



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

THIRD SECTION

CASE OF MESRURE SÜMER v. TURKEY

(Application no. 64725/01)

JUDGMENT

This version was rectified on 3 September 2008 under Rule 81 of the Rules of Court.

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Mesrure¹ Sümer v. Turkey,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Rıza Türmen,

Corneliu Bîrsan,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 64725/01) 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, Mrs Mesrure¹ Sümer (“the applicant”), on 21 January 2000.

2. The applicant was represented by Mr H. Ceylan, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 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 applicant was born in 1920 and lives in Istanbul.

¹ The applicant’s first name “Meşrure” was changed as “Mesrure”

A. The proceedings before the Ezine Cadastral Court

5. On 26 July 1978 the applicant brought an action before the Bakırköy Court of First Instance against her stepmother, Ms S.C. and her stepbrother, Mr L.C. (hereinafter all three referred to as “the parties”) and requested the annulment of their title deeds to several plots of land in the Ezine district of Çanakkale. The applicant claimed that her father had made a bogus sale of the plots of land to her stepmother and stepbrother in order to prevent her from inheriting them. The court ruled in favour of the applicant. This decision was quashed by the Court of Cassation on the ground that the Bakırköy First Instance Court lacked competence *ratione loci* to decide the case. The case was transferred to the Ezine First Instance Court on 18 February 1981. The latter considered that it lacked competence *ratione materiae* and sent the case file to the Ezine Cadastral Court on 22 September 1983.

6. In the meantime, in 1980, a cadastral survey was conducted in the Ezine district and plots nos. 220, 221 and 223 were registered under the name of the Finance Ministry on the ground that no one was able to prove ownership of them. The applicant, her stepbrother and the Forestry Directorate lodged an objection with the Cadastral Commission. The applicant and her stepbrother claimed that the aforementioned plots corresponded to plot nos. 3, 4, 26, 5, 6, 25 and 112, which were registered under their father’s name in the Land Registry on 23 January 1951, 4 May 1965 and 7 April 1972. The Commission considering that it lacked competence *ratione materiae*, transferred the case file to the Ezine Cadastral Court on 23 January 1981.

7. In the meantime, Ms S.C. and the Forestry Directorate brought separate actions with the Ezine Cadastral Court regarding the ownership of these plots.

8. On various dates the aforementioned cases were joined under the same case file before the Ezine Cadastral Court.

9. In the meantime, Mr L.C. died and his legal heirs joined the proceedings. On an unspecified date, Ms S.C. informed the court that she had sold all her shares in the disputed plots of land to her grandson Mr T.C.

10. On 8 October 1997 the court ruled that plots nos. 221, 223 and a part of plot no 220 were forest and should therefore be registered under the name of the Forestry Directorate. It also decided that the remaining plot of land should be registered under the name of the applicant’s father.

11. On 1 June 1999 the Court of Cassation held a hearing and upheld the judgment of the first-instance court in so far as it concerned a part of plot no. 220 (approximately 53,750 m²). In this connection it noted, particularly, that the area in question contained forty to seventy year old red pine trees, that it appeared as forest in the State map and that the plot in question had been previously the subject of criminal proceedings which had resulted in a

conviction. The remainder of the judgment was quashed on the ground that the information contained in the case file was insufficient to make a ruling on ownership of these plots.

12. On 23 December 1999 the case was remitted to the first-instance court.

13. On 15 January 2002 the first-instance court ruled that an area of 53,750 square metres was forest and should therefore be registered under the name of the Treasury and that 100,000 square metres of land within plot nos. 220 and 221 should be registered, jointly under the name of the parties. It further decided that 166,050 square metres of area within plots nos. 223 and 221 should be registered under the name of the Treasury with a note in the Land Registry regarding the parties' ownership over the olive trees.

14. On 30 January 2003 the Court of Cassation quashed this judgment on the ground that the information contained in the case file was insufficient to make a ruling on the matter.

15. The parties' request for a rectification of this decision was refused by the Court of Cassation on 1 March 2004.

16. According to the information submitted by the Government on 26 October 2007, the case was apparently still pending before the first-instance court on the date on which the present judgment was adopted.

B. The proceedings before the Ezine Civil Court of First Instance

17. On 7 November 1990 the applicant brought an action for compensation for unlawful occupation before the Ezine Civil Court of First Instance against her stepmother, Ms S.C. and her stepbrother, Mr L.C.

18. The first hearing before the court, held on 12 November 1990 in the absence of the parties, was devoted to procedural matters.

