



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SARUHAN AND ÇELİK v. TURKEY

(Application no. 5298/06)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Saruhan and Çelik 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. 5298/06) 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 two Turkish nationals, Mr Rıdvan Saruhan and Mr Abdulvahit Çelik (“the applicants”), on 2 February 2006.

2. The applicants were represented by Mr C. Göksel, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 18 June 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 first applicant was born in 1959 and lives in Mardin. By a letter dated 11 June 2008, the applicants’ representative informed the Court that the second applicant had died on 10 March 2007 and that his son Mr Abdulvahap Çelik wished to pursue the application.

5. In 1974, a third person named B.A. inherited a plot of land from her mother, a Syrian national. However, she did not have the land registered in her name at the time.

6. On 9 July 1996 B.A.’s representative signed an agreement with the applicants before a notary public, promising to sell the land to them. The applicants paid the amount due and were told that B.A. would finalise the

relevant formalities and transfer the ownership of the land to the applicants in the shortest possible time.

7. On 1 August 1996 the applicants brought an action against B.A. before the Üsküdar Civil Court of General Jurisdiction. They claimed that she had failed to transfer the ownership of the land to them, although they had paid the purchase price. They requested that the land be registered in their names.

8. On 30 December 2003 the court dismissed the action. It held that on 1 October 1966 the Cabinet of Ministers had issued a decree seizing the property of Syrian nationals living in Turkey, including the land in question. As the land had been owned by the State since 1966, the court concluded that the sale agreement of 9 July 1996 signed by B.A. was void.

9. Both parties appealed against that decision. B.A. also put forward a plea of unconstitutionality against the decree of 1966.

10. On 28 February 2005 the Court of Cassation dismissed the plea of unconstitutionality and upheld the first instance court's decision.

11. On 7 July 2005 the Court of Cassation rejected the applicants' request for rectification. This decision was not served on the applicants and they learned about the outcome of the proceedings by tracking their application through the Court of Cassation's web site.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

12. The Government contended that the applicants had failed to comply with the six months rule. They submitted that a notification letter had been sent to the applicants' representative on 29 July 2005. However, as he had changed his address, it had not been possible to notify the final decision to him. Referring to the Court's case-law (*Levent Öztürk v. Turkey* (dec.), no. 8428/02, 10 October 2006), the Government maintained that in the instant case the six months time-limit should start to run from the date of deposit of the final decision with the registry of the Üsküdar Civil Court of General Jurisdiction, namely from 25 July 2005.

13. The Court notes that the *Levent Öztürk* case referred to by the Government concerned the failure of the applicant to procure the judgment of the Court of Cassation for more than six months after it had been deposited with the registry of the State Security Court. In this connection, it recalls that its findings in the above-cited case applied solely to criminal proceedings since, according to the established practice of the Court of Cassation, the latter's decisions in criminal cases are not served on the

defendants. In civil law cases, however, the Court of Cassation's decisions are served on the parties upon payment of the postage fee. Therefore in the present case, the authorities were required to serve the final decision on the applicants' lawyer. The Court further refers to the Government's submission that the applicants' representative had failed to inform the authorities of his new address. However, it is clear from the documents in the case file that the applicants' representative had indicated his new address in his rectification petition. The applicants lodged their application with the Court on 2 February 2006, six months and twenty-seven days after the delivery of the final judgment. Having regard to the Government's failure to serve the final decision at the correct address of the applicants' representative, in the special circumstances of the present case the Court concludes that the applicants must be considered to have complied with the six months rule laid down in Article 35 § 1 of the Convention. It therefore rejects the Government's preliminary objection in this respect.

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

14. 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, 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..."

15. The Government contested that argument.

16. The period to be taken into consideration began on 1 August 1996 and ended on 7 July 2005. It thus lasted eight years and eleven months at two levels of jurisdiction.

A. Admissibility

17. 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

18. 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).

19. 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).

20. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicants complained under Article 6 § 1 about the outcome of the proceedings. They further invoked Article 13 of the Convention and stated that, as the Court of Cassation had refused their unconstitutionality plea concerning the Decree in dispute, they had been denied an effective remedy. The applicants also alleged a violation of Article 1 of Protocol No. 1, stating that they had been deprived of their land. Finally, they invoked Article 14 of the Convention, arguing that the Decree relied on by the domestic courts had resulted in discrimination.

22. An examination by the Court of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly -ill- founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicants claimed 10,000,000 euros (EUR), covering both pecuniary and non-pecuniary damage.

25. The Government submitted that the amount claimed was excessive and would lead to unjust enrichment.

26. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicants must have sustained non-pecuniary

damage. Ruling on an equitable basis, it awards EUR 4,200 to each of the applicants under that head.

B. Costs and expenses

27. The applicants' representative requested to be awarded 20% of the applicants' compensation.

28. The Government contested the claim.

29. According to the Court's case-law, an applicant is entitled to 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 above criteria and the applicants' failure to substantiate the claim, the Court makes no award under this head.

C. Default interest

30. 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 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 each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,200 (four thousand two hundred euros) in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President