

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

SECOND SECTION

CASE OF DERYAN v. TURKEY

(Application no. 41721/04)

JUDGMENT

STRASBOURG

21 July 2015

FINAL

21/10/2015

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



In the case of Deryan v. Turkey,

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

András Sajó, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 41721/04) 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 Greek national, Mr Armen Deryan ("the applicant"), on 18 June 2004.

2. The applicant was represented by Mr Diran Bakar, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant alleged, in particular, that a set of civil proceedings brought against him for the recovery of goods inherited by him from his predecessor had been unfair and had thus deprived him of his property.

4. On 28 March 2008 the President of the Second Section decided to give notice of the application to the Government.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). In addition, third-party comments were received from the Greek Government, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court). The respondent Government replied to those comments (Rule 44 § 6).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1948 and lives in Kallithea-Attaki, Greece.

7. The applicant is one of the heirs of Mr Serkis Gövderelioğlu, who used to live in Istanbul. On 7 July 1988 Mr Gövderelioğlu purchased movable and immovable goods from the bankrupt estate of a company by way of a public tender.

8. On 5 February 1996 the sale in question was annulled by a court order on the ground that the instalments had not been paid in time. The decision annulling the sale became final on 3 October 1997 and on 14 November 1997 Mr Gövderelioğlu was requested by the Istanbul Bankruptcy Office to return the purchased goods within seven days. He did not comply with that request.

9. On 10 August 2000 Mr Gövderelioğlu died.

10. Due to his non-compliance with the Bankruptcy Office's order to return the goods, on 5 June 2001 the bankrupt estate of the aforementioned company filed an action against Mr Gövderelioğlu's heirs, including the applicant, before the Şişli Court of First Instance (hereinafter "the Şişli Court") for the recovery of the goods or their equivalent value.

11. A lawyer acting on behalf of the applicant and the other heirs of Mr Gövderelioğlu submitted a petition to the Şişli Court on 3 December 2001, arguing, *inter alia*, that the case had been lodged outside the statutory time-limit and thus had to be rejected. The lawyer submitted that the statutory one-year time-limit had started to run on 14 November 1997 but that the plaintiffs had not lodged their action until 2001.

12. On 15 April 2002 three experts appointed by the Şişli Court submitted their opinion on the value of the goods. Two of the experts considered the value to be approximately 245,000 euros (EUR), whereas the third expert considered it to be in the region of EUR 45,000.

13. On 11 June 2002 the Şişli Court issued an interim decision, rejecting a request to hear two witnesses who, according to the applicant, would have provided pertinent information about the value of the goods in question. The Şişli Court considered that the existence of the expert reports made it unnecessary to hear the applicant's witnesses.

14. In its decision of 13 December 2002 the Şişli Court ordered Mr Gövderelioğlu's heirs to return the goods which were still in their possession and to pay a certain sum of money corresponding to the value of the goods which had been disposed of in the meantime. The amount of money ordered was based on the calculations made by the two experts. The Şişli Court further awarded statutory interest on this amount accruing from 21 November 1997, the original due date for the return of the goods. No response was given by the Şişli Court in its decision to the applicant's objection concerning the issue of the time-limit.

15. The applicant appealed against the judgment and argued, *inter alia*, that the action for recovery should have been dismissed by the Şişli Court as it had been instituted outside the statutory time-limit. He also submitted that the Şişli Court had acted unlawfully by ordering the payment of interest on

the amount due, given that no request for interest had been made by the plaintiff. He also added that the Şişli Court had failed to hear the witnesses he had proposed. The applicant asked the Court of Cassation to hold a hearing before rendering its decision.

16. On 10 July 2003 the Court of Cassation upheld the judgment of the Şişli Court without holding a hearing and without providing any answers to the applicant's objections.

17. On 22 December 2003 the Court of Cassation rejected a request by the applicant for rectification of its previous decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. Section 141 of the Turkish Constitution provides, in so far relevant, as follows:

> "141. ...All decisions adopted by all courts shall be reasoned.
>
> ..."

19. Section 388 of the Code of Civil Procedure (Law no. 1086) in force at the time of the events provided, in so far relevant, as follows:

> "388. Decisions [adopted by Civil Courts of First Instance] shall contain the following:
>
> ...
>
> 3. summary of the parties' arguments and defence submissions...
>
> ..."

20. Section 133 of the Enforcement and Bankruptcy Act (Law no. 2004) provides, in so far relevant, as follows:

> "... Buyers and their guarantors, who cause a public tender to be annulled by failing to deposit the agreed sum of money, are liable for the reimbursement of the difference between that agreed sum of money and the sum to be agreed in a subsequent tender, together with default interest ..."

