



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

THIRD SECTION

CASE OF TUNCA v. TURKEY

(Application no. 17408/04)

JUDGMENT

STRASBOURG

31 January 2008

FINAL

30/04/2008

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 Tunca v. Turkey,

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

Boštjan M. Zupančič, *President*,

Corneliu Bîrsan,

Riza Türmen,

Elisabet Fura-Sandström,

Alvina Gyulumyan,

David Thór Björgvinsson,

Isabelle Berro-Lefèvre, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 10 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 17408/04) 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, Ms Nurten Tunca (“the applicant”), on 19 April 2004.

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

3. The applicant alleged that the unreasonable length of the civil proceedings was unreasonable. She also alleged that her right to the peaceful enjoyment of her possessions was breached.

4. On 23 November 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in İstanbul.

6. On 31 March 1983 the applicant bought a plot of land (plot no. 2464) in Şarköy, measuring 690 m². On 22 January 1984, following an official cadastre measurement, the applicant's land was found to measure 564 m².

The remaining 126m² was registered as belonging to the neighbouring plot no. 2463, owned by Mr A.Ö.

7. On 15 November 1993 the applicant brought proceedings against A.Ö. in the Şarköy Civil Court of General Jurisdiction, challenging the accuracy of the new measurement and requesting that the disputed land be re-registered in her name.

8. The Şarköy Civil Court of General Jurisdiction held thirty hearings between 15 November 1993 and 13 July 1999.

9. An on-site inspection was conducted on 13 July 1994 to which the applicant objected.

10. On 31 January 1995 the applicant referred to another proceeding that had taken place before the Şarköy Magistrate Court which was linked to her case and requested the Şarköy Civil Court of General Jurisdiction to examine the case file no. 1983/183. At the next hearing held on 4 April 1995 the applicant notified the court that the case-file brought from the archives was wrong as she had quoted the wrong reference number previously.

11. The correct file which was requested from the archives again could not be submitted to the court until 23 September 1997 due to, *inter alia*, the flooding of the archives.

12. On 18 December 1997 the court decided to hold a second on-site inspection, the conduct of which was delayed to 23 June 1999 mainly due to adverse weather conditions.

13. On 13 July 1999 the Şarköy Civil Court of General Jurisdiction declared lack of jurisdiction as the on-site inspection revealed that the value of the plot of land in dispute was lower than 2,000,000 Turkish liras. The court held that, if the applicant still intended to pursue her claim, she should institute the proceedings before the Şarköy Magistrate's Court.

14. On 21 July 2003, almost four years after the decision of the Civil Court of General Jurisdiction, the applicant applied to the Şarköy Magistrate's Court.

15. On 21 January 2004 the court granted the applicant's request and decided that the disputed land should be registered in her name.

16. On 24 September 2004 the Court of Cassation upheld the judgment.

17. The defendant requested the rectification of this decision. His request was rejected by the Court of Cassation on 13 January 2005.

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 disputed this allegation.

A. Admissibility

20. The Government firstly argued that the applicant had failed to comply with the six month rule. According to the Government the proceedings before the Şarköy Civil Court of General Jurisdiction had ended on 13 July 1999, the proceedings before the Şarköy Magistrate's Court had started on 21 July 2003, whereas the applicant had lodged her complaints with the Court on 19 April 2004. The Government maintained that, therefore, the complaints regarding the length of proceedings before the Şarköy Civil Court of General Jurisdiction had been lodged outside the six months time-limit laid down in Article 35 § 1 of the Convention.

21. The applicant contested this argument.

22. The Court observes that the subject and the context of the proceedings before the Şarköy Magistrate's Court were the same as those before the Civil Court of General Jurisdiction. The Şarköy Magistrate's Court held but one hearing before rendering its decision on the basis of the facts and evidence collected by the Civil Court of General Jurisdiction. Moreover the decision itself of the Şarköy Magistrate's Court specifies that the case was introduced on 15 November 1993 and not 21 July 2003 (the date the applicant brought the proceedings before the mentioned court). The Court therefore rejects the Government's claims and concludes that, for the purposes of Article 6 § 1, proceedings before the two tribunals must be taken as a whole for the assessment of the length of the proceedings. Therefore the Government's objection must be dismissed.

23. The Government also argued that the applicant lodged her complaint with the Court before exhausting all domestic remedies. They submitted that the proceedings were still pending before the national courts when the application was introduced with the Court.

24. The Court reiterates that according to the Convention organs' constant case-law, complaints concerning length of proceedings can be brought before it before the final termination of the proceedings in question

(see *Todorov v. Bulgaria* (dec.), no. 39832/98, 6 November 2003; *Tendik and others v. Turkey*, no. 23188/02, § 36, 22 December 2005). Accordingly, the Government's objection must be dismissed.

