



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

SECOND SECTION

CASE OF DEMİRTÜRK v. TURKEY

(Application no. 31345/05)

JUDGMENT

STRASBOURG

19 January 2010

FINAL

19/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Demirtürk 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,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 31345/05) 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 Dursun Demirtürk (“the applicant”), on 15 August 2005.

2. The applicant was represented by Ms Z. Bilgiç Dölek, a lawyer practising in Mersin. The Turkish Government (“the Government”) were represented by their Agent.

3. On 1 October 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 applicant was born in 1933 and lives in Zonguldak.

5. On an unspecified date the Land Registry Commission attached to the General Directorate of Land Registration conducted a land registry survey of plots of land in Belen village in the Ereğli district of Zonguldak. Following this survey, plot nos. 2 and 3 were registered in the Land Registry in the names of A.G. and K.G. respectively.

6. On 22 February 1985 the applicant brought a case before the Karadeniz Ereğlisi Cadastral Court requesting that plot nos. 2 and 3 be registered in his name.

7. On 12 December 1986 the court joined the case in question to another claim, having regard to the fact that the parties and the subject matter of the cases were the same.

8. On 6 December 2000 the court granted the applicant's request in part. The parties appealed.

9. On 12 December 2002 the Court of Cassation remitted the case to the first-instance court on grounds of incorrect service.

10. On an unspecified date the first-instance court rectified the error in service and sent the case to the Court of Cassation for re-examination.

11. On 29 April 2004 the Court of Cassation quashed the judgment of 6 December 2000.

12. On 11 October 2006 the first instance court dismissed the case.

13. On 13 March 2008 the Court of Cassation quashed the judgment of 11 October 2006.

14. The case was remitted to the first-instance court for further examination.

15. According to the information in the case file, the case is still pending before the first-instance court.

THE LAW

16. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

17. The Government argued that the applicant had failed to exhaust domestic remedies as the civil proceedings were still pending before the first-instance court. According to the Government, the application was therefore premature.

18. The Court notes that, according to its case-law, complaints concerning length of proceedings can be brought before the final termination of the proceedings in question (see, among many others, *Plaksin v. Russia*, no. 14949/02, §§ 34-35, 30 April 2004). Accordingly, the Government's objection must be dismissed and this part of the application should be declared admissible.

19. As to the merits, the period to be taken into consideration began only 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. The period in question has not yet ended. It has

thus already lasted twenty-two years and ten months for two levels of jurisdiction.

20. 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, § 43, ECHR 2000-VII). 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.

21. The applicant further complained under Article 13 of the Convention that there were no domestic remedies available under Turkish law for the excessive length of civil proceedings.

22. The Government argued that the applicant could have brought proceedings before the administrative courts in respect of his complaint about the length of the civil proceedings. The Court notes that this objection is closely linked to an examination of the merits of the complaint. It follows that this issue should be joined to the merits of the case. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

23. As to the merits, the Court notes that it has previously found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby applicants could have contested the length of the proceedings at issue (see *Bahçeyaka v. Turkey*, no. 74463/01, §§ 26-30, 13 July 2006, and *Tendik and Others*, no. 23188/02, §§ 34-39, 22 December 2005). It finds no reason to hold otherwise in the present case since the Government failed to refer to any cases where the courts would have awarded compensation for excessive length of judicial proceedings. The Court accordingly dismisses the Government's preliminary objection and concludes that there has been a violation of Article 13 of the Convention.

24. Relying on Article 41 of the Convention, the applicant claimed 1,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. The Government contested this claim. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 16,500 in respect of non-pecuniary damage.

25. By way of costs and expenses in relation to his representation, the applicant claimed EUR 7,500 in respect of legal expenses and 150 Turkish

liras¹ for postal expenses. In support of his claims, the applicant submitted a legal fee agreement and invoices concerning postal expenses. The Government disputed these claims. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court, ruling on an equitable basis, awards the applicant EUR 1,000 in respect of costs and expenses.

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 application admissible;
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 applicant, within three months of 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 on the date of settlement:
 - (i) EUR 16,500 (sixteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

1. Approximately EUR 69

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President