



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECOND SECTION

DECISION

NURDAN SESİZ APPLICATION

(Application No: 2012/317)

Date of Decision: 16/4/2013

SECOND SECTION

DECISION

President : Alparslan ALTAN
Members : Osman Alifeyyaz PAKSÜT
Engin YILDIRIM
Celal Mümtaz AKINCI
Muammer TOPAL
Rapporteur : Murat AZAKLI
Applicant : Nurdan SESİZ

I. SUBJECT OF APPLICATION

1. The applicant alleged that the facts that the decision of invalidation of intervention that was delivered in the case filed by her testator against the Directorate General of Forestry and finalized in 1951 was not fulfilled by the Directorate General of Forestry and that in the cases of annulment of title deed and registration, which were filed by the Directorate General of Forestry and the State Treasury with regard to the same immovable, it was decided that the title deed registrations be partially annulled violated her rights to property and to a fair trial.

II. APPLICATION PROCESS

2. The application was lodged on 19/10/2012 via the 1st Civil Court of First Instance of Balıkesir. As a result of the preliminary examination of the petition and annexes thereof as conducted in terms of administrative aspects, it was found out that there was no deficiency that would prevent the referral thereof to the Commission.

3. As it was deemed necessary by the First Commission of the Second Section on 12/4/2013 that a principle decision be delivered by the Section in order for the application to be concluded, it was decided that the admissibility examination be carried out by the Section, that the file be sent to the Section as per paragraph (3) of article 33 of the Internal Regulation of the Constitutional Court.

III. FACTS AND CASES

A. Facts

4. The relevant facts contained within the application are summarized as follows:

5. As a result of the actio negatoria filed by the testator of the applicant at the 1st Civil Court of First Instance of Balıkesir against the Directorate General of Forestry, it was decided with the writ dated 7/9/1951 and numbered M.1949/579, D.1951/599 that the intervention of the defendant Forest Administration that had occurred to the place of which the plaintiff was the tenant by title deed be invalidated and the judgment was finalized.

6. As a result of the forest cadastre work conducted in 1988, the forest limitation boundaries were determined and the immovable was divided into three separate parcels. The boundaries that were determined as a result of the forest cadastre work were finalized on 20/10/1989 without any objections being raised.

7. a) In the case that was filed by Savaştepe Revenue Department as a representative of the State Treasury at the Civil Court of First Instance of Savaştepe against the applicant on 8/4/1991, the annulment of the land registry of the immovable with the block number of 88 and parcel number of 41 located in Cumhuriyet Neighborhood of Savaştepe District and its registration in the name of the State Treasury was requested, the Forest Administration intervened in the case. It was decided by the court with the writ dated 11/4/2000 and numbered M.1991/83, D.2000/43 that the case filed by the plaintiff and the intervenor be dismissed.

b) Upon the appeal of the judgment by the plaintiff and the intervenor, a decision of approval was delivered by the 20th Civil Chamber of the Supreme Court of Appeals with its writ dated 10/5/2001 and numbered M.2001/3462, D.2001/3775 with the justification that the immovable with the block number of 88 and parcel number of 41 that is the subject of the case had been left outside the forest boundaries with the writ of the 1st Civil Court of First Instance of Balıkesir dated 7/9/1951 and numbered M.1949/579, D.1951/599, that this decision, which is of the quality of a final judgment, would bind the parties to the case, that therefore the dismissal of the case that had been filed by the State Treasury and the Forest Administration was correct.

c) Upon the request for correction, the decision of approval was revoked and the judgment was reversed with the writ of the 20th Civil Chamber of the Supreme Court of Appeals dated 1/7/2002 and numbered M.2002/4832, D.2002/6419 with the justification that the judgment dated 7/9/1951 did not pertain to the place that is the subject of the case. As a result of the trial that was conducted by the court by complying with the decision of reversal, it was decided with the writ dated 30/4/2004 and numbered M.2002/147, D.2004/59 that the case that had been filed by the State Treasury be partially accepted, that the land registration of the immovable with the block number of 88 and parcel number of 41 be partially annulled and that it be registered in the name of the Treasury, and that the remaining part be registered in the name of the defendants in the land registry.

d) Upon the appeal of the judgment by the defendants and the Forest Administration, the judgment was approved with the decision of the 20th Civil Chamber of the Supreme Court of Appeals dated 10/5/2005 and numbered M.2005/1444, D.2005/6051, the request for correction was dismissed with the writ of the 20th Civil Chamber of the Supreme Court of Appeals dated 14/4/2006 and numbered M.2006/2386, D.2006/5008.

