



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SERÇİNOĞLU v. TURKEY

(Application no. 7755/05)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

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 Serçinoğlu 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 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. 7755/05) against the Republic of Turkey lodged with the Court on 3 February 2005 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Turkish nationals, Mr Okay Serçinoğlu, Mr Oktay Serçinoğlu and Mr Ahmet Oğuz Serçinoğlu (“the applicants”), born in 1958, 1956 and 1940 respectively. By a faxed letter of 20 May 2008, the Registry was informed of the death of Ahmet Oğuz Serçinoğlu. His second wife and five children (Dilek Serçinoğlu, Vedide Deveci, Orhan Nazif Serçinoğlu, Orhun Serçinoğlu, Ülkü Serçin Serçinoğlu and Tevfik Savaş Serçinoğlu) declared their intention to pursue the application. For practical reasons, Ahmet Oğuz Serçinoğlu will continue to be referred to as an applicant in this judgment, although his family is now to be regarded as such (see *Ahmet Sadık v. Greece*, 15 November 1996, § 3, *Reports of Judgments and Decisions* 1996-V).

2. Mr Okay Serçinoğlu represented the applicants. The Turkish Government (“the Government”) were represented by their Agent.

3. On 10 September 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

4. On 23 February 1979 thirty-five individuals, including the applicants' father, instituted proceedings before the Söke Land Registry Court, claiming shares in a plot of land that measured approximately 30,000,000 square metres in total. They objected to the registration of the land in question under the name of the local village during the land survey works carried out in the region in 1974 and 1979. On 5 December 1985 the domestic court dismissed their claim. On 30 June 1987 the Court of Cassation quashed the judgment.

5. On an unspecified date the case was transferred to the Söke Land Registry Court, which issued its judgment on 11 July 1991. Both parties appealed. On 29 November 1993 the Court of Cassation quashed the judgment.

6. On 9 October 2002 the Söke Land Registry Court issued its decision, in line with the former one. Following the death of their father, the applicants, as his heirs, appealed to the Court of Cassation on 31 March 2003.

7. On 18 June 2007 the Court of Cassation quashed the judgment. On 7 March 2008 the applicants requested rectification. According to the information in the case file, as submitted by the parties, the case is still pending before domestic courts.

THE LAW

8. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the length of the civil proceedings was excessive, and that this had allegedly infringed their right to the peaceful enjoyment of their possessions. The Government contested these arguments.

9. The Court notes that the applicants' complaint under Article 6 § 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that this complaint is not inadmissible on any other grounds and must therefore be declared admissible.

10. 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 which has elapsed since 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 28 January 1987 the case had already been pending for over seven years and eleven months (see paragraph 4 above). The period in question has not yet ended as the proceedings are apparently

still pending. It has thus lasted over twenty-two years and eight months at two levels of jurisdiction.

11. 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).

12. 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 *Frydlender*, cited above).

13. 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 finds that the length of the proceedings has been excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

14. As for the applicants' complaint under Article 1 of Protocol No. 1 to the Convention, the Court observes that the proceedings are still pending (see paragraph 7 above) and the issue of whether or not the applicants are the lawful owners of the property has not yet been resolved by a final judgment. Consequently, the Court concludes that this complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see *Ali Kemal Uğur and Others v. Turkey*, no. 8782/02, § 39, 3 March 2009).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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

16. The applicants claimed 8,655,150 euros (EUR) in respect of pecuniary damage. They further claimed EUR 1,195,000 for non-pecuniary damage, EUR 195,000 of which was for the excessive length complaint under Article 6 § 1, and the remaining amount for the complaint under Article 1 of Protocol No. 1. Finally they claimed EUR 72,000 for their costs

and expenses, EUR 8,000 of which was for the proceedings before the Court and the remaining EUR 64,820 for the proceedings before domestic courts. In this connection the applicants referred, *inter alia*, to an expert report, a number of receipts issued by the domestic courts and public notaries, various lawyers' contracts and fees for power of attorneys dating as far back as 1979, as well as postal receipts.

17. The Government contested these claims.

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

19. However, the Court accepts that the applicants must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Where the Court finds a violation of a Convention provision, it may award the applicant an amount for the non-pecuniary damage sustained. This amount is intended to make reparation for the state of distress, inconvenience and uncertainty resulting from the violation in question (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV; *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, § 27, ECHR 2008-...; and *Kakamoukas and Others v. Greece* [GC], no. 38311/02, § 39, 15 February 2008).

20. If a violation of Article 6 of the Convention results from the excessive length of proceedings brought by a group of persons acting together, based on the same factual and legal grounds and directed towards the same end, each of its members may, in principle and without prejudice to the standards to be applied, be awarded compensation for non-pecuniary damage individually (see *Arvanitaki-Roboti and Others*, cited above, § 29, and *Kakamoukas and Others*, cited above, § 41).

21. It is a different matter when a group of applicants derive their victim status from the existence in law of a link with a single original participant in the impugned domestic proceedings. Such a situation can arise if, for example, an original party to the proceedings dies and is replaced by his or her heirs or is declared bankrupt and is replaced by trustees representing the estate, or in the event of cession of a claim. In such event the Court sees no need to base its award on the resulting plurality of applicants, the less so since the increase in their number cannot be imputed to the respondent Party.

22. In the present case, the initial three applicants have succeeded to the rights of their father as the latter's heirs. The Court will make an award to them collectively based on the amount which it would have awarded to their father had he survived. Likewise the amount which would have normally been awarded to the third applicant (Ahmet Oğuz Serçinoğlu) had he been alive is to be awarded jointly to his six heirs (see paragraph 1 above).

23. Consequently the Court awards a total sum of EUR 15,600 to be divided as follows: EUR 5,200 each to Okay Serçinoğlu and Oktay Serçinoğlu as well as EUR 5,200 jointly to Dilek Serçinoğlu, Orhun

Serçinoğlu, Ülkü Serçin Serçinoğlu, Vedide Deveci, Orhan Nazif Serçinoğlu and Tevfik Savaş Serçinoğlu.

24. Furthermore, having regard to the fact that the proceedings in question are apparently still pending before the domestic courts, the Court considers that the most appropriate form of redress would be to bring them to a conclusion as soon as possible, whilst respecting the requirements of Article 6 § 1 of the Convention (see the aforementioned *Ali Kemal Uğur* case, § 45).

B. Costs and expenses

25. As regards the applicants' claims regarding costs and expenses, according to the Court's case-law 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly, as they were not represented by a lawyer before the Court, the sum of EUR 500 for the present proceedings and the sum of EUR 2,000 for the proceedings before the domestic courts.

C. Default interest

26. 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 complaint concerning the excessive length of the proceedings 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*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) in respect of non-pecuniary damage, plus any tax that may be chargeable,

- EUR 5,200 (five thousand two hundred euros) each to Okay Serçinoğlu and Oktay Serçinoğlu;
- EUR 5,200 (five thousand two hundred euros) jointly to Dilek Serçinoğlu, Orhun Serçinoğlu, Ülkü Serçin Serçinoğlu, Vedide Deveci, Orhan Nazif Serçinoğlu and Tevfik Savaş Serçinoğlu;
- (ii) EUR 2,500 (two thousand five hundred euros), jointly, to the applicants in respect of costs and expenses, plus any tax that may be chargeable to them.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President