



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

THIRD SECTION

CASE OF DAĞTEKİN AND OTHERS v. TURKEY

(Application no. 70516/01)

JUDGMENT

This version was rectified on 21 May 2008
under Rule 81 of the Rules of Court

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Dağtekin and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEK,

Mrs E. FURA-SANDSTRÖM,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (n° 70516/01) 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, Mr Ahmet Dağtekin, Mr Mahmut Dağtekin, Mr Bozan Dağtekin, Mr Abdo Demir and Mr Abdulkadir Fırat¹ (“the applicants”), on 15 May 2001.

2. The applicants were represented by Mr C. Aydın, 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 12 December 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1960, 1955, 1948, 1942 and 1958 respectively and live in Şanlıurfa.

¹ Rectified on 21 May 2008. In the former version the applicant’s name read Abdülkadir Fırat.

5. On 22 November 1984 Law no. 3083 came into force. Article 5 of this law provided the possibility of leasing State land to farmers who were in need and who fulfilled certain eligibility criteria (“right holders”). In particular, Article 24 § 1 of Law no. 3083 provided that those who had been convicted of certain offences were not entitled to benefit from this law (see paragraph 16 below).

6. Following the promulgation of Law no. 3083, the applicants applied to the Commission that was responsible for the determination of farmers who were eligible to be right holders under the Law in question and requested to be provided with land in Ceylanpınar in the south-east of Turkey. They were subsequently identified as right holders and leased land from the Directorate General for Agricultural Reform (*Tarım Reformu Genel Müdürlüğü*) (“the Directorate General”) for an indefinite period on payment of a rent. The applicants earned their living by cultivating these fields.

7. On 25 March 1997, after conducting a “security investigation”, the Directorate General annulled the right holder status of the applicants.

8. On 2 May 1997 the applicants lodged separate cases with the Gaziantep Administrative Court and requested that the decision of 25 March 1997 be annulled. They maintained that they had paid their rent periodically until 1997. They also contended that there was no valid reason to terminate their lease contract. They maintained in this connection that although criminal proceedings had been initiated against them in the eighties for being members of an illegal organisation, namely the PKK (the Kurdistan Workers' Party), they had all been acquitted of the charges against them.

9. On 29 May 1997 the Gaziantep Administrative Court requested the Directorate General to submit the documents in respect of the decision dated 25 March 1997.

10. On 5 September 1997 the Gaziantep Administrative Court ordered the Directorate General once again to submit further information and the documents in relation to the security considerations of the administration.

11. On 4 November 1997 the Directorate General replied that the Minister of Agriculture had refrained from submitting these documents as they concerned the security of the State. In this respect, they relied on Article 20 § 3 of the Law on Administrative Procedure. The observations of the Directorate General were communicated to the applicants on 13 October 1997, 10 December 1997, 15 December 1997 and 19 December 1997 respectively. According to the Government, the applicants did not submit any observations in reply.

12. On 24 February 1998 the Gaziantep Administrative Court dismissed the applicants' cases. The court held that the decision dated 25 March 1997 which annulled the applicants' right holder status and the refusal of the Directorate General to submit the relevant documents had been in accordance with the domestic legislation. A member of the Gaziantep

Administrative Court dissented from the judgments of the court, arguing that the administrative authorities had failed to demonstrate the reason for the annulment of the right holder status of the applicants.

13. The applicants appealed.

14. On 10 November 2000, 14 September 2000, 26 October 2000, 10 November 2000 and 16 November 2000 respectively the Supreme Administrative Court upheld the judgments of the Gaziantep Administrative Court.

15. The first applicant was notified of the decision of the Supreme Administrative Court on 25 January 2001, the second applicant on 1 November 2000, and the remaining applicants on 22 December 2000.

II. RELEVANT DOMESTIC LAW

16. According to Article 24 § 1 of Law no. 3083, persons who are convicted of the offences defined in the first Section of the second Part of the Criminal Code and in Articles 312 § 2, 536 and 537 of the Criminal Code cannot benefit from the distribution of land. Article 24 § 2 of the same Law provides that land shall be taken back, had the right holder been convicted of one of the offences mentioned in the first paragraph subsequent to the acquisition of land.

Article 38 § 3 of the Regulations on the Application of Law no. 3083 provides that, in view of the particularities and security of a region and subsequent to obtaining the opinion of the security institutions, the Directorate General is authorised to make amendments in the right holders list prepared by the Commission.