8. a) A case was filed by the Directorate General of Forestry at the Civil Court of First Instance of Savaştepe against the applicant on 6/9/1999 with the request for the annulment of the land registry of the immovable with the block number of 88 and parcel number of 45 located in Cumhuriyet Neighborhood of Savaştepe District and its registration as forest, the State Treasury intervened in the case. It was decided by the court with the writ dated 13/12/2006 and numbered M.2001/125, D.2006/110 that the land registration be partially annulled, that it be registered in the land registry with the quality of forest in the name of the Treasury.

b) Upon appeal, the judgment was approved with the writ of the 20th Civil Chamber of the Supreme Court of Appeals dated 21/4/2008 and numbered M.2008/2398, D.2008/6141.

c) The request for correction was rejected with the writ of the 20th Civil Chamber of the Supreme Court of Appeals dated 18/9/2008 and numbered M.2008/10366, D.2008/11409.

9. a) In the case that was filed by the Directorate General of Forestry against the applicant on 11/10/1990 at the Civil Court of First Instance of Savaştepe, the annulment of the land registry of the immovable with the block number of 88 and parcel number of 44 located in Cumhuriyet Neighborhood of Savaştepe District and its registration as forest was requested. With the writ dated 8/7/1997 and numbered M.1990/120, D.1997/52, it was decided by the court to dismiss the case due to final judgment by referring to the writ of the 1st Civil Court of First Instance of Balıkesir dated 7/9/1951 and numbered M.1949/579, D.1951/599 as the justification.

b) Upon appeal of the judgment, the judgment was reversed by the decision of the 20th Civil Chamber of the Supreme Court of Appeals dated 23/9/1998 and numbered M.1998/7880, D.1998/7973 with the justification that the forest boundary map that had been drawn at the place where the immovable is located was finalized.

c) The request for correction was dismissed by the 20th Civil Chamber of the Supreme Court of Appeals on 4/2/1999.

d) At the end of the trial that was conducted by the Court by complying with the decision of reversal, with the writ dated 3/7/2001 and numbered M.1999/37, D.2001/106, it was decided that the case be dismissed with the justification that the decision of the Civil Court of First Instance of Savaştepe numbered M.2000/19, D.2000/40 constituted a final judgment, upon appeal of the judgment, the judgment was approved with the decision of the 20th Civil Chamber of the Supreme Court of Appeals dated 26/3/2002 and numbered M.2002/380, D.2002/2635. The request for correction was dismissed by the 5th Civil Chamber of the Supreme Court of Appeals with the decision dated 11/11/2002 and numbered M.2002/8097, D.2002/8883.

10. a) In the case that was filed by the State Treasury against the applicant on 28/11/1995 at the Civil Court of First Instance of Savaştepe, the annulment of the land registry of the immovable with the block number of 88 and parcel number of 44 located in Cumhuriyet Neighborhood of Savaştepe District and its registration in the name of the treasury was requested, the Forest Administration intervened in the case. With the decision dated 25/5/1999 and numbered M.1995/220, D.1999/93, it was decided by the court to dismiss the case that had been filed by the plaintiff State Treasury, to partially accept the case that had been filed by the intervenor Forest Administration. The judgment was reversed with the decision of the 16th Civil Chamber of the Supreme Court of Appeals dated 27/12/1999 and numbered M.1999/5077, D.1999/5286.

b) At the end of the trial that was conducted by the court after the decision of reversal, with the decision of insistence dated 28/3/2000 and numbered M.2000/19, D.2000/40, it was decided that the case that had been filed by the State Treasury be dismissed with the justification that the forest boundary drawn in 1989 had been finalized in the absence of objection by the defendants, that the case that had been filed by the State Administration be partially accepted, that the land registration of the immovable with the block number of 88

and parcel number of 44 be partially annulled and it be registered in the land registry and approved with the quality of forest in the name of the Treasury, that the remaining part be registered in the land registry in the name of the defendant.

c) The judgment was approved with the writ of the General Assembly of the Civil Chambers of the Supreme Court of Appeals dated 25/10/2000 and numbered M.2000/16-1291, D.2000/1560, the request for correction was dismissed by the General Assembly of the Civil Chambers of the Supreme Court of Appeals with the decision dated 21/2/2001 and numbered M.2001/16-146, D.2001/162.

