

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

SECOND SECTION

CASE OF ÜLGEN v. TURKEY

(Application no. 4530/06)

JUDGMENT

STRASBOURG

6 March 2012

This judgment is final but it may be subject to editorial revision.



In the case of Ülgen v. Turkey,

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

Isabelle Berro-Lefèvre, *President,*
Guido Raimondi,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 14 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 4530/06) 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, Ms Gülsen Ülgen ("the applicant"), on 29 December 2005.

2. The applicant was represented by Ms B. Baysal, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 27 August 2009 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born on 2 November 1936.

5. On 14 August 1976 the applicant's mother, N.B. lodged a case with the Bodrum Cadastral Court seeking annulment of the land survey conducted in respect of her land: plot no. 423.

6. On 12 June 1995 the applicant became involved in the proceedings as the heir.

7. On 7 August 1998 the court granted the request.

8. On 25 May 1999 the Court of Cassation quashed the judgment of 7 August 1998.

9. On 26 November 1999 a request for rectification of the judgment was dismissed.

10. On 27 March 2000 the first-instance court dismissed the case.

11. On 28 November 2000 the Court of Cassation upheld the judgment of 27 March 2000.

12. According to the document submitted by the Government, on 17 October 2005 the rectification request of the parties was rejected.

THE LAW

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

13. 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, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a]... tribunal..."

A. Admissibility

14. The Government submitted that the Court had no competence to examine the applicant's complaints concerning the matters which took place before the date of 28 January 1987, on which Turkey accepted the right of individual application, in accordance with the rule of *ratione temporis*. They further argued that the proceedings had lasted ten years as the period to be taken into consideration should start on 12 June 1995, when the applicant participated in the proceedings. Finally they contended that the applicant had failed to exhaust the domestic remedies by not raising her complaints before the domestic courts and that she did not comply with the six-month rule.

15. The applicant contested these submissions and alleged that the proceedings are still pending before the national courts.

16. Regarding the Government's first assertion, in the light of the Court's case law (see *Cankoçak v. Turkey*, nos. 25182/94 and 26956/95, § 25, 20 February 2001), the Court observes that it can only consider the period elapsed after 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition under former Article 25 of the Convention. As regards the second assertion of the Government, considering that the applicant is the legitimate heir of her mother N.B., the Court dismisses the Government's preliminary objection in this respect.

17. As to the arguments that the applicant had failed to exhaust the domestic remedies, the Court notes that it has already examined similar submissions made by the respondent Government in *Daneshpayeh v. Turkey*

(no. 21086/04, §§ 35-38, 16 July 2009). The Government have not submitted any arguments which could lead the Court to reach a different conclusion in the instant case. As to the six-month issue, in the light of the documents submitted by the Government the final decision was rendered on 17 October 2005 and bearing in mind that the instant application was lodged with the Court on 29 December 2005, the Court finds that the applicant has complied with the six month rule under Article 35 § 1 of the Convention. Consequently, the Court rejects the Government's preliminary objections.

18. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The Government disagreed with the complaint. They contended that the impugned proceedings could not be considered to have been excessively long in view of the complexity of the case. They concluded therefore that there had been no delay in the proceedings that may be attributable to the State.

20. The applicant maintained her complaints.

21. The Court notes that the period to be taken into consideration and within its jurisdiction *ratione temporis* began on 28 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition (see paragraph 16 above). Given that the proceedings ended by the Court of Cassation's decision of 17 October 2005, they therefore lasted approximately eighteen years and nine months before two levels of jurisdiction. (see, *mutatis mutandis*, *Baggetta v. Italy*, 25 June 1987, § 20, Series A no. 119, and *Timotiyevich v. Ukraine* (dec.), no. 63158/00, 18 May 2004).

22. 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 *Daneshpayeh*, cited above, §§ 26-29, and *Frydlender v. France* [GC], no. 30979/96, §§ 42-46, 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

23. The applicant complained that there was no domestic remedy available under the Turkish law whereby she could challenge the excessive length of proceedings. She relied on Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

24. The Government did not comment on the matter.

25. As this complaint is linked to the above complaint under Article 6, it must therefore also be declared admissible. The Court has examined similar cases on previous occasions and has found violations of Article 13 of the Convention in respect of the lack of an effective remedy under Turkish law whereby the applicant could have contested the length of the proceedings at issue (see *Daneshpayeh*, cited above, §§ 37 and 51; and *Bahçeyaka v. Turkey*, no. 74463/01, §§ 26-30, 13 July 2006; and *Tendik and Others v. Turkey*, no. 23188/02, §§ 34-39, 22 December 2005). It finds no reason to depart from that conclusion in the present case.

There has accordingly been a breach of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 17,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

28. The Government contested the claim as being unsubstantiated.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 16,800 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant did not state a specific amount for the costs and expenses she claimed but asked the Court to make an award under this head in the light of the Turkish Bar Association's scale of fees.

31. The Government contested the claim.

32. 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, the Court observes that the applicant did no more than refer to the Turkish Bar Association's scale of fees. She failed to quantify her costs and expenses and to submit any document in support of her claim. The Court therefore makes no award under this head.

C. Default interest

33. The Court considers it appropriate that the default interest rate 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 complaints concerning the excessive length of the proceedings and lack of effective remedy admissible;

2. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 16,800 (sixteen thousand eight hundred euros), to be converted into Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 6 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Isabelle Berro-Lefèvre
Deputy Registrar	President