



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

1959 · 50 · 2009

SECOND SECTION

**CASE OF BALTUTAN AND ANO İNŞAAT VE TİCARET LTD. ŞTİ
v. TURKEY**

(Application no. 9522/03)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Baltutan and Ano İnşaat ve Ticaret Ltd. Şti 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. 9522/03) against the Republic of Turkey lodged on 4 December 2002 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Naci Baltutan (Balkar)¹, a Turkish national, and ANO İnşaat ve Ticaret Limited Şirketi, a company founded by the first applicant and registered in Turkey (“the applicants”). The applicants were represented by Ms A. Bıçak and Mr K. Berzeg, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

2. On 7 October 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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

THE CIRCUMSTANCES OF THE CASE

3. The first applicant was born in 1934 and lives in Ankara. The second applicant is a construction company registered in Turkey.

1. Although the applicant’s surname was changed from Baltutan to Balkar by Şişli Civil Court’s decision of 22 September 1997, his surname is still registered as “Baltutan” in the identity card issued by the Beşiktaş Registration Office on 15 July 2004.

4. On 10 October 1990 the applicant company brought a civil action before the Seventh Chamber of the Ankara Civil Court against the National Water Board (*Devlet Su İşleri*) to recover the monies owed to it under a construction contract (case no. 1990/584).

5. On 27 December 1993 the Ankara Civil Court awarded the applicant company's claim in full, plus interest.

6. On 18 November 1994 the Court of Cassation quashed the judgment of the first-instance court on procedural and substantive grounds.

7. On 16 March 1995 the applicant company brought an additional action against the National Water Board before the Eighth Chamber of the Ankara Civil Court in relation to the latter's default in certain other financial undertakings under the aforementioned construction contract (case no. 1995/255).

8. On 28 September 1995 the Eighth Chamber of the Ankara Civil Court decided to join case no. 1995/255 with case no. 1990/584 pending before the Seventh Chamber of the Ankara Civil Court.

9. On 15 December 1998, 12 September 2000 and 5 July 2001 the Ankara Civil Court rendered three separate judgments on the case, all of which were quashed by the Court of Cassation on 20 May 1999, 6 February 2001 and 27 December 2001 respectively on procedural and substantive grounds, including erroneous calculations, resulting in the remittal of the case to the Ankara Civil Court each time.

10. On 19 April 2002 the Ankara Civil Court examined the case for the fifth time and awarded the applicant company's claim in part, together with interest.

11. On 6 June 2002 the Court of Cassation upheld the judgment of the first-instance court with certain minor technical amendments.

THE LAW

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

12. The applicants complained that the length of the civil proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. The Government contested that argument.

13. The period to be taken into consideration began on 10 October 1990 and ended on 6 June 2002. It thus lasted eleven years, seven months and twenty-nine days for two levels of jurisdiction, which examined the case ten times in total.

14. As regards the admissibility of the application, the Government argued that the applicants had failed to exhaust domestic remedies within

the meaning of Article 35 § 1 of the Convention. They submitted that the applicants had failed to raise this complaint before the domestic courts.

15. The Court notes that it has already examined and rejected this objection in similar cases (see, for instance, *Erin v. Turkey*, no. 71342/01, §§ 18-21, 10 August 2006). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Consequently, the Court rejects the Government's objection.

16. The Court notes that the remainder of 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.

17. As for the merits, the Government maintained that the proceedings could not be considered to have been unreasonably long, particularly in view of the complexity of the case and the number of times it was examined. They further argued that the applicants had contributed to the prolongation of the proceedings as they used the appeal procedure as a delaying tactic.

18. 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 v. France* [GC], no. 30979/96, § 46, ECHR 2000-VII). The Court notes particularly in this regard that the Court of Cassation quashed the judgment of the first instance court as many as four times. The Court reiterates with regard to the repeated quashing of the lower courts' decisions that since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower authorities, the repetition of such orders within one set of proceedings discloses a deficiency in the operation of the legal system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008).

19. 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 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages, and costs and expenses

20. The applicants claimed 61,659,258 United States dollars (USD) (approximately 46,280,310 euros (EUR)) in respect of pecuniary damage

for the loss they suffered as a result of the delay in the proceedings. The applicants also claimed USD 20,000,000 (approximately EUR 15,011,630) for non-pecuniary damage and USD 100,000 (approximately EUR 75,000) for costs and expenses incurred before the domestic courts and the Strasbourg institution. The applicants did not submit any documents in support of their claims regarding costs and expenses.

21. The Government contested these claims as being unsubstantiated and excessive.

22. 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 applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 8,400 jointly under that head.

23. As regards the applicants' claim for costs and expenses, the Court makes no award under this head as the applicants have not produced any documents in support of their claims.

B. Default interest

24. 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 applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,400 (eight thousand four 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 applicants' 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