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

FOURTH SECTION

CASE OF TALİPOĞLU v. TURKEY

(Application no. 64236/01)

JUDGMENT

STRASBOURG

24 July 2007

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 Talipoğlu v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mrs P. HIRVELÄ, *judges*,
and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 3 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 64236/01) 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 Mehmed Ali Talipoğlu ("the applicant"), on 4 August 2000.

2. The applicant was represented by Mr A.A. Talipoğlu, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 October 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Erzurum.

I. First set of proceedings before the Hınıs Cadastre Court (no.1985/07)

5. On an unspecified date, the Land Registry Commission issued a decision on plots of land in the Taşbulak village in the Hınıs district in

Erzurum registering them as property of the Treasury. The decision included the applicant's plot of land.

6. On 14 January 1985 the mayor of Taşbulak village filed an action with the Hınıs Cadastre Court and requested the annulment of the Land Registry Commission's decision.

7. On an unspecified date, the applicant filed a similar action with the Hınıs Cadastre Court. In his petition he stated that the plot of land in question had been registered in his father's name in 1946.

8. On 3 October 1986 the Hınıs Cadastre Court decided to join the cases.

9. On 21 May 1987 the First Instance Court held its first hearing and heard the parties.

10. Between 21 May 1987 and 19 October 1999 the court held fifty three hearings. During this period, the court examined the documents furnished by the parties concerning their ownership allegations and ordered on-site visits to be carried out on the plots of lands. However, the court postponed carrying out on-site visits on the plots of lands due to bad weather conditions or the absence of experts. Despite the court's letters to the Directorate of Agriculture and Land Registry to secure the presence of the experts, they failed to appear for the on-site visits.

11. The proceedings before the Hınıs Cadastre Court are still pending. The on-site visits to the plots of land have not yet been carried out.

2. Second set of proceedings before the Hınıs Civil Court of First-instance (Asliye Hukuk)

12. On 20 August 1990 the mayor of the Dikili village in Hınıs district filed an action with the Hınıs Civil Court of First-instance against the Uyanık village. The action concerned a dispute over a plot of land.

13. On 27 June 1991 the applicant intervened in the action and alleged that his father was the owner of the plot of land in question. The Suvaran village also intervened in the proceedings.

14. On 28 May 1992 the First Instance Court sent a letter to the Cadastre Registration Office and requested the determination of the borders of the Uyanık and Dikili villages.

15. On 9 July 1992 the court ordered an on-site visit to be carried out on the plot of land. In this connection it sent a letter to the Directorate of Agriculture and Cadastre and requested the latter to secure the presence of experts for the on-site visit.

16. Between 9 July 1992 and 18 November 1999 the court held thirty-nine hearings. During this period, the court postponed the conduct of on-site visits on account of bad weather conditions or the absence of the experts.

17. On 18 July 1996 during the hearing before the court the applicant requested the court to carry out an on-site visit to the plot of land and to secure the presence of the experts.

18. On 3 October 1996 the court postponed an on-site visit. It noted that the District Gendarmerie Command had sent a letter and informed the court that an on-site visit could not be carried out for security reasons in the area.

19. On 28 June 2001 the Hınıs Civil Court of First Instance issued a decision of non-jurisdiction in respect of the applicant's action and decided to relinquish jurisdiction in favour of the Hınıs Cadastre Court. The court further decided to strike out the case in respect of the Dikili and Suvaran villages since they had failed to pursue their claim. The applicant appealed.

20. On 11 December 2001 the Court of Cassation dismissed the appeal. This decision became final on 14 February 2002.

3. Third set of proceedings before the Hınıs Cadastre Court (no.1985/423)

21. On 19 February 1985 the mayor of Suvaran village filed an action with the Hınıs Cadastre Court against the Dikili village and requested the annulment of the decision of the Land Registry Commission in respect of the plots of land (see paragraph 5 above).

22. On an unspecified date, the applicant filed an application to intervene in the action.

23. On 25 March 1986 the court accepted the applicant's request for intervention and decided to join the cases nos. 1985/423 and 1985/07.

24. Between 2 September 1986 and 9 November 1999 the court held fifty-nine hearings. During this period it examined the documents submitted by the parties and requested the State authorities to submit additional documents concerning the plots of land in question.

25. On 24 March 1989 the court ordered an on-site visit to the plots of land. However it postponed the on-site visits due, respectively, to the absence of the experts or bad weather conditions.

26. The proceedings before the Hınıs Cadastre Court are still pending. The on-site visits to the plots of land have not yet been carried out.

4. Applicant's petition to the General Directorate of Criminal Matters

27. On 7 February 2000 the applicant filed a petition with the General Directorate of Criminal Matters attached to the Ministry of Justice. He complained that the judges at the Hınıs Civil Court of First Instance and Hınıs Cadastre Court had failed to display due diligence in handling the proceedings concerning the lands in question.

28. In a letter of 18 May 2000 the General Directorate of Criminal Matters dismissed the applicant's request.

THE LAW

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

29. 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..."

30. The Government contested that allegation.

31. The Court notes that in the instant case there are three sets of proceedings which commenced on different dates. Accordingly, the period to be taken into consideration for each of the proceedings must be calculated separately.

32. As regards the first set of proceedings, which are still pending, the Court notes that the period began on 28 January 1987 when the recognition by Turkey of the right of individual petition took effect (see *Şahiner v. Turkey*, no. 29279/95, ECHR 2001-IX, § 22). 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 proceedings in questions have already lasted more than twenty years. They had already lasted approximately two years on the last-mentioned date before one level of jurisdiction.

33. The second set of proceedings began on 27 June 1991, the date on which the applicant became an intervening party to the proceedings, and ended on 14 February 2002. They thus lasted approximately ten years and seven months.

34. The third set of proceedings began on 25 March 1986, the date on which the Hınıs Cadastre Court joined the cases following the intervention of the applicant, and they are still pending. They have already lasted more than twenty years. As noted above, the Court's jurisdiction *ratione temporis* only permits it to consider the period that elapsed after 28 January 1987. It must nevertheless take account of the state of the proceedings at the time when the aforementioned declaration was deposited. On that critical date the proceedings had already lasted nine months.

A. Admissibility

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

B. Merits

36. 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).

37. 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*, cited above).

38. 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 proceedings before the Hınıs Cadastre Court and Hınıs Civil Court of First Instance was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 120,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 for non-pecuniary damage.

41. The Government contested these claims.

42. 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, the Court considers that the applicant must have sustained non-pecuniary damage. Accordingly, the Court awards EUR 20,000 for the length of the proceedings before the Hınıs Cadastre Court (first and third sets of proceedings which were examined jointly) and EUR 9,000 in respect of the proceedings before the Hınıs Civil Court of First Instance.

43. In sum, ruling on an equitable basis, the Court awards EUR 29,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed EUR 10,500 for the costs and expenses incurred before the Court.

45. The Government submitted that the amount claimed was excessive and unsubstantiated

46. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 considers it reasonable to award the sum of EUR 3,000 for costs and expenses incurred in the course of the proceedings before the Court.

C. Default interest

47. 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*
   (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 29,000 (twenty-nine thousand euros) in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) for costs and expenses, plus any tax that may be chargeable, to be converted into new 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI	Nicolas BRATZA
Deputy Registrar	President