19. In the hearing held on 12 March 1991 the parties requested time to submit their evidence. The court allowed their request.

20. On 18 June 1991 the applicant's lawyer requested time to submit additional information. The court complied with this request. This period was extended in the next hearing held on 22 October 1991 as the applicant's lawyer did not submit information regarding the plots in question.

21. The next hearing, due to be held on 21 January 1992, was postponed as the parties were excused attendance. The court held two more hearings on 12 May and 13 October 1992.

22. At a hearing held on 9 February 1993 the court, at the request of the applicant's lawyer, granted leave to apply for the instruction of a Guardian (with special responsibility to coordinate inheritance matters) by the Magistrates' Court. The next hearing was held on 11 May 1993 when the defendants requested that their claim for compensation also be joined to the present hearings.

23. On 28 September 1993 the court decided to wait for the outcome of the proceedings before the Ezine Cadastral Court as it concerned the same plots of land.

24. The applicant's lawyer was not present at the next two hearings held on 28 December 1993 and 19 April 1994. In the meantime, the court joined the two sets of compensation proceedings. In the next hearing held on 6 September 1994, the applicant's lawyer was not present. The opposing party requested a stay of proceedings pending the outcome of the proceedings before the Ezine Cadastral Court.

25. The applicant's lawyer attended the hearing on 24 November 1994 and informed the court that the proceedings before the Ezine Cadastral Court were still pending. At the next hearing held on 16 February 2005 he was not present.

26. At the hearing held on 16 May 1995 a request by the applicant's lawyer for an on-site inspection concerning the value of the olive trees on the property was rejected by the court. On 13 July 1995 the applicant's lawyer stated that the present proceedings did not concern ownership of the disputed property but compensation on account of *de facto* possession of the property and that therefore there was no need to wait for the outcome of the proceedings before the Ezine Cadastral Court. The court dismissed this argument and decided to wait for the outcome of those proceedings.

27. At the hearing held on 17 January 1995 the applicant's lawyer submitted additional documents.

28. Between 26 December 1995 and 9 July 1997 the proceedings were postponed in the absence of the parties.

29. At a hearing held on 8 October 1997 the applicant's lawyer informed the court that the proceedings before the Ezine Cadastral Court were still pending.

30. Between 28 January 1998 and 3 November 1999 the proceedings were postponed in the absence of the parties. On 3 November 1999 the court decided to strike the case out of its list of cases until it was revived under Article 409 § 5 of the Code of Civil Procedure.

31. On 22 November 1999 the case file was reopened following a request by the applicant's lawyer to that effect. Between 26 January 2000 and 6 September 2000 the court postponed the hearings as the parties were not present.

32. At a hearing held on 4 October 2000 the applicant's lawyer informed the court that the defendants' lawyer had died.

33. Between 8 November 2000 and 28 March 2001 the court postponed the hearings as the applicant's lawyer had informed it that he would be absent.

34. In a hearing held on 16 May 2001 the applicant's lawyer requested time to study the case file as he was newly appointed. The court accepted this request and the next hearing was fixed for 4 July 2001.

35. On 4 July 2001 the applicant's lawyer requested the court to wait for the outcome of the proceedings before the Cadastral Court. The court allowed this request.

36. The hearings due to be held between 10 October 2001 and 17 July 2002 were postponed as the applicant's lawyer had informed the court that he would be absent.

37. On 30 October 2002 the court decided to strike the case out of its list of cases until it was revived under Article 409 § 5 of the Code of Civil Procedure since neither the applicant nor her legal representative had attended the hearing. On 19 February 2003 the court decided to consider the case as never having been opened since the applicant had failed to request a reopening within three months of its previous decision.

THE LAW

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

38. The applicant complained that the length of the civil proceedings had exceeded the "reasonable time" requirement under Article 6 § 1 of the Convention, which provides as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

39. The Government asked the Court to dismiss the application for the failure of the applicant to exhaust domestic remedies, as required under Article 35 § 1 of the Convention, since the proceedings before the Ezine Cadastral Court were still pending and the proceedings before the Ezine Civil Court of First Instance had ended with a decision to strike that case out of its list of cases.

40. The applicant contested, in general terms, the Government's arguments.

41. The Court reiterates that it has already examined and rejected similar objections by the Government in previous cases (see, in particular, *Tutar v. Turkey*, no. 11798/03, §§ 12-14, 10 October 2006, and *Ertürk v. Turkey*, no. 15259/02, §§ 21-22, 12 April 2005). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in the above-mentioned applications. It therefore rejects the Government's objections under this head.

