



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

SECOND SECTION

CASE OF ALİ KEMAL UĞUR¹ AND OTHERS v. TURKEY

(Application no. 8782/02)

JUDGMENT

*This version was rectified on 17 December 2009
under Rule 81 of the Rules of the Court*

STRASBOURG

3 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

1. Rectified on 17 December 2009: the name of the applicant was “Ali Kemal Uğur”.

In the case of Ali Kemal Ugur¹ and Others 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 Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 8782/02) 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 21 Turkish nationals (“the applicants”), on 11 December 2001. The applicants, whose names, dates of birth and places of residence are set out in the appendix, were represented before the Court by Mr Yavuz Selim Sarıbrahimoğlu, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

2. On 5 November 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

3. The applicants' ancestors emigrated to Anatolia from the Caucasus during the Ottoman-Russian War of 1877-1878. In 1920 the authorities gave them usufructuary rights to a piece of land located within the administrative division of the town of Kadirli, near Adana. Although they were able to use the land, they were not able to buy it. In 1926, when the Civil Code of the

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then newly founded Turkish Republic entered into force, it became possible for private individuals to own property.

4. Between 1924 and 1929 a Mr Ali Saip Ursavaş, who had been an army commander, a member of Parliament and a judge, forced the applicants' ancestors and a number of other villagers living in the same area of their land and registered the land in his own name and that of his wife.

5. A court case was brought in 1950s to challenge the registration of the land in the name of the Ursavaş family. In 1965 the applicants' ancestors applied to the Kadirli Title Deeds Registration Court (hereafter “the Kadirli Court”) and asked to be given permission to join the proceedings as interveners. This request was rejected on 7 April 1967.

6. An appeal lodged by the applicants' ancestors against the decision of the Kadirli Court was upheld by the Court of Cassation and the decision of 7 April 1967 was thus quashed.

7. The proceedings, which recommenced before the Kadirli Court in 1969, ended 14 years later with a decision of 21 July 1983. The Kadirli Court found in favour of the applicants' ancestors (as, by that date, some of the applicants had started taking part in the proceedings themselves, for practical reasons those applicants as well as the ancestors of the younger applicants will hereafter be referred to as “the applicants”) and ordered the registration of the land in their names in the Land Register.

8. An appeal lodged by the Treasury and the heirs of Ali Saip Ursavaş against the decision of 21 July 1983 was upheld by the Court of Cassation on 13 November 1984. The decision of 21 July 1983 was thus quashed. A revision request made by the applicants was also rejected.

9. Proceedings recommenced before the Kadirli Land Registry Court in 1987. These proceedings continued for nine years and ended on 4 March 1996. In its decision the Kadirli Land Registry Court rejected the applicants' claims in respect of plots nos. 1-3, and severed the proceedings in so far as they concerned plots nos. 4-6.

10. In the meantime, on 10 May 1994 five of the applicants, namely Gülşen Başdoğan, Akif Uğur, Salih Uğur, Mahmut Nedim Uğur and Cevriye Uğur, gave a power of attorney to Hanifi Uğur to represent them in all proceedings in Turkey.

1. Proceedings concerning plots nos. 1-3

11. On 18 July 1997 the applicants appealed against the decision of 4 March 1996 in so far as that decision concerned their entitlement to plots nos. 1-3. This appeal was rejected by the Court of Cassation on 6 July 1999. The Court of Cassation upheld the requests made by a number of other persons who were also participating in the proceedings in respect of plots nos. 1-3 and quashed the decision of 4 March 1996 in so far as it concerned those persons' claims. A new set of proceedings in respect of those persons' entitlement to plots nos. 1-3 began.

12. A request made by the applicants on 8 November 1999 for a revision of the decision was rejected on 6 June 2001 and the decision of 4 March 1996 thus became final in so far as it concerned the applicants' entitlement to plots nos. 1-3. The proceedings concerning other persons' entitlement to plots nos. 1-3 continued.

2. Proceedings concerning plots nos. 4-6

13. In 1996 new proceedings started before the Kadirli Land Registry Court in respect of plots nos. 4-6. These proceedings ended on 24 June 1997 with a decision in which the applicants' claims in respect of plot no. 4 were rejected. The applicants appealed on 23 February 1998.

14. On 9 October 2000 the Court of Cassation quashed the decision of 24 June 1997 and decided that the proceedings concerning plots nos. 4-6 should be joined to the other pending proceedings which concern other persons' entitlement to plots nos. 1-3.

15. The proceedings concerning both sets of plots were thus joined and they are still continuing with the participation of several hundred heirs of the original plaintiffs and of the Ursavaş family.

