



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

1959 · 50 · 2009

SECOND SECTION

CASE OF BARKER v. TURKEY

(Application no. 34656/03)

JUDGMENT

STRASBOURG

22 September 2009

FINAL

22/12/2009

This judgment may be subject to editorial revision.

In the case of Barker 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. 34656/03) 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 Cüneyt Mehmet Barker (“the applicant”), on 9 July 2003. The applicant was represented by Mr K. Koç, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

2. On 16 October 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

3. The applicant was born in 1949 and lives in Istanbul.

4. On 15 August 1988 the applicant brought a case before the Erdek Civil Court against the Treasury, requesting to be registered as the owner of a certain plot of land.

5. On 17 April 1990 the Erdek Civil Court granted the applicant’s request. The Treasury appealed.

6. Whenever he inquired about the outcome of the appeal proceedings, the applicant was informed by the registry of the first-instance court that the proceedings were still pending. In 1998, however, the applicant was informed by the Court of Cassation that the latter had actually rendered its decision long before, on 28 October 1992. The Erdek Civil Court declared, in response to a petition from the applicant, that the case file had never been

sent back to it and it had subsequently attempted to recreate the case file, which appeared to have been lost.

7. On 8 May 1998 the Treasury filed a petition with the Court of Cassation requesting that the decision of 28 October 1992 be rectified.

8. On 28 September 1998 the Court of Cassation decided that it could not examine the Treasury's request as the reconstituted file was not sufficient and it needed the original case file for such an examination. It therefore decided to send the file back to the Erdek Civil Court. According to the information submitted by the parties to the Court, the proceedings are still pending.

9. In 2001 the Land Registry Commission attached to the General Directorate of Land Registration conducted a land registry survey and registered the title to the relevant plot under the name of a certain K.T. and the Treasury.

10. On 30 May 2001 the applicant brought a case before the Erdek Cadastral Court, challenging the land registry survey.

11. On 18 May 2004 an on-site inspection of the land was carried out, and on 20 October 2004 the Erdek Cadastral Court allowed the applicant's request in part.

12. On 10 November 2005 the Court of Cassation upheld the judgment of 20 October 2004 and on 26 February 2007 it dismissed the Treasury's rectification request.

THE LAW

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

13. The applicant complained that the length of the proceedings, both before the Erdek Civil Court and before the Erdek Cadastral Court, had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

14. The Government contested that argument.

15. As regards the proceedings before the Erdek Civil Court, the period to be taken into consideration began on 15 August 1988 and has not yet ended, according to the information in the case file submitted by the parties. It has thus already lasted over twenty-one years before two levels of jurisdiction.

16. As regards the proceedings before the Erdek Cadastral Court, the period to be taken into consideration began on 30 May 2001 and ended on 26 February 2007. It thus lasted five years and nine months before two levels of jurisdiction.

17. The Court notes that the application 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.

18. As to the merits, the Court notes, regarding the proceedings before the Erdek Civil Court, that it is not disputed between the parties that the original case file remains lost and that the proceedings are still pending before the Court of Cassation, which seems to be unable to examine the Treasury's rectification request due to the incomplete state of the reconstituted file.

19. As for the proceedings before the Erdek Cadastral Court, the Court notes that the case was pending before the first instance court for approximately three years and five months, despite its lack of complexity. In particular, the Court notes that, although the proceedings commenced on 30 May 2001, the on-site inspection was only conducted on 18 May 2004, no major steps having been taken by the authorities in the meantime.

20. 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, for example, *Talipoğlu v. Turkey*, no. 64236/01, §§ 36-38, 24 July 2007).

21. 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 application. Having regard to its case-law on the subject, the Court finds that the length of the proceedings, both before the Erdek Civil Court and before the Erdek Cadastral Court, was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages, and costs and expenses

22. The applicant claimed 70,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

23. The Government contested these claims.

24. On the question of pecuniary damage, the Court observes that the applicant has not produced any document in support of his claim. It accordingly dismisses it.

25. However, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the

case and having regard to its case-law, the Court awards the applicant EUR 21,000.

26. The applicant did not claim any costs and expenses. Accordingly, no award is made under this head.

B. Default interest

27. 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*
 - (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 21,000 (twenty-one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is 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 22 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President