



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

1959 · 50 · 2009

SECOND SECTION

CASE OF BAKIRCI AND OTHERS v. TURKEY

(Application no. 41902/04)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Bakırcı and Others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 41902/04) 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 four Turkish nationals, Mr Aziz Bakırcı, Ms Zekiye Çirkinoğlu (Bakırcı), Mr Sabri Bakırcı and Ms Laetitia Cardier (Sabiha) Bakırcı (“the applicants”), on 8 September 2004.

2. The applicants were represented by Mr Hakan Bakırcıoğlu and Mr Erkan Bakırcıoğlu, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 16 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1951, 1950, 1964 and 1962 respectively. The first three applicants live in Turkey and the fourth applicant lives in France.

5. The application concerns a dispute between the applicants and a third party over ownership of plots of land in the province of Adıyaman.

A. Proceedings before the Kahta Civil Court of First Instance

6. On 21 February 1980 the applicants brought an action before the Kahta Civil Court of First Instance for prohibition of the third party's unlawful occupation of their land. On 16 April 1997 the civil court issued a decision of lack of subject-matter jurisdiction (*görevsizlik kararı*) and sent the case file to the Kahta Cadastral Court.

B. Proceedings before the Kahta Cadastral Court

7. In the meantime, on 8 April 1997 the third party brought a counter action against the applicants before the Kahta Cadastral Court and requested registration of the plots of land in his name.

8. On 14 April 1997 the General Directorate of Forests in Turkey ("the Directorate") also brought an action before the same court and requested that one of the plots owned by one of the applicants should be designated as forest and registered as property of the Treasury. The Kahta court joined the cases on 2 September 1997.

9. On 6 July 2000 the Kahta Cadastral Court ordered partial registration of the land in the names of the applicants. The applicants and the Directorate appealed. On 29 January 2001 the Court of Cassation quashed the judgment, holding that all the land had to be registered in the name of the applicants and remitted the case to the Kahta Cadastral Court.

10. On 17 April 2003 the Kahta Cadastral Court abided by the Court of Cassation's decision and ordered the registration of the land in the name of the applicants.

11. On 15 December 2003 the Court of Cassation upheld the judgment and on 13 July 2004 it dismissed the third party's rectification request.

THE LAW

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

12. 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..."

13. The Government contested that argument.

14. The Court notes that the period to be taken into consideration began on 28 January 1987, when the recognition by Turkey of the right of

individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see *Şahiner v. Turkey*, no. 29279/95, § 21, ECHR 2001-IX). It notes that by that date, the case had already been pending for seven years (see paragraph 6 above). The period in question ended on 13 July 2004. It thus lasted almost seventeen and a half years and for two levels of jurisdiction.

A. Admissibility

15. 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

16. 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).

17. 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).

18. 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

19. The applicants further complained of the fact that in Turkey there was no court to which application could be made to complain of the excessive length of proceedings. They relied on Article 13 of the Convention.

20. The Government did not deal with this complaint in their observations.

21. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

22. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). To that end, the Court notes that the absence of such a remedy in Turkey was examined in earlier cases and held to be in breach of Article 13 of the Convention (see, *inter alia*, *Daneshpayeh v. Turkey*, no. 21086/04, §§ 37-38, 16 July 2009). It sees no reason to reach a different conclusion in the present case.

23. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicants could have obtained a ruling upholding their right to have the case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicants complained under Article 3 of the Convention that the length of the proceedings had caused them stress and that their reputation in society had been damaged by the case. They further complained under Article 14 of the Convention on the basis of the same facts. Finally, the applicants complained under Article 1 of Protocol No. 1 that at the end of the proceedings they had managed to obtain only a partial result to stop the unlawful occupation of their land.

25. The Court has examined these complaints. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicants jointly claimed 98,000 Turkish liras (TRY) (approximately 46,000 euros (EUR)) in respect of pecuniary and

TRY 10,000 (approximately EUR 4,750) in respect of non-pecuniary damage.

28. The Government considered that the applicant's claims were unsubstantiated.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that it should award the applicants jointly the full sum claimed – that is EUR 4,750 – in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicants also claimed TRY 2,000 (approximately EUR 950) for the costs and expenses incurred before the Court.

31. The Government contested the claim and considered it to be excessive.

32. 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, the applicants have not submitted to the Court any documents in support of their claim and have thus failed to substantiate that they have actually incurred the costs claimed. Accordingly, the Court makes no award in respect of costs and expenses.

C. Default interest

33. 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 complaints under Articles 6 § 1 and 13 of the Convention 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* that there has been a violation of Article 13 of the Convention;
4. *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 4,750 (four thousand seven hundred and fifty 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President