



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

FOURTH SECTION

CASE OF ALİ ESEN v. TURKEY

(Application no. 74522/01)

JUDGMENT

STRASBOURG

24 July 2007

FINAL

24/10/2007

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 Ali Esen v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr R. TÜRMEŖ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 74522/01) 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 a Turkish national, Mr Ali Esen (“the applicant”), on 16 May 2001.

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

3. On 20 December 2005 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 applicant was born in 1957 and lives in Uşak.

5. On 2 July 1999 Mr A.Ç. filed a criminal complaint with the Hatay public prosecutor against Mr M.Y. to whom he had sold his vehicle with registration number 04 M 3070. He alleged that, during the sale, Mr M.Y. used fake identity papers and gave him fake bonds in return for his vehicle.

6. On 4 August 1999 the applicant bought a vehicle with a registration number 64 AF 984 from Mr M.O. to use in the course of his professional activities and registered it under his name in the Traffic Registry.

7. On 20 September 1999 the Hatay public prosecutor found that the vehicle which had been sold by Mr A. Ç to Mr M.Y. was subsequently sold to the applicant with a fake registration number. The prosecutor therefore ordered the confiscation of the vehicle.

8. On 28 September 1999 the Hatay public prosecutor filed a bill of indictment against Mr M.Y. for fraud and for forging false identity papers. The charges were brought under Article 503 § 1, 522 and 350 of the Criminal Code.

9. On 8 October 1999 the criminal proceedings against Mr M.Y. commenced before the Hatay Criminal Court and the applicant intervened in the proceedings as a third party together with three other people.

10. On 17 July 2000 the applicant requested the restitution of his car. This request was rejected by the court on 18 July 2000 on the ground that the ownership of the car was in dispute.

11. On 18 October 2000 the first-instance court declined jurisdiction and transferred the case to the Hatay Assize Court.

12. On 31 October 2000 the proceedings before the Hatay Assize Court commenced.

13. In the hearing held on 11 January 2001, the court dismissed the requests of restitution of both the applicant and Mr A.Ç. on the ground that the ownership of the car was in dispute.

14. On 26 June 2001 the court decided that the car could be returned to the applicant for his use pending the criminal proceedings. It set the amount of TRL 5,000,000 as a deposit. The applicant was unable to request the return of the car since he could not pay the deposit.

15. On an unspecified date, the applicant requested the court to allow the car to be returned to him, pending criminal proceedings, without a deposit.

16. On 19 September 2002 the court ordered the return of the car to the applicant, pending criminal proceedings, without a deposit. The car was examined for any damage sustained during its seizure before being delivered to the applicant on 2 October 2002.

17. The criminal proceedings are still pending before the Hatay Assize Court since, despite an arrest warrant, Mr M.Y. has still not been found.

THE LAW

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

18. The applicant 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...”

19. The Government contested the claim.

20. The period to be taken into consideration began on 8 October 1999 and has not yet ended. It has thus already lasted more than seven years for a single level of jurisdiction.

A. Admissibility

21. The Government argued in the first place that as no criminal proceedings were brought against the applicant, Article 6 was not applicable in the instant case.

22. The Court notes that in the instant case no criminal charges have been brought against the applicant and that he intervened in the criminal proceedings against Mr M.Y. as a third party. Furthermore, the confiscation of his car is a preventive measure and cannot be compared to a criminal sanction. As a result, Article 6 of the Convention is not applicable in its criminal aspect. Nevertheless, it is observed that the outcome of the proceedings would have a pecuniary impact on the applicant and therefore the proceedings complained of affect the applicant’s right of property, which according to the Court’s case-law is a civil right (see *Sporrong and Lönnroth*, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 29, § 79). The Court therefore considers that in the instant case Article 6 § 1 is applicable in its civil branch (see *Yıldırım v. Italy* (dec.), no. 38602, 10 April 2003). It therefore rejects the Government’s preliminary objection.

23. The Court notes that this complaint 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

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 has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

26. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

27. The applicant submitted that the confiscation of his car amounted to an infringement of his right to the peaceful enjoyment of his possessions in breach of Article 1 of Protocol No. 1 to the Convention. He also complained that because of the confiscation of his car, he was deprived of his livelihood.

28. The Government argued in the first place that the applicant has not exhausted domestic remedies within the meaning of Article 35 of the Convention. They maintained that the applicant could have filed an objection against the confiscation order pursuant to Article 298 of the Criminal Procedure Code. Secondly, they contended that this complaint was unsubstantiated. In this connection, they stated that the vehicle in question had been returned to the applicant in 2002 and that the confiscation order, which had been issued because there was a dispute over the ownership of the car, was in accordance with the domestic law and served the general interest.

29. The Court does not consider it necessary to decide whether the applicant may be considered to have complied with the requirements of Article 35 § 1 of the Convention since this complaint should in any case be declared inadmissible for the following reason.

30. 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).

31. In the present case, it is undisputed that the confiscation of the applicant’s car constituted an interference with his right to the peaceful enjoyment of his possessions. It is however noted that the confiscation of the car was ordered as there was a dispute over the ownership of the car. Thus, even though the measure in question led to a deprivation of possessions, it was an instance of the control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1.

32. According to the Court’s case-law, interference for the purposes of the second paragraph must be prescribed by law and pursue a legitimate aim. Furthermore, it should strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual’s fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, cited above, pp. 26 and 28, §§ 69 and 73).

33. In that connection, the Court observes that the confiscation of the applicant’s car was ordered pursuant to Article 86 of the Criminal Procedure Code to prevent its unlawful use, as there was a dispute over the ownership of the car. It was therefore an interference prescribed by law and the impugned measure served the general interest.

34. As regards the balance between the aim and the applicant’s fundamental rights, the Court notes that on 19 September 2002 the vehicle was returned to the applicant without charge as a trustee, pending the outcome of the proceedings.

35. In view of the foregoing and having regard to the margin of appreciation left to States concerning “the use of property in accordance with the general interest”, the Court concludes that the interference with the applicant’s right to the peaceful enjoyment of his possessions was not disproportionate in relation to the legitimate aim pursued.

36. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 35,653.79 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

39. The Government contested these claims.

40. 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. Ruling on an equitable basis, the Court awards the applicant EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court.

42. The Government contested the claim.

43. 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 full sum claimed.

C. Default interest

44. 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 inadmissible and 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 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 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:

- (i) EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand 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;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President