16. The names of only two of the applicants - Mr Ali Kemal Ugur¹ and Mr Ömer Lütfi Ugur² - feature in the petitions submitted to the domestic courts and in the decisions rendered by those courts.

THE LAW

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

17. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention. They further complained under the same Article that the Court of Cassation, in its decision of 13 November 1984, had made a procedural mistake. Article 6 of the Convention, in so far as relevant, reads 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..."

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2. Rectified on 17 December 2009: the name of the applicant was "Ömer Lütfi Uğur".

A. The complaint concerning the length of the proceedings

18. The Court notes that the period to be taken into consideration began on 28 January 1987, when the recognition by Turkey of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX). It notes that by that date, the case, in so far as it concerns the applicants, had already been pending for 22 years (see paragraph 5 above). The period in question has not yet ended as the proceedings are still ongoing. It has thus lasted 22 years for three levels of jurisdiction.

1. Admissibility

a. Victim status

19. The Government argued that 19 of the 21 applicants whose names do not feature in the domestic proceedings cannot claim to be victims because they had not intervened in the proceedings.

20. The applicants maintained that, as they were the heirs of those who had taken part in the proceedings over the years, they had the right, under domestic law, to intervene in the proceedings in question. Indeed, the fact that five of them had given a power of attorney to Hanifi Uğur to act on their behalf was a proof that they had been participating in the proceedings (see paragraph 10 above).

21. The Court notes at the outset that, at the time of giving notice of the application to the respondent Government, each applicant was requested to clarify, by referring to the necessary documents, the proceedings in which they had taken part and for how long. Nevertheless, the applicants failed to comply with that request. Instead, they submitted to the Court documents, showing that they are the heirs of some of the persons who had initiated or participated in the proceedings.

22. As to the power of attorney authorising Hanifi Uğur – who himself is one of the applicants – to represent five of the applicants, the Court notes that that power of attorney does not make an express reference to the proceedings which are the subject matter of the present application. Moreover, the name of Mr Hanifi Uğur does not feature in any of the decisions rendered by the domestic courts or in the petitions submitted to those courts.

23. The Court notes that domestic legislation does indeed allow the applicants to join the ongoing proceedings and to take the place of their deceased relatives. Nevertheless, as pointed out earlier, the applicants have not provided the Court with any documentary evidence showing that they had done so.

24. The Court concludes, therefore, that for the purposes of the complaint concerning the length of the proceedings under Article 6 § 1 of the Convention, only two of the applicants - Mr Ali Kemal Ugur¹ and Mr Ömer Lütfi Ugur² - whose names feature in the domestic courts' decisions, can claim to be victims within the meaning of Article 34 of the Convention. The claim of the other 19 applicants must be rejected as being incompatible *ratione personae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

b. Exhaustion of domestic remedies

25. The Government were of the opinion that, as the proceedings were still pending, the applicants had not yet complied with the obligation to exhaust domestic remedies and, as such, the complaint was premature.

26. The Court draws the Government's attention to the fact that the applicants' complaint relates specifically to the length of the proceedings which have been continuing since 1950s.

27. In any event, it is to be noted that the Turkish legal system does not provide any remedies to accelerate the proceedings or to obtain any compensation for such delays. It follows that there was no appropriate and effective remedy which the applicants could have used for the purposes of Article 35 § 1 of the Convention (see *Mete v. Turkey*, no. 39327/02, §§ 18-19, 25 October 2005). The Court therefore rejects the Government's objection.

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 in so far as it concerns Mr Ali Kemal Ugur¹ and Mr Ömer Lütfi Ugur².

2. Merits

29. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

30. 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 *Frydlender*, cited above).

31. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of

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persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds 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 of the Convention in respect of the applicants Mr Ali Kemal Ugur¹ and Mr Ömer Lütfi Ugur².

B. The remaining complaint under Article 6 of the Convention

32. The applicants complained that the Court of Cassation had made a procedural mistake in its decision of 13 November 1984 (see paragraph 8 above).

33. The Court notes that the decision referred to by the applicants was adopted before 28 January 1987, that is before the recognition by Turkey of the right of individual petition took effect.

34. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

35. In their application form, the applicants relied on Article 8 of the Convention and argued that their right to respect for their home had been infringed on account of their inability to use their houses and land for over 70 years. In this connection the applicants maintained that the respondent State had breached its positive obligation by failing to protect them from unjust interference by private individuals.

36. In their observations submitted to the Court on 25 September 2008, the applicants requested the Court to examine this complaint both under Article 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention.

37. The Court considers that, in the circumstances of the present case, no issues arise under Article 8 of the Convention. In any event, even assuming that the complaint made by the applicants under Article 8 can also to be examined under Article 1 of Protocol No. 1 to the Convention, it is inadmissible for the following reasons.

