



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

SECOND SECTION

CASE OF OLCAR v. TURKEY

(Application no. 76096/01)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Olcar 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,

Mr V. ZAGREBELSKY,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELENŞ-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 76096/01) 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 Salih Olcar (“the applicant”), on 10 September 2001.

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

3. On 22 August 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 1964 and lives in Şırnak.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Destruction of the applicant's property and the determination of damage

6. On 11 February 1994 the applicant's stores and goods were burned and destroyed in the course of an armed clash between members of the State Security Forces and militants from the PKK (*the Workers' Party of Kurdistan*, an illegal organisation), in the Silopi district of the province of Şırnak.

7. On 14 February 1994 the applicant filed a declaratory action before the Silopi Magistrates' Court for an assessment of the damage he had suffered as a result of the clash and the fire.

8. On the same day the Silopi Magistrates' Court appointed an expert to determine the damage.

9. On 16 February 1994 the expert submitted a damage assessment report to the court. The expert noted in his report that his conclusions were based on the applicant's claims since the receipts for some of the goods had been burned as a result of the fire.

2. Compensation proceedings before the Administrative Court

a) First set of proceedings

10. On 26 December 1994 the applicant filed an action with the Diyarbakır Administrative Court against the Ministry of Interior and requested compensation for the damage he had suffered.

11. On 30 December 1994 the Diyarbakır Administrative Court dismissed the action on the ground that the applicant had failed to apply to the Ministry of the Interior with his claim. The court reasoned that, under Article 13 of Law no. 2577, an action of this kind could be filed only after the administrative authorities had refused the litigant's request.

b) Second set of proceedings

12. On 1 February 1995 the Ministry of the Interior received the case file from the Diyarbakır Administrative Court. The Ministry did not respond to the applicant's request for compensation within the 60-day period prescribed by Law no. 2577.

13. On 3 April 1995 the applicant filed an action with the Diyarbakır Administrative Court and requested compensation for the damage suffered as a result of the destruction of his stores.

14. On 7 May 1998 the Diyarbakır Administrative Court awarded the applicant compensation based on his annual tax return in 1993. It held that the expert report on the applicant's damage should not be taken into consideration since the assessment of the damage was based on the applicant's claims alone.

15. On 19 August 1998 the applicant appealed.

16. On 10 April 2001 the Supreme Administrative Court quashed the Diyarbakır Administrative Court's judgment. It held that the lower court had erred in its assessment of the damage sustained by the applicant as it had disregarded the damage to the goods in the stores.

17. In a judgment dated 16 June 2005, the Diyarbakır Administrative Court, complying with the Supreme Administrative Court's ruling, partially acceded to the applicant's request for compensation. The applicant appealed against this judgment as well and, according to the information in the case file, the proceedings are still pending before the Supreme Administrative Court.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND 13 OF THE CONVENTION

18. The applicant complained that the length of the second set of proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. He also alleged under Article 13 of the Convention that there were no effective remedies in domestic law to accelerate the proceedings.

Article 6 § 1 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...”

Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

19. The Government contested that argument.

20. The period to be taken into consideration began on 1 February 1995 and apparently has not yet ended (paragraph 17 above). It has thus lasted more than twelve years and eight months before two levels of jurisdiction.

A. Admissibility

21. The Government contended that the applicant did not complain of the length of the proceedings at any stage of the trial before the domestic court. The Court notes that this objection is closely linked to an examination of the merits of the complaint, thus it joins it to the merits. It further notes that these complaints are not manifestly ill-founded within the meaning of

Article 35 § 3 of the Convention on any other grounds. They must therefore be declared admissible.

B. Merits

22. 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).

23. 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).

24. Having examined all of 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.

25. The applicant further complained of a lack of an effective domestic remedy to accelerate the proceedings.

26. The Government maintained that the applicant could have brought a compensation action against the judges who conducted the proceedings for the alleged damage he has suffered as a result of lengthy proceedings.

27. The Court recalls its earlier finding that the Turkish legal system did not provide an effective remedy whereby the length of the proceedings could be successfully challenged (see *Tendik and Others v. Turkey*, no. 23188/02, §§ 4-39, 22 December 2005). It finds no reason to reach a different conclusion in the instant case.

28. Against this background, the Court dismisses the Government's objection on non-exhaustion of domestic remedies and holds that there has been a violation of Articles 6 and 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

29. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the amount of compensation which he might be awarded at the end of the proceedings would be insufficient on account of the excessive length of the proceedings.

30. The Government contended that the applicant was not entitled to claim a property right before the proceedings come to an end.

31. The Court reiterates that future income - compensation in this case - may not qualify as “possessions” within the meaning of Article 1 of

Protocol No. 1 unless it has been earned or where an enforceable claim to it exists (see *Ian Edgar (Liverpool) Ltd. v. the United Kingdom* (dec.), no. 37683/97, ECHR 2000-I). In the present case, the applicant has not yet been awarded any compensation. Thus, there is no enforceable claim concerning the compensation which might constitute a possession.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant submitted that the pecuniary damage he sustained in 1994 was in the amount of 1671,000,000 Turkish liras. He therefore asked the Court to award him an amount which would correspond to the current value of his loss. The applicant did not claim non-pecuniary damage.

35. The Government asked the Court to dismiss the applicant's claim.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Furthermore, having regard to the applicant's failure to claim non-pecuniary damage, the Court makes no award in this respect.

37. However, the Court considers that where the length of proceedings, as in the instant case, has 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 as quickly as possible, whilst observing the fair administration of justice, are recognised, in principle, as offering appropriate redress for the violation.

B. Costs and expenses

38. The applicant did not claim an amount for costs and expenses. Accordingly, the Court makes no award under this heading.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the excessive length of the proceedings and lack of effective remedies in domestic law admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President