



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SÜRGİT v. TURKEY

(Application no. 27597/06)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Sürgit 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,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 27597/06) 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 Ahmet Sürgit (“the applicant”), on 19 June 2006.

2. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 September 2008 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

4. The applicant was born in 1964 and lives in İzmir.

5. In 1998 the applicant and his wife bought a flat. In 1999 the applicant’s wife initiated divorce proceedings against the applicant and in 2000 the divorce was pronounced.

6. In the meantime, on 24 November 1999, the applicant brought an action before the İzmir Civil Court of General Jurisdiction, asking for compensation in an amount equal to half the value of the flat he and his former wife had bought in 1998. On 17 September 2003 the court dismissed the case as it found that it did not have jurisdiction *ratione materiae*, and sent the file to the İzmir Family Court. However, on 21 October 2004 the İzmir Family Court dismissed the case as it also found that it lacked

jurisdiction *ratione materiae*, and sent the file back to the İzmir Civil Court of General Jurisdiction.

7. Finally, on 16 June 2005, having regard to the statements of both parties' witnesses and an expert report to assess the contribution made by the parties to the flat, and in view of the facts of the previous divorce action, the İzmir Civil Court of General Jurisdiction dismissed the case. It held that the applicant and his former wife had been living in separate houses when the flat in question was bought. Moreover, the applicant was unemployed and unable to provide even a basic level of financial support for his wife. It was concluded that, given his financial situation, the applicant could not have contributed enough to the purchase of the flat in question to be entitled to claim a share in it. The court further noted that, at the time of purchase, the legal matrimonial regime was the system of separation of property and the title deed of the flat was registered in the wife's name.

8. On 29 December 2005 and 14 April 2006 respectively, the Court of Cassation rejected the applicant's appeal and rectification requests.

THE LAW

9. The applicant complained that he did not have a fair hearing and that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

10. The Government contested this argument. They contended that the applicant's complaint regarding the length of the proceedings should be declared inadmissible for non-exhaustion of domestic remedies, as he had failed to raise his complaint before the national courts. The Court reiterates that it has already examined and rejected the Government's preliminary objections in cases similar to the present application (see, *Karakullukçu v. Turkey*, no. 49275/99, §§ 27-28, 22 November 2005; *Nalbant v. Turkey*, no. 61914/00, § 31, 10 August 2006). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Consequently, it rejects the Government's preliminary objection.

11. As to the applicant's complaint concerning the fairness of the proceedings, the Court observes that the national courts' decisions were given on the basis of domestic law and the particular circumstances of the case. The Court finds no element which might lead it to conclude that the domestic courts acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the domestic law. There is therefore no appearance of a violation of Article 6 § 1 in this respect. The Court finds that this complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

12. As to the length of the proceedings, 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.

13. In the present case, the period to be taken into consideration began on 24 November 1999 and ended on 14 April 2006. It thus lasted six years and four months at two levels of jurisdiction.

14. The Government submitted that the length of the proceedings had not exceeded a reasonable time. They argued that the conduct of the applicant's lawyer had contributed to the length of the proceedings since he had requested several extensions and failed to attend six hearings. 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). 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).

15. In the present case, the Court observes that the Izmir Civil Court of General Jurisdiction took three years and nine months to declare that it lacked jurisdiction. Subsequently, the Izmir Family Court, to which the case file was sent, decided after thirteen months that it also lacked jurisdiction to examine the case. As a result, the first decision on the merits of the case was only rendered after five and a half years. In the Court's opinion, the absence of the applicant's lawyer at certain hearings cannot justify the prolongation of the proceedings. Although there were no substantial delays on appeal, the Court takes the view that five years and six months before one instance is too long. Having regard to its case-law on the subject, the Court considers that in the instant case the total length of the proceedings (in particular the period before the first-instance court) was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

16. Concerning just satisfaction, the applicant claimed 10,000 Turkish liras (TRL) (approximately 4,600 euros (EUR)) in respect of pecuniary damage and TRL 10,000 in respect of non-pecuniary damage. The Government contested the claims. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have suffered some non-pecuniary damage and therefore, taking into account the circumstances of the present case, and ruling on an equitable basis, it awards him EUR 3,000 in respect of non-pecuniary damage.

17. The applicant further requested TRL 10,000 for the costs and expenses before the domestic courts and the Court, without substantiating

his claim. 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 are reasonable as to quantum. In the present case, the applicant has not established that he actually incurred the costs claimed. Accordingly, the Court makes no award under this head.

18. The Court further finds 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 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;
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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President