



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

THIRD SECTION

CASE OF ŞENCAN v. TURKEY

(Application no. 7436/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

02/06/2008

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 Şencan 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. TÜRMEŖ,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *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 (no. 7436/02) 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 three Turkish nationals, Mr İsmail Şencan, Ms Hülya Şencan and Mr Nejdet Şencan (“the applicants”), on 12 October 2001.

2. The applicants were represented by Mr F. Yurdakul, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 1 June 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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 1955, 1973 and 1962 respectively and live in Istanbul.

5. The applicants signed contracts with third persons before the notary public to acquire *de facto* possession (*zilyedlik*) of a plot of land in Gökçeada.

6. On 10 May 1990, 27 August 1991 and 18 May 1992 respectively, the applicants filed three separate actions with the Gökçeada Civil Court of General Jurisdiction and requested that their title to the plot in question be registered in the Land Registry records.

7. On 11 September 1991 and 16 March 1992 respectively the first-instance court partially accepted the requests of the first and third applicants. Subsequently, on 28 April 1992 and 6 November 1992 respectively, the Court of Cassation quashed these judgments, holding that the Gökçeada Civil Court of General Jurisdiction had failed to carry out the necessary examination in order to determine the nature of the plot. The cases were remitted to the first-instance court.

8. On 12 October 1992 and 15 March 1993 the first-instance court once again partially accepted İsmail and Nejdett Şencan's claims. On 21 June 1993 the Gökçeada Civil Court of General Jurisdiction also partially accepted the second applicant's claim. In its judgments, the first-instance court held that the fact that the land in question appeared as "meadowland" in the tax registration records did not mean that it could not be the subject of private ownership.

9. On 18 April 1994 the Court of Cassation quashed the three judgments of the first-instance court and held that the first-instance court should have taken into account the tax registration records and accepted the applicants' claims only in respect of the parts of the plot which were used for agriculture. It further held that meadowlands could not be subject to private ownership. The cases were remitted to the Gökçeada Civil Court of General Jurisdiction.

10. On 26 September 1994 all three cases were joined.

11. On 13 June 1995 the first-instance court again partially accepted the applicants' claims. In its judgment, the court stated that the plot in question was not designated as "meadowland" in the land registration records and that, therefore, it could be subject to private ownership.

12. On 24 June 1996 the Court of Cassation once again quashed the judgment of the first-instance court, holding that according to the documents in the case-file, the plot in question was meadowland and that therefore the applicants could not have their title registered.

13. On 31 July 1996 the Gökçeada Civil Court of General Jurisdiction issued a decision of non-jurisdiction and sent the case file to the Gökçeada Cadastre Court.

14. On 5 June 1997 the Gökçeada Cadastre Court rendered its judgment and partially accepted the applicants' claims.

15. On 20 May 1998 the Court of Cassation quashed the judgment of the cadastre court.

16. On 16 April 1999 the Gökçeada Cadastre Court abided by the Court of Cassation's decision, holding that according to the tax registration records the land in question was meadowland and that it could not be subject to

private ownership. The court further held that the land should be officially designated as a second degree conservation area.

17. On 21 March 2000 the Court of Cassation upheld the judgment of the first-instance court.

18. On 6 April 2001 the Court of Cassation dismissed the applicants' request for rectification. This decision was served on the applicants' representative on 30 April 2001.

THE LAW

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

19. 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...”

20. The Government contested that argument.

21. The Court notes that in the instant case, there were three sets of proceedings which were closely linked to each other and which were subsequently joined. As a result, in calculating the length of the proceedings, these three proceedings should be considered as a whole. Accordingly, the period to be taken into consideration began on 10 May 1990 and ended on 6 April 2001 with the decision of the Court of Cassation. It thus lasted approximately 11 years.

A. Admissibility

22. The Government argued that the applicants have not exhausted the domestic remedies, as they failed to raise their complaint before the national courts.

23. The Court reiterates that the obligation to exhaust domestic remedies only requires that an applicant make normal use of effective and sufficient remedies, that is those capable of remedying the situation at issue and affording redress for the breaches alleged.

24. It observes that the Turkish legal system does not provide any remedies to accelerate the proceedings. Nor does it award any compensation for delay. The Court accordingly concludes that there was no appropriate and effective remedy which the applicants should have exercised for the purposes of Article 35 § 1 of the Convention (see *Mete v. Turkey*,

no. 39327/02, §§ 18-19, 25 October 2005). It therefore rejects the Government's preliminary objection.

25. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

B. Merits

26. 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).

27. 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).

28. The Court further observes that the first-instance court decisions were quashed on four occasions by the Court of Cassation. In this connection, it reiterates that since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower authorities, the repetition of such orders within one set of proceedings discloses a deficiency in the operation of the legal system (*mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

29. 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. 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 2,843,375 euros (EUR) in respect of

pecuniary damage and EUR 100,000 each in respect of non-pecuniary damage.

32. The Government contested these claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, it awards the applicants EUR 2,500 each in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicants also claimed EUR 100,000 for the costs and expenses incurred before the Court and EUR 100,000 for lawyer's fees.

35. The Government contested these claims.

36. 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 are reasonable as to quantum. In the present case, the applicants have not substantiated that they have actually incurred the costs claimed. Accordingly, it makes no award under this head.

C. Default interest

37. 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 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 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 2,500 (two 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;

4. *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