38. The Court observes that the proceedings concerning plots nos. 1-3 were concluded on 6 June 2001 when the Court of Cassation upheld the decision of 4 March 1996 in which the applicants' claims in respect of those plots had been rejected by the first instance court (see paragraph 12 above).

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It must be stressed at this juncture that it is not for the Court to settle the issue of ownership of disputed land (see *Nalbant v. Turkey* (dec.), no. 61914/00, 12 May 2005). Furthermore, the Court finds no indication of arbitrariness in the domestic courts' decisions in reaching their decisions in respect of the applicants' entitlement to plots nos. 1-3. It follows that, in so far as plots nos. 1-3 are concerned, the applicants cannot claim to have a "possession" within the meaning of the first sentence of Article 1 of Protocol No. 1 and the guarantees of that provision do not therefore apply to the present case (see, *mutatis mutandis*, *Pekinel v. Turkey*, no. 9939/02, §§ 57-61, 18 March 2008).

39. As regards the plots nos. 4-6, the Court observes that the proceedings relating to those plots are still pending (see paragraph 15 above) and the issue of whether or not the applicants have a lawful title thereto is not yet determined.

40. In view of the above, the Court concludes that this complaint should be rejected as being manifestly ill-founded as a whole, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicants claimed 6,383,580 new Turkish liras (approximately 3,500,000 euros (EUR¹)) in respect of pecuniary damage. Each applicant also claimed EUR 30,000 in respect of non-pecuniary damage.

43. The Government contested the claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards each of the two applicants Mr Ali Kemal Ugur² and Mr Ömer Lütfi Ugur³ EUR 19,200 in respect of non-pecuniary damage.

45. Furthermore, having regard to the fact that the proceedings in question are still pending before the domestic courts (see paragraph 15 above), the Court considers that the most appropriate form of redress would be to bring them to a conclusion as soon as possible, by conducting them in

1. The amount was converted according to the exchange rates in December 2008.

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accordance with the requirements of Article 6 § 1 of the Convention (see, *Uğuz v. Turkey*, no. 31932/03, § 30, 13 December 2007).

B. Costs and expenses

46. The applicants did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award them any sum on that account.

C. Default interest

47. 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 introduced by Mr Ali Kemal Ugur¹ and Mr Ömer Lütfi Ugur² 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 in respect of Mr Ali Kemal Ugur¹ and Mr Ömer Lütfi Ugur²;
3. *Holds*
 - (a) that the respondent State is to pay each of these two applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 19,200 (nineteen thousand two 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 State 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 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 two applicants' claim for just satisfaction.

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Done in English, and notified in writing on 3 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

List of Applicants

1. Ali Kemal Uğur¹, 1930, Yeşilyepe Village, Kahramanmaraş
2. Cevriye Uğur, 1962, Yeşilyepe Village, Kahramanmaraş
3. Gülşen Başdoğan, 1964, Kadirli, Osmaniye
4. Akif Uğur, 1955, Yeşilyepe Village, Kahramanmaraş
5. Hüseyin Uğur, 1941, Yeşilyepe Village, Kahramanmaraş
6. Salih Uğur, 1960, Yeşilyepe Village, Kahramanmaraş
7. Mahmut Nedim Uğur, 1948, Yeşilyepe Village, Kahramanmaraş
8. Doğan Uğur, 1963, Yeşilyepe Village, Kahramanmaraş
9. Ömer Lütfi Uğur², 1922, Yeşilyepe Village, Kahramanmaraş
10. Münevver Uğur, 1962, Yeşilyepe Village, Kahramanmaraş
11. Özkan Uğur, 1985, Yeşilyepe Village, Kahramanmaraş
12. Yusuf Uğur, 1975, Yeşilyepe Village, Kahramanmaraş
13. Türkan Uğur, 1974, Yeşilyepe Village, Kahramanmaraş
14. Rifail Uğur, 1981, Yeşilyepe Village, Kahramanmaraş
15. Fatma Uğur, 1950, Yeşilyepe Village, Kahramanmaraş
16. İclal Uğur, 1981, Yeşilyepe Village, Kahramanmaraş
17. Melek Uğur, 1927, Yeşilyepe Village, Kahramanmaraş
18. Gülendam Uğur, 1942, Yeşilyepe Village, Kahramanmaraş
19. Bünyamin Uğur, 1977, Kadirli, Osmaniye
20. Hanifi Uğur, 1955, Kadirli, Osmaniye
21. Halit Uğur, 1949, Yeşilyepe Village, Kahramanmaraş

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