were subsequently overturned, and thus did not have a final and binding effect. Therefore, the judgments delivered by the Cadastral Court did not invest the applicant with an enforceable right to acquire the land.

32. As a result, the Court concludes that, under the relevant law, as applied and interpreted by domestic authorities, the applicant could not claim to have a legitimate expectation in the sense of the Court's case-law to obtain title to the property in question.

33. It follows that this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained under Article 6 § 1 of the Convention about the excessive length of the civil proceedings. Article 6 § 1 provides as relevant:

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

35. The Government argued that this complaint was introduced out of the six-month time-limit.

A. Admissibility

36. As regards the preliminary objection raised by the Government, the Court notes that the proceedings before the Ayvalık Cadastral Court commenced on 10 June 1988 and ended on 22 October 2001 with the decision of the Court of Cassation. This decision was served on the applicant on 14 December 2001. Furthermore, the second case, which started on 12 August 1986 before the Ayvalık Magistrate's Court was terminated on 21 May 2002, also with the decision of the Court of Cassation. As the application was introduced on 12 June 2002, the Court concludes that it was introduced within the six months time-limit. It therefore rejects the Government's preliminary objection.

37. The Court notes that the applicant's complaint regarding the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

Period to be taken into consideration

38. The Court notes that in the instant case, there are two sets of proceedings which are closely linked to each other. It is observed that the proceedings to annul R.K.'s title deed were commenced on 12 August 1986 and the applicant intervened in these proceedings on 23 February 1987. However, in 1988 the Ayvalık Civil Court of General Jurisdiction decided to stay the proceedings as the determination of the case depended on the outcome of the case pending before the Ayvalık Cadastral Court (see paragraphs 19-20 above). The proceedings before the Cadastral Court, which were commenced on 10 June 1988, were terminated by the decision of the Court of Cassation on 22 October 2001 (see paragraph 18 above).

In the meantime, the proceedings before the Ayvalık Civil Court of General Jurisdiction resumed following the decision of the Joint Chambers of the Court of Cassation dated 3 April 1996 and the final decision in these proceedings was delivered on 21 May 2002 (see paragraphs 21 and 22 above).

39. The Court considers that as the first set of proceedings were stayed pending the outcome of the second set of proceedings, in calculating the length of the proceedings these two proceedings should be considered as a whole. Furthermore, as the applicant intervened in the proceedings on 23 February 1987, the period to be taken into consideration should start running from that date.

40. Having regard to the above, the Court finds that the period to be taken into consideration started on 23 February 1987 and ended on 21 May 2002 with the decision of the Court of Cassation. They have therefore lasted approximately 15 years and 3 months for two sets of proceedings.

The reasonableness of the length of proceedings

41. 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).

42. 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 for example *Frydlender*, cited above).

43. The Court notes that the Government contended that the length of the proceedings could not be considered as unreasonable since the proceedings in question were complex.

44. The Court does not find that the case is characterised by any exceptional legal or factual complexity. It notes however that lengthy periods elapsed between the decisions of the first-instance courts and appeal courts. In this respect, it also takes note of the fact that it took the national courts almost two years to determine the court which had the jurisdiction to examine the case brought against the Forestry Directorate (see paragraphs 11 and 12 above). The Court is also struck by the fact that while the Ayvalık Civil Court of General Jurisdiction delivered its decision on 5 June 1998, the Court of Cassation rendered its decision on 21 May 2002, almost 4 years later (see paragraphs 21 and 22 above). The Government have not offered any explanation for this state of affairs. Failing such an explanation, and in the absence of any indication that the applicant was to blame, the delay must be considered to be attributable to the domestic courts' handling of the appeal proceedings.

45. Recalling 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 should have applied stricter measures to speed up the proceedings. It therefore finds that the proceedings in the instant case were unnecessarily prolonged as the national courts failed to act with the necessary diligence.

In view of the above, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. In respect of his Article 6 complaint, the applicant claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

49. The Government contested these claims.

50. 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 accepts that the applicant 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 applicant a total sum of EUR 7,000 under this head.

B. Costs and expenses

51. The applicant did not request a particular amount for costs and expenses, leaving it to the Court's discretion.

52. 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, the Court notes that the applicant failed to submit any supporting documents. The Court therefore does not award any sum under this head.

C. Default interest

53. 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 complaint concerning Article 1 of Protocol No. 1 to the Convention inadmissible and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *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, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, to be converted into New Turkish liras at the rate applicable at the date of 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President