42. Moreover, the Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. As regards the proceedings before the Ezine Cadastral Court

a) Period to be taken into consideration

43. The Government requested the Court to take into account solely the proceedings which took place after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights.

44. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable time" requirement laid down by Article 6 § 1 began on 26 July 1978, when the applicant brought an action for the annulment of the title deeds to seven plots of land and that the proceedings are still pending before the domestic courts. They have thus already lasted more than twenty-nine years.

45. The Court's jurisdiction *ratione temporis* permits it to only consider the period of twenty-one years and two months that elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights. It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited (see *Şahiner v. Turkey*, no. 29279/95, § 22, ECHR 2001-IX, and *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, §§ 25-26, 20 February 2001). On that critical date the proceedings had already lasted more than eight years and six months.

b) Reasonableness of the length of the proceedings

46. The Government argued that the case was a complex one concerning a dispute over title to plots of land and therefore needed meticulous examination by the domestic courts. They further submitted that the applicant's lawyer, by failing to appear before the court at several hearings and requesting additional time-limits had contributed to the prolongation of the proceedings.

47. The applicant maintained her allegations.

48. 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).

49. The Court considers that there were substantial delays throughout the proceedings, which have already lasted approximately twenty-nine years – twenty-one years and two months of which fall within the Court’s jurisdiction *ratione temporis*. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, in particular, *Namlı and Others v. Turkey*, no. 51963/99, § 26, 5 December 2006, and *Nalbant v. Turkey*, no. 61914/00, § 45, 10 August 2006). Neither the complexity of the case nor the conduct of the applicant’s lawyer is sufficient to explain the delays processing the case by the first-instance court (see, for example, *Namlı and Others*, cited above, § 25). In this connection, the Court reiterates that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see *Nalbant*, cited above, § 42). In the Court’s opinion, the length of the proceedings, in the instant case, can only be explained by the failure of the domestic courts to deal with the case diligently. Finally, the Court considers that what was at stake for the applicant in the domestic litigation was of considerable importance to her.

50. Having examined all the material submitted to it and 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.

51. There has accordingly been a breach of Article 6 § 1.

2. As regards the proceedings before the Ezine Civil Court of First Instance

52. Neither parties made any specific submissions under this head.

53. The Court notes that the main Convention question raised in the instant application was the length of the proceedings before the Ezine Cadastral Court, under Article 6 § 1 of the Convention. Having found a violation of this provision (see paragraph 51 above), the Court considers that there is no need to make a separate ruling on whether the proceedings before the Ezine Civil Court of First Instance were also excessive, given the fact that these two sets of proceedings were closely linked to each other as the proceedings before the Ezine Civil Court of First Instance were stayed pending the outcome of the proceedings before the Ezine Cadastral Court, (see *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. On various dates, the latest being a letter of 10 July 2006, the applicant referred to an unjustified interference with her inheritance rights, including her right to benefit from the sale of the olive trees on the premises, in breach of Article 1 of Protocol No. 1. In letters dated 30 March and 15 April 2002 the applicant alleged that she had been discriminated against on the ground of her sex in breach of Article 14 of the Convention.

55. Even assuming that these complaints were duly raised, the Court finds that, in the light of all the materials in its possession, they do not disclose, at this time, any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

56. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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, costs and expenses

58. The applicant sought reparation for the damage she had sustained as a result of the length of the proceedings but left the amount to the discretion of the Court. She further sought an award in respect of pecuniary and non-pecuniary damage which would reflect the failure to respect her property rights. In one of her letters, dated 5 August 2006, the applicant claimed 900,000 United States Dollars, her share of the amount she should have received for the past twenty-eight years from the sales of the produce yielded by the olive trees.

59. The Government disputed the applicant’s arguments.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. In addition, since the applicant did not submit any claims for costs and expenses within the specified time-limit, the Court makes no such award under Article 41 of the Convention. On the other hand, the Court considers 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. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 13,500.

61. Furthermore, 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 within the shortest possible period of time are recognised, in principle, as offering appropriate redress for the violation.

B. Default interest

62. 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 length of the civil proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the proceedings before the Ezine Cadastral Court;
3. *Holds* that there is no need to examine separately the applicant’s remaining complaint under Article 6 § 1 of the Convention;
4. *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, EUR 13,500 (thirteen thousand and five hundred euros) in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of the 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;

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

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President