11. The applicant applied to the Directorate General of Forestry of the Ministry of Forestry and Water Affairs on 27/7/2012 and requested that the necessary corrective action be fulfilled in line with the decision dated 7/9/1951 and numbered M.1949/579, D.1951/599 that had been delivered by the 1st Civil Court of First Instance of Balıkesir according to the date on which the decision had been delivered, it was notified by the Directorate General of Forestry through the correspondence dated 8/8/2012 that there was no action to be taken by the administration due to the fact that the request was subject to finalized judgments of the judiciary.

12. a) The applicant applied to the European Court of Human Rights on 3/12/2007 and alleged that the decision pertaining to the partial annulment of the land registry of the immovable with the block number of 88 and parcel number of 41 located in Cumhuriyet Neighborhood of Savaştepe District and its registration in the name of the State Treasury and the registration of the remaining part in the name of the defendants that had been finalized on 14/4/2006 violated her rights to property and to a fair trial, the application was registered by the Second Chamber of the European Court of Human Rights on 5/2/2008.

b) The applicant applied to the European Court of Human Rights on 10/4/2009 and alleged that the decision pertaining to the partial annulment of the land registry of the immovable with the block number of 88 and parcel number of 45 located in Cumhuriyet Neighborhood of Savaştepe District, its registration with the quality of forest in the name of the Treasury that had been finalized on 18/9/2008 violated her rights to property and to a fair trial, the application was registered by the Second Chamber of the European Court of Human Rights on 1/8/2009.

c) The applicant also applied to the European Court of Human Rights with the allegation that the decision pertaining to the partial annulment of the land registry of the immovable with the block number of 88 and parcel number of 44 located in Cumhuriyet Neighborhood of Savaştepe District and its registration with the quality of forest in the name of the Treasury violated her right to property and to a fair trial.

B. Relevant Law

13. Paragraph (8) of provisional article 1 of the Code on the Establishment and Rules of Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216, paragraph one of article 427, paragraph one of article 432, paragraph one of article 440 and paragraph one of article 442 of the abolished Code of Civil Procedure dated 18/6/1927 and numbered 1086 as it was prior to the amendment that was made with the Code dated 26/9/2004 and numbered 5236 as per paragraph (2) of provisional article 3 of the Code of Civil Procedure dated 12/1/2011 and numbered 6100.

IV. EXAMINATION AND JUSTIFICATION

14. The individual application of the applicant dated 19/10/2012 and numbered 2012/317 was examined during the session held by the court on 16/4/2013 and the following were ordered and adjudged:

A. Claims of the Applicant

15. The applicant indicated that at the end of the case that had been filed by her testator against the Forest Administration at the 1st Civil Court of First Instance of Balıkesir, it was ruled with the decision dated 7/9/1951 to invalidate the intervention of the defendant Forest Administration with the justification that the immovable was registered in the name of her testator and alleged that the facts that despite the final judgment dated 7/9/1951 and the registration of the immovable in the name of her testator, it was decided that the land registrations of the immovables be annulled and they be registered in the land registry in the name of the State Treasury and the Forest Administration at the end of the cases that were filed at the Civil Court of First Instance of Savaştepe in relation to the immovables with the block number of 88 and parcel numbers of 41, 44 and 45 and that the application she made to the Directorate General of Forestry so that an action would be taken in line with the decision that had been finalized in 1951 and according to the date of the decision was dismissed violated her right to property defined under article 35 of the Constitution and her right to a fair trial defined under article 36 of the Constitution and requested compensation.

B. Evaluation

16. Paragraph (8) of provisional article 1 of the Code on the Establishment and Trial Procedures of the Constitutional Court dated 30/3/2011 and numbered 6216 is as follows:

“The court shall examine the individual applications to be lodged against the definitive actions and decisions that are finalized after 23/9/2012.”