21. According to the Grand Chamber of the Court of Cassation's Civil Division (Yargıtay Hukuk Genel Kurulu), in its decision no. E. 2011/4-504 K. 2011/606 adopted on 12 October 2011, pursuant to section 74 of the Code of Civil Procedure, judges are bound by the parties' arguments and defence submissions and they may not, therefore, decide to award more than what was claimed by the parties. It held in that decision, which concerned the awarding of statutory interest by a court despite the lack of a request from the plaintiff, that the first instance court had erred in awarding statutory interest and quashed its decision.

THE LAW

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

22. The applicant complained that the Şişli Court had failed to admit his evidence by refusing to hear his two witnesses and by basing its decision on an expert report adopted by a majority. He also complained that the Şişli Court had ordered him to pay interest on the amount payable despite the fact that the claimant had not made any such request. He further complained that the Şişli Court had agreed to examine the case despite its having been introduced outside the statutory time-limit. Finally, he argued that no hearing had been held before the Court of Cassation and that the decision rendered by that court had not been adequately reasoned.

23. In respect of these complaints the applicant relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

24. The Government contested the applicant's arguments.

A. Admissibility

25. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Submissions of the parties

(a) The applicant

26. The applicant maintained that the above-mentioned defects in the proceedings had infringed his right to a fair hearing.

(b) The Government

27. The Government submitted that the statutory time-limit issue required a plea which should have been submitted within 10 days of the notification of the claim. As a matter of law, this issue could not have been taken into account by a domestic court of its own motion. In any event, the case in question was an action for restitution or recovery of property (*istihkak davası*) and in such cases the statutory time-limit did not apply.

28. The Government also submitted that in accordance with the Law on Execution and Bankruptcy, the buyer who participates in a public tender and

causes the annulment of that tender by failing to deposit the required amount would be liable to pay default interest.

2. The third party intervener

29. Referring to the Court's case-law under Article 6 § 1 of the Convention, the Greek Government submitted that, although it was not the Court's task to deal with errors of fact or law allegedly committed by a national court, it would do so if they have infringed rights and freedoms guaranteed by the Convention. They alleged that in the present case the two most essential allegations of the applicant, namely that the case had been brought outside the time-limit and interest had been awarded despite the absence of any such request by the plaintiffs, had not been examined by the domestic courts.

3. The Court's assessment

30. The Court reiterates that, according to its established case-law, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see, among others, *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003 and *Luka v. Romania*, no. 34197/02, § 55, 21 July 2009). A further function of a reasoned decision is to demonstrate to the parties that they have been heard, to afford them the possibility to appeal against that decision and the possibility of having the decision reviewed by an appellate body (*Suominen*, cited above, § 37).

31. Although Article 6 § 1 of the Convention obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I and the cases cited therein).

32. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A).

33. However, where the examination of a party's submission has a decisive importance for the proceedings at hand, such as a plea concerning statutory time-limits as in the case of *Ruiz Torija*, it will require a specific

and express reply (see, *ibid*., § 30; see also *Hiro Balani v. Spain*, 9 December 1994, § 28, Series A no. 303-B).

34. The Court would stress at this juncture that it is not concerned with whether the decisions reached by the domestic courts in the present case were correct and compatible with domestic law. The Court is not, for example, concerned whether the Şişli Court was correct in entertaining the case brought against the applicant and his fellow heirs despite their submissions that the case had been brought outside the statutory time-limit (see paragraph 11 above). Similarly, it falls to the national courts to determine whether the applicant had made his plea within ten days and whether it was well-founded (see paragraph 27 above; see also *Ruiz Torija*, cited above, § 30).

35. The Court's assessment is limited to examining whether the domestic courts adequately reasoned their decisions by responding to pertinent and important points raised by the applicant. To that end, the Court observes that, pursuant to the Code of Civil Procedure and the Constitution, the Şişli Court and the Court of Cassation were under an obligation to summarise in their decisions the parties' arguments and defence submissions (see paragraph 19 above) and to reason those decisions (see paragraph 18 above).

36. The Court notes that it is not disputed that in the proceedings before the Şişli Court the applicant raised a number of arguments which included, notably, the issue concerning the statutory time-limit (see paragraph 11 above). In the opinion of the Court, the plea concerning the time-limit was an essential point and had a decisive bearing on the outcome of the case against the applicant (see *Ruiz Torija*, cited above, § 30). It therefore required an adequate response. Nevertheless, no response was given to it by the Şişli Court in its decision.

