



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

1959 · 50 · 2009

SECOND SECTION

CASE OF KALGI v. TURKEY

(Application no. 37252/05)

JUDGMENT

STRASBOURG

20 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 Kalgı v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 37252/05) 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 national, Mr Seydo Kalgı (“the applicant”), on 28 September 2005.

2. The applicant was represented by Mr M. Güzeler, a lawyer practising in Şanlıurfa. The Turkish Government (“the Government”) were represented by their Agent.

3. On 7 July 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1938 and lives in Şanlıurfa.

5. In the cadastral survey carried out in 1964 some plots of land in Siverek village were registered in the names of the applicant and a number of other individuals. In 1971 an individual further donated his share of a plot in the same village to the applicant.

6. On 28 August 1972 two villagers (O.T., H.Y.) instituted civil proceedings against another villager (M.E.) objecting to the cadastral

registrations and claiming that they were the lawful owners of the land in question on the basis of a registration dating from before 1950. It appears that on unspecified dates during the course of the proceedings numerous villagers, including the applicant, became parties to the proceedings, which continued with three complainants, seventeen defendants and two intervening third parties. Both the claimants and defendants claimed to have title to the land in question.

7. On 9 June 1983 the trial court requested the applicant's address to be determined so that he could be summoned before the court. On 20 March 1985 the trial court decided to publish the summons in a country-wide newspaper in an attempt to determine the applicant's whereabouts.

8. On 18 November 1985 H.Y. submitted a letter to the trial court informing the judge of an agreement he had reached with the applicant and stating that the applicant would appear before the court to testify accordingly.

9. The case file indicates that the applicant did not appear before the trial court until 22 March 2004, when he presented himself as one of the parties. On 22 November 2004 the applicant's representative submitted a power of attorney to the trial court.

10. During the course of the proceedings the court held an on-site inspection on 23 June 1986. A number of expert reports were requested concerning the title registrations. Numerous witnesses were heard on various occasions. Some of the defendants transferred part of their shares to others on different dates.

11. On 5 March 2007 the Siverek Cadastral Court delivered its judgment in favour of the applicant and the other defendants. It appears that the number of claimants and defendants had reached twenty-eight and eighty-one respectively by the time the judgment was delivered.

12. The case is still pending before the Court of Cassation.

II. RELEVANT DOMESTIC LAW

13. The Land Registry Act (Law No. 3402) entered into force on 9 October 1987. Section 29 provides that even in the absence of the parties hearings are to be held, the proceedings are to continue and the case is not be suspended.

THE LAW

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

14. The applicant complained under Article 6 § 1 of the Convention that the length of the civil proceedings had exceeded the “reasonable time” requirement.

A. Period to be taken into consideration

15. The Government requested the Court to take into account solely the proceedings which took place after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights. Moreover, they submitted that the applicant had only become a party to the proceedings as of 22 November 2004 when he began to be represented by a lawyer. The applicant did not make any comment.

16. The Court notes that it is not clear from the case file exactly when the applicant became a party to the proceedings, which began on 28 August 1972. The first mention of the applicant in the proceedings dates back to 9 June 1983, when the trial court requested the applicant's address to be determined. In the absence of any document indicating that the applicant had become involved in the proceedings before then, the Court considers that it should take 9 June 1983 as the date the proceedings began in respect of the applicant. It notes that they are still pending before the domestic courts. Taking into account of the Court's competence *ratione temporis*, they have thus already lasted some twenty-two years and nine months since the Government's recognition of the right of individual petition on 28 January 1987. It notes, however, that by that date the proceedings had apparently already been pending some three years and seven months in respect of the applicant.

B. Admissibility

17. The Government argued that the applicant lacked victim status as he had only recently become involved in the proceedings. The applicant did not make any comment.

18. The Court accepts that the applicant did not pursue the proceedings with due diligence. Nevertheless, it notes that the Land Registry Act (Law no. 3402) requires the domestic courts to continue with the proceedings and resolve the issues even in the absence of both parties (see paragraph 13 above). Accordingly, it considers that the applicant can claim to be the

victim of excessively lengthy proceedings (see *Mahmut and Zülfü Balıkcı v. Turkey*, nos. 19895/03 and 21302/03, § 28, 21 October 2008).

19. 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.

C. Merits

20. The Government argued that, since the applicant's active involvement in 2004, the proceedings have not been excessively long. The applicant did not make any comment. However, the Court notes that it has already taken as the starting date for the present proceedings the 28 January 1987 (paragraph 16 above).

21. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. In the present case the Court observes that the determination of the claim required expert evidence, an on-site inspection and the hearing of witnesses. Therefore it was of a certain complexity.

23. Nevertheless, the Court notes that there have been substantial delays throughout the proceedings and, as much as the applicant's absence may have contributed to their length, it cannot be considered the main reason. In accordance with domestic law, the trial court was under an obligation to carry on with the proceedings even in the applicant's absence (see paragraph 13 above). The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to those of the present application (see, *mutatis mutandis*, *Meşrure Sümer v. Turkey*, no. 64725/01, § 49, 8 April 2008). Neither the complexity of the case nor the conduct of the parties is sufficient to explain such long delays by the first-instance court in the present case.

24. 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. The Court concludes that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

26. The applicant complained that the excessive length of the proceedings had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1. The Government rejected this claim.

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

28. However, having regard to its finding under Article 6 § 1 (see paragraph 25 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 (see *Ezel Tosun v. Turkey*, no. 33379/02, § 28, 10 January 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Regarding a just-satisfaction award, the applicant set out his claims in the application form lodged on 28 September 2005, but failed to comply with Rule 60 of the Rules of Court, as well as Article 5 of the related Practice Direction. Therefore the Court considers that there is no call to award any sum in the present case on that account (see *Marčić and Others v. Serbia*, no. 17556/05, § 63, 30 October 2007).

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* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President