



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

SECOND SECTION

CASE OF NAİME DOĞAN AND OTHERS v. TURKEY

(Application no. 76091/01)

JUDGMENT

STRASBOURG

17 July 2007

FINAL

17/10/2007

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 Naime Doğan and Others v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 76091/01) 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 five Turkish nationals, Ms Naime Doğan, Ms Semray Doğan, Mr Osman Zeki Doğan, Ms Tülay Doğan and Ms Şenay Çabuk (“the applicants”), on 6 September 2001.

2. The applicants were represented by the applicant Semray Doğan, who is a lawyer practising in Bodrum. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 14 September 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1919, 1948, 1949, 1953 and 1956 respectively and live in different cities in Turkey.

5. The applicants’ predecessor, Mr Hasan Fehmi Doğan, was the owner of a plot of land in Manavgat. On 27 November 1959 he filed an action with the Manavgat Civil Court against certain third persons, whom he claimed

were unlawfully occupying his land. He requested that the allegedly unlawful interference be halted.

6. As cadastral work by the authorities started in the area in 1965, the court decided on 16 July 1965 that it no longer had jurisdiction and transferred the case to a court with special jurisdiction in the subject, the Land Registry Court (*Tapulama Mahkemesi*) in Manavgat.

7. The cadastral work divided the land into six parcels, the ownership of which was separately disputed between the applicants' predecessor and the occupiers. In 1967, the Land Registry Court joined all six cases.

8. Throughout the proceedings, the applicants' predecessor on the one hand maintained that the new plots corresponded to the single piece of land already registered in his name. The defendants, on the other hand, claimed that the land records could not possibly relate to those plots as they had purchased the whole piece of land in dispute from its previous, lawful owner.

9. On 27 March 1987 the Land Registry Court ruled in favour of the applicants' predecessor and ordered the six parcels to be registered in his name.

10. On 25 October 1988, however, the Court of Cassation quashed this judgment on the grounds that there had been an insufficient factual examination of the case.

11. On 27 June 1989 the Land Registry Court resumed the proceedings. On 31 July 1990 it decided to abide by the Court of Cassation's decision. Accordingly, it conducted a broader factual examination.

12. Notwithstanding that decision, the same court held a hearing on 9 October 1990 and scheduled a new hearing to decide (apparently for a second time) whether or not to abide by the Court of Cassation's ruling.

13. At the next hearing held on 4 December 1990, the Land Registry Court gave a fresh decision to abide by the Court of Cassation's ruling.

14. Between 3 September 1991 and 17 July 2002 hearings were held every two to three months. However, several hearings were presided over by different judges.

15. At the hearing on 3 September 1991, the court decided to conduct an on-site inspection (*keşif*) on 11 November 1991.

16. On 17 March 1992 a new judge was appointed to the court for the second time in four months. As he was unfamiliar with the case, he postponed the inspection. Until the end of 1992, the judge sitting on the bench of the court was changed three more times and the hearings were mainly devoted to the new judges' gaining familiarity with the dispute.

17. Despite the fact that the court scheduled an on-site inspection several times, it was deferred for various reasons, including the lack of the necessary court stamps in the court's registry to notify experts and witnesses, the parties' failure to pay certain fees, the applicants' failure to bring their witnesses to the inspection site, the parties' mutual failure to

attend the inspection, the judge's annual leave, the lack of pertinent witnesses, unsuitable weather conditions, the ailing condition of a local witness, the court's search for suitable new witnesses, the court's shortage of time due to its hearing backlog and, finally, the defendants' disorderly behaviour and contempt of court. Throughout this process, the judge presiding over the case was again changed at least four times.

18. The re-scheduled on-site inspection was eventually conducted on 24 September 1998.

19. At the hearing on 29 December 1998, the parties submitted their final observations. From that date until 17 July 2002, the court held a total of fifteen hearings. At the hearing held on that last date, the Land Registry Court dismissed the applicants' request.

20. On 11 November 2002 the applicants appealed. The Court of Cassation held a hearing on 12 July 2005.

21. On 26 December 2006 the Court of Cassation upheld the Land Registry Court's judgment.

22. On 26 March 2007 the applicant filed a petition with the Land Registry Court in Manavgat, to be submitted to the Court of Cassation, and requested the rectification of the decision dated 26 December 2006 on the ground that the latter court had rendered a decision which lacked legal and procedural reasoning. According to the applicant's letter dated 25 June 2007, the proceedings are still pending before the Court of Cassation.

THE LAW

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

23. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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..."

24. The Government contested that argument.

25. The period to be taken into consideration only began on 28 January 1987, when the recognition by Turkey of the right of individual petition took effect. According to the information available in the case file, the case is still pending because the final decision, as of 13 February 2007, had not been notified to the applicants. By that date, it had already lasted more than twenty years before two levels of jurisdiction. However, in assessing the reasonableness of the time which has elapsed since 1987, account must be taken of the state of proceedings at that point. In this connection, the Court

notes that the case had been pending before the domestic courts since 1959, an additional twenty-eight years prior to the aforementioned recognition of the right of individual petition.

A. Admissibility

26. The Court notes that the application 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. It must therefore be declared admissible.

B. Merits

27. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

28. 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 *Frydlender*, cited above).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicants claimed 557,000 euros (EUR) in respect of pecuniary damage and EUR 35,000 for non-pecuniary damage.

32. The Government submitted that these claims were excessive and unsubstantiated.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards them, jointly, EUR 18,000 under that head.

34. Furthermore, the Court considers that where the length of proceedings, as in the instant case, have been excessive and in contravention of the “reasonable time” requirement under Article 6 § 1 of the Convention, the subsequent expedition and resolution of those proceedings within the shortest possible period of time are recognised, in principle, as offering appropriate redress for the violation.

B. Costs and expenses

35. The applicants also claimed EUR 5,000 for the costs and expenses incurred before the Court.

36. The Government maintained that no award should be made under this head since the applicants failed to substantiate their claims with supporting documents.

37. According to the Court’s case-law, an applicant is entitled to reimbursement of 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 applicants, jointly, the sum of EUR 1,000 for the costs and expenses incurred in the course of the proceedings before the Court.

C. Default interest

38. 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 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, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into new Turkish liras at the rate applicable at the date of settlement:

(i) EUR 18,000 (eighteen thousand euros) in respect of non-pecuniary damage,

(ii) EUR 1,000 (one thousand euros) for costs and expenses,

(iii) plus any tax that may be chargeable;

(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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President