37. Furthermore, although the applicant repeated his arguments in his appeal petition, the Court of Cassation did not make reference to them and simply endorsed the Şişli Court's decision. Although such a technique of reasoning by an appellate court is, in principle, acceptable, in the circumstances of the present case the Court finds that it failed to satisfy the requirements of a fair hearing (see *Hirvisaari v. Finland*, no. 49684/99, § 32, 27 September 2001; see also *Emel Boyraz v. Turkey*, no. 61960/08, §§ 72-75, 2 December 2014). As the Şişli Court's reasoning was not reasoned, it was all the more important for the Court of Cassation to give proper reasons for its own decision (see *Helle v. Finland*, 19 December 1997, § 60, *Reports of Judgments and Decisions* 1997-VIII). In this connection the Court observes that the Government have not sought to argue that the lack of any replies by the national courts to the points raised by the applicant should be construed as implied rejections (see, *a contrario*, *Ruiz Torija*, cited above, § 30).

38. Concerning the Government's submission that the statutory time-limit issue required a plea which should have been submitted by the applicant within 10 days of the notification of the claim and also that the case in question was an action for restitution or recovery of property and in such cases the statutory time-limit did not apply (see paragraph 27 above), the Court considers that, as pointed out above (see paragraph 34), these were matters for the national courts to examine and decide. Nevertheless, no replies were given to them by the national courts.

39. As for the applicant's submissions concerning the awarding of statutory interest in the absence of a request from the plaintiff, the Court notes that it was confirmed in a later decision adopted by the Grand Chamber of the Court of Cassation in an unrelated but comparable case that judges in Turkey are bound by the parties' arguments and defence submissions and that they may not decide to award statutory interest if no such request has been made by the plaintiff (see paragraph 21 above). The Court considers that this decision lends support to the applicant's argument that his plea concerning the awarding of interest was also pertinent and worthy of a reply by the Court of Cassation.

40. In this connection the Court cannot agree with the respondent Government's submissions that the interest awarded by the Şişli Court was "default interest" (*temerrüt faizi*) stemming from the annulment of the public tender (see paragraph 28 above). The Court notes that "default interest", which is defined in Section 133 of the Enforcement and Bankruptcy Act (see paragraph 20 above), is a different interest from the one added on to the sum awarded to the plaintiff in the present case, which was "statutory interest" (*yasal faiz*) (see paragraph 14 above).

41. The Court considers that although the issue of interest could only have been examined by the Court of Cassation because it was decided by the Şişli Court in its decision and thus the applicant did not have the opportunity to challenge it in the first instance proceedings, the Court of Cassation failed to give even the briefest response.

42. The Court thus notes that the Şişli Court and subsequently the Court of Cassation failed to reply to the pertinent points raised by the applicant, contrary to the requirements of the Constitution and the Code of Civil Procedure (see paragraphs 18 and 19 above).

43. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts which handled the civil proceedings failed to fulfil one of the requirements of a fair hearing, namely to provide adequate reasoning for their decisions. There has accordingly been a violation of Article 6 § 1 of the Convention.

44. Having regard to its conclusion in the preceding paragraph, the Court does not deem it necessary to examine separately whether the national court's failure to hear the witnesses proposed by the applicant, to take into account his challenge directed against the expert witnesses, or for the Court

of Cassation to hold a hearing before rendering its decision give rise to separate violations of Article 6 of the Convention.

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

45. Lastly, the applicant claimed that the erroneous decision reached by the domestic courts had caused him pecuniary loss and had therefore violated his rights under Article 1 of Protocol No. 1.

46. The Government contested that argument.

47. The Court considers that this complaint may be declared admissible. However, having regard to the findings relating to Article 6 § 1 of the Convention (see paragraph 43 above), the Court does not deem it necessary to examine separately whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 to the Convention. In this connection the Court also observes that it is possible for the applicant to apply to the national authorities and have the proceedings reopened.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed EUR 180,322 in respect of pecuniary damage.

50. The Government considered the claim to be unsubstantiated.

51. Having regard to the possibility for the applicant to have the proceedings reopened pursuant to the present judgment, the Court dismisses the applicant's claim for damages.

B. Costs and expenses

52. The applicant also claimed "a reasonable sum" in respect of his costs and expenses incurred before the Court.

53. The Government invited the Court to reject the applicant's claim on account of his failure to claim a specific sum.

54. 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 are reasonable as to quantum. In the present case, the applicant has not only failed to claim a

specific sum, but has also failed to substantiate that he actually incurred any costs. Accordingly, the Court makes no award under this head.

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 on account of the national courts' failure to provide adequate reasons for their decisions;

3. *Holds* that there is no need to examine separately the remaining complaints under Article 6 of the Convention;

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

5. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	András Sajó
Registrar	President