



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

SECOND SECTION

CASE OF TARIMCI v. TURKEY

(Application no. 30001/03)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Tarımcı v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 30001/03) 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 Tunç Tarımcı (“the applicant”), on 18 August 2003.

2. The applicant was represented by Mr H.K. Elban and Ms Serpil Yalçın, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 11 December 2006 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Antalya.

5. The applicant owns a flat in Antalya. Based on a construction permit issued by the Antalya Municipality on 14 February 1991, construction works were commenced on neighbouring land to build an apartment block. The limitations concerning the height of the building were not respected and, as a result, the sea view from the applicant’s flat, which is situated on the sixth floor, was blocked by the new building.

6. On an unspecified date, the applicant initiated administrative proceedings against the Antalya Municipality for the annulment of the construction permit. He maintained that the permit was in breach of city planning regulations. On 27 June 1995 the Antalya Administrative Court found in the applicant's favour and annulled the construction permit. On 13 March 1996 the Supreme Administrative Court upheld the decision of the Antalya Administrative Court.

7. The applicant asked the Antalya Municipality to enforce the decision of the Antalya Administrative Court, but his request was rejected.

8. On 18 October 1998 the applicant initiated compensation proceedings before the Antalya Administrative Court on account of the Municipality's failure to implement the court order of 13 March 1996. He requested both pecuniary and non-pecuniary compensation, stating that the non-enforcement of the final court decision which had annulled the construction permit had diminished his flat's value.

9. On 19 November 1998 the Antalya Administrative Court partially upheld the applicant's claim, awarding him pecuniary compensation, but refusing non-pecuniary damages.

10. On 26 April 2000 the Supreme Administrative Court upheld the Antalya Administrative Court's decision in respect of pecuniary damage. However, finding that the applicant was also entitled to non-pecuniary compensation, it quashed the judgment in this respect. Subsequent to this decision, the Municipality paid the pecuniary compensation to the applicant.

11. On 1 November 2000 the Antalya Administrative Court awarded 250,000,000 Turkish liras (TRL) to the applicant in respect of non-pecuniary damage.

12. On 16 April 2002, considering the amount of non-pecuniary compensation insufficient, the Supreme Administrative Court quashed the judgment of the Antalya Administrative Court once again.

13. On 19 December 2002 the Antalya Administrative Court insisted on maintaining its judgment. The applicant appealed.

14. On 16 June 2005 the Supreme Administrative Court quashed the judgment of the Antalya Administrative Court of 19 December 2002.

15. On 29 December 2005 the Antalya Administrative Court adhered to the decision of the Supreme Administrative Court and awarded the applicant TRL 1,000,000,000 in respect of non-pecuniary compensation with statutory interest running from 18 October 1996.

16. On 27 June 2006 the Supreme Administrative Court rejected the appeal of the Municipality. The Municipality paid the due amount to the applicant.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

1. The scope of the application

17. The applicant first alleged that his right to a fair hearing had been breached on account of the failure of the national authorities to enforce the judgment of the Antalya Administrative Court. However, he subsequently withdrew this complaint after the exchange of written observations between the parties. Accordingly, the Court is not required to examine the matter further.

18. The case is thus limited to the applicant's second complaint that the proceedings had exceeded the reasonable time requirement of Article 6 § 1 of the Convention, which provides as follows:

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

19. The Government contested this claim.

2. Applicability of Article 6

20. Referring to the Court's case-law in the *Hüseyin Cahit Ünver v. Turkey* case (dec. no. 36209/97, 26 September 2000), the Government submitted that Article 6 of the Convention was not applicable to the instant case.

21. The Court recalls that in the *Ünver* case, it held that Article 6 was not applicable to the proceedings in dispute, as the applicant in that case had never argued before the domestic courts that the value of his house had been diminished. His sole concern was to preserve his view of the sea and the natural beauty of the area. However, in the present case the applicant specifically argued before the Antalya Administrative Court and the Supreme Administrative Court that the value of his house had been diminished because of the neighbouring building which had been built pursuant to an unlawful construction permit. Furthermore, the Court notes that the applicant was awarded pecuniary compensation by the domestic courts for his loss. Consequently, the Court concludes that the outcome of the proceedings was decisive for the applicant's private and/or pecuniary rights.

22. The Court therefore dismisses the Government's preliminary objection in this respect and finds that Article 6 is applicable to the proceedings in issue.

3. *First set of proceedings*

23. The Government stated that there were two separate sets of proceedings in the present case. The first set of proceedings concerned the annulment of the neighbour's building permit and successfully ended with the Supreme Administrative Court's decision of 13 March 1996. However, the application was not lodged with the Court until 18 August 2003. This aspect of the complaint should therefore be dismissed for non-compliance with the six month time-limit prescribed by Article 35 § 1 of the Convention.

24. The Court concurs with this analysis and therefore rejects this part of the application pursuant to Article 35 §§ 1 and 4 of the Convention.

4. *Second set of proceedings*

25. The Court observes that the second set of proceedings, concerning the non-enforcement of the aforementioned 1996 judgment, commenced on 18 October 1998 and ended on 27 June 2006 with the another decision of the Supreme Administrative Court. During this period both the first-instance court and the Court of Cassation delivered four decisions each. It thus lasted more than seven years and eight months for two levels of jurisdiction.

26. The Court notes that this aspect of the 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.

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 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).

29. In the present case, the domestic courts delivered eight decisions in seven years and eight months. However, the Court cannot overlook the fact that lengthy periods elapsed before the Supreme Administrative Court (namely between 19 November 1998 and 26 April 2000; 1 November 2000 and 16 April 2002, and 19 December 2002 and 16 June 2005). The Government have not offered any explanation for this state of affairs. Failing which, and in the absence of any indication that the applicant contributed to the delays, this lack of diligence is solely attributable to the domestic courts.

30. 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

31. 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

32. The applicant claimed 27,964 new Turkish liras (TRY), equivalent to 15,000 euros (EUR), in respect of pecuniary damage and TRY 5,000, equivalent to EUR 2,700, in respect of non-pecuniary damage.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, as regards non-pecuniary damage, taking into account the circumstances of the case and having regard to its case-law, the Court awards the full amount claimed by the applicant, namely EUR 2,700.

B. Costs and expenses

35. The applicant also claimed TRY 9,000, equivalent to EUR 4,800, in respect of legal fees and TRY 130, equivalent to EUR 70, in respect of costs and expenses. The applicant submitted a legal fee agreement, and stated that his lawyer had spent 36 hours preparing his application to the Court.

36. The Government contested this claim.

37. 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, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum of EUR 1,000 under this head.

C. Default interest

38. 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 in respect of the length of the second set of administrative 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 amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 2,700 (two thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President