Article 20 § 3 of the Law on Administrative Procedure provides that the Prime Minister or a Minister may refrain from submitting information or documents to an administrative court if the information or documents in question pertain to the security or vital interests of the State.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

1. Admissibility of the application in respect of the second applicant, Mr Mahmut Dağtekin

17. In their observations, the Government argued that the application, in respect of the second applicant Mr Mahmut Dağtekin was introduced outside the six months time-limit.

18. The Court recalls that under Article 35 § 1 of the Convention, it may deal with an application within a period of six months from the date on which the final decision was taken. The six months period under Article 35 § 1 begins to run on the day after the date on which the final domestic decision was pronounced or was communicated to the applicant or his lawyer, or if pursuant to the domestic law and practice the applicant is entitled to *ex officio* with a copy of the judgment, from the date of service of the written judgment (see *Kahramanoğlu v. Turkey* (dec.), no. 61933/00, 10 October 2006).

19. In the instant case, the second applicant had legal representation during the domestic proceedings and the final decision of the Supreme Administrative Court dated 14 September 2000 was served on his lawyer on 1 November 2000. However, the application was lodged with the Court on 15 May 2001, more than six months later.

20. In view of the above, the Court concludes that the application in respect of Mr Mahmut Dağtekin should therefore be rejected for non-compliance with the six months time-limit pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Exhaustion of domestic remedies

21. The Government argued that the applicants did not exhaust the domestic remedies as they did not request the rectification of the decisions delivered by the Supreme Administrative Court. They also stated that as the applicants did not submit any observations in reply to the submissions of the administration dated 4 November 1997, they cannot be considered as having exhausted the domestic remedies within the meaning of Article 35 of the Convention.

22. As regards the first part of the Government's objection, the Court reiterates that it has already examined and rejected similar arguments in previous cases (see, in particular, *Gök and Others v. Turkey*, nos. 71867/01, 71869/01, 73319/01 and 74858/01, §§ 47- 48, 27 July 2006). The Court finds no particular circumstances, in the present application, which would require it to depart from that conclusion. Consequently, it rejects this part of the Government's preliminary objection.

23. As regards the second limb of the Government's objection, the Court recalls that according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. In the instant case, the applicants' complaint related to the allegedly unjust termination of their lease contract. The applicants initiated an action before the administrative courts to obtain the annulment of the Directorate General's decision dated 25 March 1997. In the Court's view, the fact they did not reply to the

observations of the administration during the proceedings is not material; it is not the case that their claim was thereby rejected for failure to comply with a procedural requirement. Having regard to the fact that the applicants' case was examined by the domestic courts and to the fact that a final and binding decision was delivered on the matter, the Court concludes that they must be regarded as having exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention and this part of the Government's objections cannot be upheld.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

1. As regards the length of the proceedings

24. The applicants alleged that the length of the domestic proceedings exceeded the reasonable time requirement, in breach of Article 6 § 1 of the Convention.

25. The Court notes that the proceedings in dispute commenced on 2 May 1997 and ended on 26 October 2000, 10 November 2000 and 16 November 2000 respectively. They thus lasted for approximately three years and five months, for two levels of jurisdiction. Therefore, the Court concludes that, in the present case, the length of the proceedings cannot be regarded as exceeding the reasonable time requirement of Article 6 § 1 of the Convention.

26. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. As regards the fairness of the proceedings

27. The applicants complained that the failure of the Directorate General to submit the documents pertaining to the annulment of their right holder status to the domestic courts violated their right to a fair hearing within the meaning of Article 6 §§ 1 and 3 (a) and (b) of the Convention.

28. The Government contested the applicants' claims. They submitted that pursuant to Article 20 § 3 of Law No. 2577, the Prime Minister or a Minister may refrain from submitting information or documents to an administrative court if the information or documents in question pertain to the security or vital interests of the State. According to the Government, in the instant case, the administration had used its discretionary power provided by Article 24 of Law no. 3038 and Article 38 of the Regulations and having regard in particular to the security of the region concerned, it amended the list of right holders.

29. The Court considers that, in the instant case, it is more appropriate to deal with the applicants' complaints under Article 6 § 1 globally due to the

overlapping nature of the issues and since the sub-paragraphs of Article 6 § 3, which apply in the criminal sphere, may nonetheless be regarded as specific aspects of the general fairness guarantee of the first paragraph.

A. Admissibility

30. 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

31. The Court recalls that Article 6 § 1 embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect. However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1, if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 72).

