



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

1959 · 50 · 2009

SECOND SECTION

**CASE OF TUR-KO TURİZM YATIRIM VE TİCARET A.Ş.
v. TURKEY**

(Application no. 41421/05)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tur-Ko Turizm Yatırım ve Ticaret A.Ş. 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 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 41421/05) 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 company, Tur-Ko Turizm Yatırım ve Ticaret A.Ş. (“the applicant company”), on 1 November 2005.

2. The applicant company was represented by Mr E.A.Yıldırım until 16 December 2008 and by Mr D.Türemen after 17 March 2009, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. On 2 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the administrative proceedings. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. On 26 June 1998 the applicant company filed a letter with the General Directorate of Land Registration (*Tapu Kadastro Genel Müdürlüğü*) (hereinafter “the Directorate”), requesting renewal of cadastral registrations concerning a plot of land which it owned. The civil courts had previously rejected the applicant company's correction request concerning the same plot for non-compliance with procedural requirements. This judgment had become final. It appears from the case file that the Directorate dismissed, on 22 July 1998, the applicant company's request with reference to the existing final judgment regarding the issue.

5. On 6 October 1998 the applicant company instituted proceedings before the Ankara Administrative Court and requested annulment of the Directorate's rejection. On 10 November 1999 the Ankara Administrative Court dismissed the applicant company's request on the ground that cadastral corrections had become final after the civil proceedings. On 22 October 2002 the Council of State quashed the judgment. The Directorate applied for rectification of the Council of State's judgment. On 29 April 2005 the Council of State upheld the Ankara Administrative Court's judgment, holding that the judgment had been in conformity with the law and procedure. The decision was served on the applicant company on 5 July 2005.

THE LAW

6. The applicant company complained under Article 6 § 1 of the Convention that the length of proceedings before the administrative courts had exceeded the reasonable time requirement. The Government contested this argument.

7. The period to be taken into consideration began on 6 October 1998 when the applicant company instituted the administrative proceedings and ended on 29 April 2005 when the Council of State delivered its final judgment. It has thus lasted some 6 years and 6 months for two levels of jurisdiction.

8. The Court notes that the 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.

9. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). Having regard to the total length of the proceedings before the trial court in the present case, the Court is not convinced that these proceedings were conducted within a reasonable time. In the light of the foregoing, the Court holds that there has been a violation of Article 6 § 1 of the Convention.

10. As for the question of just satisfaction award under Article 41 of the Convention, the applicant company claimed a total of 8,893,368 euros (EUR) in respect of pecuniary damage and EUR 50,000 for non-pecuniary damage. It further claimed EUR 450,000 for its costs and expenses. The Government contested these claims.

11. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

However, in respect of non-pecuniary damage, it makes an award of EUR 3,300. As to costs and expenses, the Court recalls its case-law that 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 were reasonable as to quantum. In the present case, the Court observes that the applicant company did not produce any document in support of its claims. Accordingly, the Court makes no award under this head.

12. 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 remainder of 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 company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,300 (three thousand three hundred 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 company's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President