



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

SECOND SECTION

CASE OF GENCER v. TURKEY

(Application no. 31881/02)

JUDGMENT

STRASBOURG

25 November 2008

FINAL

25/02/2009

This judgment may be subject to editorial revision.

In the case of Gencer v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 4 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 31881/02) 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 a Turkish national, Mr Bedran Gencer (“the applicant”), on 22 July 2002.

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

3. The applicant alleged that, as a result of unfair decisions given by the domestic courts, he had been deprived of his land which was the main source of income for his family. He relied on Articles 6, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1.

4. On 15 January 2008 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

5. The applicant was born in 1952 and lives in Şanlıurfa.

6. 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).

7. Following the promulgation of Law no. 3083, the applicant applied to the Commission which determined the eligibility of farmers to be right holders and requested to be provided with land in Ceylanpınar in the south-east of Turkey.

8. On 1 March 1999 the applicant was identified as a right holder 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 applicant earned his living by cultivating this land.

9. On 11 May 2000, after conducting a “security investigation”, the Directorate General annulled the right holder status of the applicant.

10. On 31 May 2000 the applicant brought an action in the Gaziantep Administrative Court requesting the stay of execution and reversal of the Directorate General’s decision.

11. On 8 June 2000 the Gaziantep Administrative Court decided to request the defendant administration to indicate the reasons which grounded its decision to annul the right holder status of the applicant. The court invited the defendant administration to submit their response and relevant documents within thirty days.

12. On 2 August 2000 the Gaziantep Administrative Court dismissed the applicant’s request for a stay of execution of the decision, holding that necessary conditions were not met.

13. On an unspecified date, the Directorate General refused to submit the information or documents requested by the Gaziantep Administrative Court. In this respect, the Directorate General relied on Article 20 § 3 of the Law on Administrative Procedure which provides that the Prime Minister or other Government 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.

14. On 7 December 2000 the Gaziantep Administrative Court dismissed the applicant’s case. The court held that the impugned decision of 11 May 2000 and the refusal of the Directorate General to submit the relevant information and documents had been in accordance with the domestic legislation. The applicant appealed.

15. On 15 April 2002 the Supreme Administrative Court dismissed the applicant’s appeal. This decision was served on the applicant on 5 July 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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.

17. 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.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

18. The Government submitted that the applicant had failed to exhaust domestic remedies given that he had not requested the rectification of the Supreme Administrative Court's decision and that he had not raised an objection to the Gaziantep Administrative Court's decision to dismiss his request for a stay of execution.

19. As regards the first part of the Government's objection, the Court reiterates that it has already examined and rejected similar objections in previous cases (see, in particular, *Dağtekin and Others v. Turkey*, no. 70516/01, § 22, 13 December 2007, and *Gök and Others v. Turkey*, nos. 71867/01, 71869/01, 73319/01 and 74858/01, §§ 47- 48, 27 July 2006). It 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 objection.

20. 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 or her Convention grievances.

21. In the instant case, the applicant's complaint related to the alleged unjust termination of his lease. In this respect, the applicant brought an action in the administrative courts to obtain the annulment of the Directorate

General's decision dated 11 May 2000 and, meanwhile, sought interim measures to secure a stay of execution of that decision. However, the applicant's requests were dismissed by the Gaziantep Administrative Court. In the Court's opinion, the fact the applicant did not object to the dismissal of his request for a stay of execution is not material; it is not the case that his claim was thereby rejected for failure to comply with a procedural requirement. Having regard to the fact that the applicant's case was examined by the domestic courts who delivered a final and binding decision on the matter, the Court concludes that he 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 objection cannot be upheld.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

1. As regards the length of the proceedings

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

23. The Court notes that the proceedings in question commenced on 11 May 2000 and ended on 15 April 2002. They thus lasted for approximately two years at 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.

24. 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

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

26. The Government contested the applicant's claim. They submitted that, pursuant to Article 20 § 3 of the Law on Administrative Procedure, the Prime Minister or other Government 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 under Article 24 of Law no. 3038 and Article 38 of the Regulations of implementation. Thus, having regard in

particular to the security of the region concerned, it had amended the list of right holders.

27. The Court considers that, in the instant case, it is more appropriate to deal with the applicant's 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 solely in the criminal sphere, may nonetheless sometimes be regarded as general elements of the fairness guarantee of the first paragraph in civil cases.

A. Admissibility

28. 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

29. The Court notes that it has examined a similar case in the past and has concluded that there had been a violation of Article 6 § 1 of the Convention (see *Dağtekin and Others*, cited above, §§ 31-35). In that case, it observed that the national authorities had cancelled the applicants' right to lease farm land in south-east Turkey following a security investigation, the results of which were never communicated to the applicants or to the domestic courts. Furthermore, the result of this security investigation had important consequences for the applicants since at no stage of the domestic proceedings were they given an opportunity to learn the reason as to why their contracts had been annulled. Nor were they given an effective opportunity to challenge the lawfulness of the annulment of their right holder status.

30. The Court sees no reason to reach a different conclusion in the instant case. It notes that, as a result of the impugned security investigation, the applicant was deprived of his right to cultivate the farm land in question, which was the main source of income to sustain his family, and was never given any reasons for the annulment of his contract. Nor was he given an effective opportunity to challenge the lawfulness of the annulment of his right holder status, since the results of the security investigation were not communicated to the domestic courts either (see paragraphs 13 and 14 above). As a result, the applicant was deprived of sufficient safeguards against any arbitrary action on the part of the authorities (see, *Dağtekin and Others*, cited above, § 34).

31. In view of the above, the Court concludes that the non-disclosure of the security investigation report infringed the applicant's right to a fair

hearing within the meaning of Article 6 § 1 of the Convention. Accordingly, there has been a violation of this provision.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

32. The applicant further complained, under Article 1 of Protocol No. 1 to the Convention, that, as a result of the unfair decisions of the domestic authorities, he had been deprived of his land which he had leased from the domestic authorities.

33. The Government submitted that the domestic authorities had not acted arbitrarily in cancelling the applicant's right holder status. They further argued that the applicant did not have "possessions" within the meaning of Article 1 of Protocol No. 1.

34. The Court notes that this complaint is linked to that already examined above and must likewise be declared admissible.

35. 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 29-31 above), the Court considers that there is no need to make a separate ruling on the applicant's complaint under Article 1 of Protocol No. 1 (see *Dağtekin and Others*, cited above, § 39).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. On the basis of these same events, the applicant alleged a further violation of his rights protected by Articles 13, 14 and 18 of the Convention.

37. The Government contested these allegations.

38. However, the Court finds nothing 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

39. 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."

40. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints concerning the fairness of the proceedings and his right to the peaceful enjoyment of his possessions 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 fairness of the proceedings;
3. *Holds* that there is no need to examine separately the applicant's complaint under Article 1 of Protocol No. 1.

Done in English, and notified in writing on 25 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President