



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

SECOND SECTION

CASE OF AKTAR v. TURKEY

(Application no. 3738/04)

JUDGMENT

STRASBOURG

2 February 2010

FINAL

02/05/2010

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

In the case of Aktar 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 Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 3738/04) 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 a Turkish national, Mr Naim Aktar (“the applicant”), on 7 January 2004.

2. The Turkish Government (“the Government”) were represented by their Agent.

3. On 21 November 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. The applicant was born in 1940 and lives in Ankara.

5. On 15 January 1977 the applicant bought seven plots of land in the Bozcaada region of Çanakkale from a private person by way of a bill of sale.

6. On an unspecified date, a land registry survey was carried out in the region, as a result of which the plots in question were registered in the name of the Treasury.

7. On 21 August 1991 the applicant raised an objection before the Bozcaada Cadastral Court against the land registry survey and requested its annulment.

8. The first hearing was held on 5 November 1991. The applicant did not attend the hearings held between 16 June 1992 and 17 November 1998. Moreover, the hearings were adjourned between 16 June 1992 and 22 February 1994 pending the determination of the applicant's address by the Treasury.

9. At the hearing held on 3 May 1994 the Bozcaada Cadastral Court ordered an on-site inspection of the plots in question. However, the official notice for the payment of the inspection fee was only served on the applicant on 21 July 1998, and the inspection was conducted on 4 September 2000.

10. On 29 March 2002 the Bozcaada Cadastral Court partially granted the applicant's request in relation to three of the plots in question. The court held that there was no record of ownership in the land register in respect of these three plots and the applicant had therefore acquired title to them by way of adverse possession. The remaining four plots, however, were registered in the Treasury's name in the land register and could not, therefore, have changed ownership by way of adverse possession. The bill of sale executed in 1977 to convey the title of the disputed land was also void for the same reason. Moreover, even if the Treasury had held no valid title to the plots in question, the conditions for adverse possession of unregistered land had not been fulfilled by the applicant in the instant case. The applicant, therefore, could not claim title to them. In reaching its decision the Bozcaada Cadastral Court relied on a number of sources, including on-site inspection reports, statements from witnesses and local experts, title deeds, tax records, bills of sale, sketch plans and agricultural and technical expert reports.

11. After holding a hearing on the merits of the case, on 4 February 2003 the Court of Cassation upheld the judgment of the Bozcaada Cadastral Court. On 18 June 2003 the Court of Cassation rejected the applicant's rectification request. This decision was served on the applicant on 11 July 2003.

THE LAW

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

A. As to the length of the proceedings

12. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in

Article 6 § 1 of the Convention. The Government contested that argument and maintained that the applicant has not exhausted domestic remedies, as he failed to raise his complaints before the domestic courts.

13. The Court notes that it has already examined and rejected this objection raised by the Government in similar cases (see, among others, *Pekinel v. Turkey*, no. 9939/02, §§ 41-43, 18 March 2008). It 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 and declares this complaint admissible.

14. As regards the merits, the Court notes that the proceedings in question began on 21 August 1991 and ended on 18 June 2003. They thus lasted approximately eleven years and ten months before two levels of jurisdiction.

15. The Government maintained that it had essentially been the conduct of the applicant which had delayed the determination of his claim. They pointed out that the applicant had not attended the hearings for over six years, that he had delayed in depositing the expenses required for the conduct of the on-site inspection and that his lawyer had requested several additional time-limits to submit certain statements and documents.

16. The applicant maintained that, according to Article 29 of the Land Registry Act (Law no. 3402), the Bozcaada Cadastral Court was required to continue with the proceedings and resolve the issues even in the absence of the parties. His absence, therefore, could not have contributed to the length of the proceedings.

17. 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).

18. As regards the conduct of the applicant, the Court observes that he did not attend the hearings for some six years. However, whilst his absence perhaps causing some delay and inconvenience, the Court notes that none of the hearings was adjourned on that account and the cadastral court was under an obligation to carry on with the proceedings even in the applicant's absence under the domestic law (see *Kalgı v. Turkey*, no. 37252/05, § 23, 20 October 2009¹). The Court therefore considers that the applicant's conduct could not justify the entire length of the proceedings.

19. 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, for example, *Öztunç v. Turkey*, no. 74039/01, § 26, 27 March 2007; and *Meşrure Sümer v. Turkey*, no. 64725/01, § 49, 8 April 2008). Having

1. This judgment is not yet final.

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.

B. As to the fairness of the proceedings

20. The applicant further contended under Article 6 § 1 of the Convention that the decisions of the domestic courts had been arbitrary. In his view, the domestic courts had failed to act impartially in the conduct of the proceedings and the evaluation of evidence, and had favoured the Treasury's claims in spite of the evidence in his favour.

21. The Government contested this argument.

22. The Court finds that this complaint essentially concerns the assessment of evidence and the result of the proceedings before the domestic courts. However, it is not its task to act as an appeal court of “fourth instance” by calling into question the outcome of the domestic proceedings (see, amongst many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B). Moreover, it cannot substitute its view for that of the domestic courts' findings in regard to the physical characteristics and ownership of the land in question (see *Balcı v. Turkey* (dec.), no. 68545/01, 10 January 2008).

23. The Court observes that the applicant had the benefit of adversarial proceedings. He was legally represented throughout the proceedings and was able to argue his claim and call witnesses in support. The Court of Cassation also held a hearing on the merits of the case and heard from both parties. Moreover, the factual and legal reasons for dismissing the case were set out at length both in the judgment of the first-instance court and the decision of the Court of Cassation. In these circumstances, the Court considers that the applicant has failed to lay the basis of an arguable claim that any of the procedural guarantees of Article 6 § 1 were breached in the instant case, or that the domestic courts' decisions were otherwise arbitrary (see, similarly, *Pekinel*, cited above, §§ 51-56).

24. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 300,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 for non-pecuniary damage.

26. The Government contested these claims.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,200 under that head.

28. The applicant did not seek the reimbursement of costs and expenses relating to the proceedings before the Court. The Court therefore makes no award under this head.

29. 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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,200 (five thousand two 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 applicant's claim for just satisfaction.

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

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President