25. 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. Period to be taken into consideration

26. The Court notes that the period to be taken into consideration began on 15 November 1993 when the applicant instituted civil proceedings before the Civil Court of General Jurisdiction and ended on 13 January 2005 with the rejection of the defendant's rectification demand. It thus lasted eleven years and two months, a period during which both the first-instance court and the Court of Cassation delivered two decisions each. However, the Court notes that the applicant waited four years after the Şarköy Civil Court of General Jurisdiction's decision to re-initiate the proceedings before the Şarköy Magistrate's Court. Therefore, for the purposes of Article 6 § 1, the period to be taken into consideration will be seven years and two months.

C. 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 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).

28. The Government firstly submitted that the case was complicated as it required the compilation of technical information and the conduct of onsite inspections.

29. The Government secondly argued that even though the applicant was entitled to make use of his right of appeal, these appeals prolonged the proceedings for a considerable time. The Government added that the applicant was at fault by erroneously instituting the proceedings at the Şarköy Civil Court of General Jurisdiction instead of the Şarköy Magistrate's Court. Furthermore the applicant had requested the wrong file which had delayed the proceedings. Finally, the Government added, the applicant had waited four years for applying to the Şarköy Magistrate's Court.

30. The applicant disputed these assertions.

31. Even having regard to the need to have recourse to onsite inspections and the compilation of technical information, the Court considers that the

overall length of the proceedings cannot be explained by the complexity of the case alone.

32. The Court further notes that the applicant cannot be reproached for having made use of her procedural rights. In particular, there is nothing to indicate that she abused the appeal procedures or wasted the courts' time with vexatious and purely self-serving motions.

33. The Court observes that, according to the domestic law regarding civil law disputes, it is the value of the subject at dispute which determines the courts' jurisdiction *ratione materiae*. In the instant case the Court notes that it took five years and seven months for the Şarköy Civil Court of General Jurisdiction to reach an assessment on the value of the land, which can be considered an excessive period on its own. The Court acknowledges that this delay was partly attributable to the applicant who had requested the wrong file and partly to the adverse weather conditions that prevented the conduct of the second on-site inspection. However the Court observes that the wrong file was submitted to the court within two months whereas it then took the court approximately one year and five months to acquire the correct file as the archives had been flooded in the meantime. On the other hand a period of one year and six months passed in between the decision to hold a second on-site inspection and the actual conduct of the inspection itself, a delay mainly explained by the adverse weather conditions. The Court notes that adverse weather conditions and flooding of the archives alone delayed the proceedings for some three years. In this respect the Court rejects the Government's above assertions which do not dispense the domestic courts from ensuring the expeditious trial of the action as required by Article 6.

34. Having regard to all the circumstances of the case, the Court concludes that the difficulties encountered at the time of the proceedings were not such as to deprive the applicant of her entitlement to a judicial determination within "a reasonable time". There has accordingly been a breach of Article 6 § 1.

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

35. The applicant complained that the registration of the 126 m² of her land in another individual's name constituted a breach of her right to the peaceful enjoyment of her possessions. She relied on Article 1 of Protocol No. 1 which reads insofar as relevant as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Admissibility

36. The Government asked the Court to dismiss this complaint as inadmissible for being manifestly ill-founded.

37. The Court observes that the applicant brought her complaint before the domestic courts which concluded that the disputed 126 m² land should be re-registered under the applicant's name. Thus, the Court finds that the applicant cannot be considered as victim of a violation of Article 1 of Protocol No. 1. Therefore her complaint should be declared inadmissible for being manifestly ill-founded pursuant to Article 35 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage and EUR 200,000 for non-pecuniary damage.

40. The Government contested the amounts requested by the applicant considering them excessive and unsubstantiated. In particular, they disputed the lack of receipts or documents in proof of the alleged expenditure.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have suffered some non-pecuniary damage on account of the duration of the proceedings, which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 1,000.

B. Costs and expenses

42. The applicant requested EUR 9,280 in respect of the lawyer's fee and other costs and expenses incurred both before the domestic courts and before the Court.

43. The Government contended that this sum was unsubstantiated.

44. According to the Court's case-law, an applicant is entitled to the 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 Court notes that the applicant did not submit any documents relating to the costs and expenses or to the lawyer's fee. Accordingly it rejects the claim under this head.

C. Default interest

45. 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 the excessive length of the proceedings 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*
 - (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 amount, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage,
 - (ii) any taxes that may be chargeable on the above amount;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Boštjan M. Zupančič
President