



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

SECOND SECTION

CASE OF MUSTAFA AÇIKGÖZ v. TURKEY

(Application no. 34588/03)

JUDGMENT

*This version was rectified on 28 January 2009
under Rule 81 of the Rules of Court.*

STRASBOURG

9 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Mustafa Açıkgöz 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 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 34588/03) 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 Mustafa Açıkgöz (“the applicant”), on 31 July 2003.

2. The applicant was represented by Mr E. Sansal, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 20 November 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicant was born in 1958 and lives in Ankara.

5. The applicant is the owner and director of a construction company registered in Turkey, the Mustafa Açıkgöz Construction Company Limited.

6. On 26 April 1993 the applicant concluded a contract with S.K. and F.Ö., in which the applicant undertook to construct a building, comprising flats and shops, on a plot of land in Beypazarı belonging to S.K. and F.Ö. The owners were to transfer the ownership of the plot to the applicant and, on completion of the construction, the applicant was to transfer the ownership of six flats to S.K. and F.Ö. According to the contract, S.K. and F.Ö. were to have three flats each, two of which would be well lit by daylight.

7. On 7 March 1994 S.K. brought a case against the applicant before the Beypazarı Civil Court, claiming that the applicant had constructed the building but had failed to transfer the ownership of the flats to her. S.K. requested that flats nos. 8, 15 and 18 be registered in her name.

8. Twenty-eight hearings were held between 8 April 1994 and 1 May 1997. During the same interval five expert reports were submitted to the court either as to the division of flats and sections of the building or as to the luminosity of the flats.

9. On 1 May 1997 the Beypazarı Civil Court granted S.K.'s request.

10. On 3 December 1997 the Court of Cassation quashed the judgment of 1 May 1997, holding that the first-instance court had failed to assess the provisions of the contract between the applicant and S.K. correctly and, as a result, had designated the wrong flats. The Court of Cassation considered that the expression "well lit flats" contained in the contract should have been interpreted as meaning flats on the south side of the building.

11. The applicant requested revision of the Court of Cassation's decision.

12. On 18 May 1998 the revision request was dismissed.

13. The case was subsequently remitted to the first-instance court.

14. Two hearings were held between 18 May 1998 and 24 September 1998.

15. On 18 September 1998 an expert report was submitted to the court indicating that the sunnier flats were nos. 11, 14, 17 and 20.

16. On 24 September 1998 the Beypazarı Civil Court decided that S.K. should be registered as the owner of sections nos. 5, 6 and 8 (whose size was equal to that of a flat), as well as flats nos. 17 and 20.

17. On 7 April 1999 the Court of Cassation again quashed the first-instance court's judgment. It considered that the applicant had incurred unjustified loss as a result of that decision.

18. The claimant requested review of the Court of Cassation's decision.

19. On 2 December 1999 the review request was dismissed.

20. The case was subsequently remitted to the first-instance court.

21. Six hearings were held between 2 December 1999 and 9 October 2000.

22. On 26 May 2000 an expert report was submitted to the court.

23. On 9 October 2000 the Beypazarı Civil Court decided that S.K. should be registered as the owner of sections nos. 1, 3, 5 and 6 (whose total surface was less than that of flats nos. 5, 6 and 8), as well as flats nos. 17 and 20.

24. On 30 April 2001 the Court of Cassation upheld the judgment of 9 October 2000.

25. The applicant requested review of the Court of Cassation's decision.

26. On 8 October 2001 the Court of Cassation granted the applicant's request, annulled its decision of 30 April 2001 and quashed the judgment of

9 October 2000. The Court of Cassation noted that the first-instance court had requested experts to draw up a report and to make proposals as to the division of the flats and sections of the building, and that on 26 May 2000 the experts had submitted a report containing seven proposals. It observed that the court had failed to give the applicant an opportunity to express his preference regarding these proposals. Instead it selected the first one of its own motion, which had had a detrimental outcome for the applicant. The case was subsequently remitted to the first-instance court.

27. Four hearings were held between 8 October 2001 and 8 July 2002.

28. At the hearing of 11 March 2002, the Beypazarı Civil Court requested the applicant to state his preferred expert proposal, but he failed to respond within the set time-limit.

29. On 8 July 2002 the Beypazarı Civil Court gave judgment and ordered that S.K. be registered in the land register as the owner of sections nos. 2, 3, 4 and 5, as well as flats nos. 17 and 20.

30. On 21 April 2003 the Court of Cassation upheld the judgment of 8 July 2002.

THE LAW

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

31. 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...”

A. Admissibility

32. 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

33. The Government submitted that the length of the proceedings had not exceeded the reasonable time requirement. They argued that the applicant’s case had been complex. They further stated that the conduct of

the parties had contributed to the length of the proceedings since they had refused to compromise throughout.

34. The applicant maintained his allegations.

35. The period to be taken into consideration began on 7 March 1994 and ended on 21 April 2003 when the Court of Cassation upheld the last judgment of the Beypazarı Civil Court. It thus lasted nearly nine years and one month for three levels of jurisdiction with several remittals.

36. 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).

37. The Court considers that the subject matter of the litigation, namely the interpretation of the contract between the applicant and S.K., was not particularly complex.

38. As regards the conduct of the applicant, the Court observes that, although the applicant may have contributed to some extent to the delay in the proceedings by his conduct, for example by failing to respond to the request of the court as to his preferred expert proposal within the set time-limit, this cannot justify the overall length of the proceedings (see *Türkoğlu v. Turkey*, no. 58922/00, § 38, 8 August 2006).

39. As regards the conduct of the relevant authorities, the Court observes that Beypazarı Civil Court delivered four judgments, while the Court of Cassation delivered seven decisions. In total, eleven decisions were delivered in nine years. The delay was caused mainly by the re-examination of the case. With regard to the repeated quashing of the lower court's judgments, the Court recalls that since the remittal of cases for re-examination is usually ordered as a result of errors committed by the lower authorities, the repetition of such orders within one set of proceedings discloses a deficiency in the operation of the legal system (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

40. Having regard to the above, the Court considers that in the instant case the length of proceedings was excessive and failed to meet the "reasonable time" requirement.

41. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

42. The applicant complained that the excessive length of the proceedings had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

43. The Government argued that the applicant did not have the possession of the disputed flats. They maintained that Article 1 of Protocol No. 1. to the Convention was not applicable.

44. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

45. However, having regard to its finding under Article 6 § 1 (see paragraph 41 above), the Court considers that it is not necessary to examine separately whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Öztunç v. Turkey*, no. 74039/01, §32, 27 March 2007, and *Zanghì v. Italy*, 19 February 1991, § 23, Series A no. 194-C).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 3,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

48. The Government contested these claims.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 2,400¹ in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant did not submit any claim for costs and expenses.

51. The Court thus considers that there is no cause to make any award under this head.

¹ Rectified on 28 January 2009: The amount read “EUR 3,600” in the former version of the judgment.

C. Default interest

52. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is unnecessary to examine separately the complaint under Article 1 of Protocol No. 1 to 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 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent Government, at the rate applicable at the date of settlement;
 - (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 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President