32. The Court further reiterates that the principle of equality of arms, which is one of the elements of the broader concept of fair trial, requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, *Reports* 1997-I, p. 107, § 23). It further notes that the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision (see *Lobo Machado v. Portugal*, judgment of 20 February 1996, *Reports* 1996-I, pp. 206-07, § 31).

33. Turning to the facts of the case, the Court notes that the applicants earned their living by cultivating the fields that had been leased to them pursuant to Law no. 3083. The Court further observes that it is undisputed

between the parties that the result of the security investigation, which led to the annulment of their lease contracts, was never communicated to the applicants. It is also common ground that these documents, although explicitly requested by the Gaziantep Administrative Court, were not submitted to the domestic court upon the order of the Ministry of Agriculture for national security reasons.

34. The Court considers that the result of this security investigation had important consequences for the applicants yet at no stage of the domestic proceedings were they given an opportunity to learn the reason as to why their contracts had been annulled or given an effective opportunity to challenge the lawfulness of the annulment of their right holder status. The Court is mindful of the security considerations at stake in the south-east of Turkey and of the need for the authorities to display the utmost vigilance. This does not mean, however, that the national authorities can be free from effective control by the domestic courts whenever they choose to assert that national security and terrorism are involved. There are techniques that can be employed which both accommodate legitimate security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 131). The Court observes that as in the instant case, the conclusions of the security investigation were not revealed to the applicants or to the domestic courts, the applicants were deprived of sufficient safeguards against any arbitrary action on the part of the authorities.

35. In view of the foregoing, the Court concludes that the non-disclosure of the security investigation report infringed the applicants' right to a fair hearing within the meaning of Article 6 § 1 of the Convention. Accordingly, this provision has been violated.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL N° 1 TO THE CONVENTION

36. The applicants further invoked Article 1 of Protocol No. 1 to the Convention, alleging that due to the unfair decisions of the domestic authorities they were deprived of their land that they had leased from the domestic authorities. They further maintained that they were relying on the income they had retrieved from cultivating these fields.

37. The Government contested the allegations, stating that the domestic authorities had not acted arbitrarily in cancelling the applicants' right holder status. They further argued that the applicants did not have "possessions" within the meaning of Article 1 of Protocol No. 1.

38. The Court notes that this complaint is linked to the one examined above and must likewise be declared admissible.

39. The Court further notes that the main Convention question raised in the instant application was the fairness of the domestic proceedings pursuant to Article 6 § 1 of the Convention. Having found a violation of this provision (paragraphs 31-34 above), the Court considers that there is no need to make a separate ruling on the applicants' complaint raised under Article 1 of Protocol No. 1 (see *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 73, ECHR 2001-VIII).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicants further invoked Articles 13, 14 and 18 of the Convention.

41. The Government contested those allegations.

42. The Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicants claimed the following sums in respect of pecuniary damage:

- 37,637 euros (EUR) each for Mr Ahmet Dağtekin and Bozan Dağtekin;
- EUR 84,648 for Abdo Dağtekin;
- EUR 67,718 for Abdulkadir Fırat¹.

They also claimed EUR 10,000 each in respect of non-pecuniary damage.

45. The Government contested the claims.

46. On the question of pecuniary damage, the Court notes that it cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 would have been. Accordingly, it considers that no award can be made to the applicants under this head.

¹ Rectified on 21 May 2008. In the former version the applicant's name read Abdülkadir Fırat.

47. As regards the applicants' claims for non-pecuniary damage, the Court, having regard to all the elements before it and ruling on an equitable basis, awards EUR 6,500 to each of the applicants under this head.

B. Costs and expenses

48. The applicants also claimed EUR 810 each for the costs and expenses incurred before the domestic courts and a total of EUR 2,077 for those incurred before the Court. In respect of their claims, the applicants referred to the Diyarbakır Bar Association's Scale of Fees.

49. The Government contested the claims.

50. 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, the applicants have not substantiated that they have actually incurred the costs so claimed. Accordingly, the Court makes no award under this head.

C. Default interest

51. 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 inadmissible in respect of Mr Mahmut Dağtekin;
2. *Declares* the remaining applicants' complaints concerning the fairness of the proceedings and their right to peaceful enjoyment of their possessions admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the fairness of the proceedings;
4. *Holds* that there is no need to examine separately the applicants' complaint under Article 1 of Protocol No. 1;
5. *Holds*

(a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,500 (six thousand five hundred 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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President