17. As per the mentioned provision of the Code, the beginning of the Constitutional Court's venue in terms of time is the date of 23/9/2012, and the Court will only be able to examine individual applications that are lodged against actions and decisions that are finalized after this date. In the face of this clear regulation, it is not possible to expand the scope of the venue in such a way to also cover the acts and actions that had been finalized prior to the mentioned date.

18. On the other hand, the fact that a definite date is determined for the Constitutional Court's venue in terms of time and that the Court's venue is not applied retrospectively is a requirement of the principle of legal security (App. No: 2012/51, § 18, 25/12/2012).

19. It is neither an effective remedy to apply to institutions and organs that do not have venue in terms of fulfilling decisions in the aftermath of court decisions that are finalized as a result of seizing ordinary legal remedies, nor deciding on the dismissal of this application would grant a new right and venue to lodge an individual application at the Constitutional Court. The remedy that is exhausted should be of the nature to provide a solution to the circumstance that is the subject of the application before the Constitutional Court, in other words, to ensure the correction of the matter that is alleged to have violated the Constitution and the removal of the violation. The court does not allow the case to be reignited by means of applying to institutions and organs that do not have the venue to provide an effective solution to the incident that is the subject of application and the application to be included within the scope of the venue in terms of time (App. No: 2012/829, § 32, 5/3/2013).

20. In the incident that is the subject of the application, the applicant alleged that her constitutional rights were violated by indicating that at the end of the case that had been filed at the 1st Civil Chamber of First Instance of Balıkesir with the writ dated 7/9/1951 and numbered M.1949/579, D.1951/599 it had been decided that the intervention of the Forest Administration be invalidated with the justification that the immovables were registered in the land registry in the name of her testator, that this decision had not been fulfilled by the Directorate General of Forestry, that as a result of the cases filed at the Civil Court of First Instance of Savaştepe following the cadastre determination pertaining to the same immovables, it was decided that the land registrations of the immovables be annulled and they be registered in the land registry in the name of the State Treasury and the Forest Administration.

21. The decision of invalidation of intervention of the 1st Civil Court of First Instance of Balıkesir dated 7/9/1951 and numbered M.1949/579, D.1951/599, which the applicant wishes to be implemented according to the date of the decision, was finalized in 1951. As a result of the title deed annulment and registry cases that were filed following this case with a view to the ownership of the immovable, it was decided that a part of the immovable be registered in the land registry in the name of the applicant and another part of it in the name of the Directorate General of Forestry. The ownership situation was redetermined with the decisions that were delivered as a result of the title deed annulment and registry cases and the mentioned decisions were finalized. Therefore, despite the presence of newly reformed and finalized title deed registrations and sketches pertaining to the immovable, neither does the fact that the applicant requested from the Directorate General of Forestry that the decision of invalidation of intervention, which had been finalized in 1951, be implemented according to the date of the decision grant a new right to the applicant to lodge an individual application, nor does it provide the right to apply with the claim that the decision that had been finalized in 1951 was not implemented.

22. The decision of title deed annulment and registration delivered at the end of the case filed against the applicant pertaining to the immovable with the block number of 88 and parcel number of 41 located in Cumhuriyet Neighborhood of Savaştepe District was finalized on 14/4/2006, the decision of title deed annulment and registration pertaining to the immovable with the block number of 88 and parcel number of 44 was finalized on 21/2/2001, and the decision of title deed annulment and registration pertaining to the immovable with the block number of 88 and parcel number 45 was finalized on 18/9/2008. Due to the fact that these provisions, which the applicant alleges to have violated her constitutional rights, and the decision of invalidation of intervention that was delivered at the end of the case filed by the testator of the applicant against the Forest Administration at the 1st Civil Court of First Instance of Balıkesir and was finalized in 1951 were finalized prior to the date of 23/9/2012, they are not within the venue of the Constitutional Court in terms of time.

23. For the explained reasons, as it is understood that the decisions that are the subject of the application were finalized before the date of 23/9/2012, which is determined as the date on which the examination of individual applications was initiated, it should be decided that the application is inadmissible due to “*lack of venue in terms of time*” without examining it in terms of the other admissibility conditions.

V. JUDGMENT

It was decided **UNANIMOUSLY** on 16/4/2013 that the application is **INADMISSIBLE** due to “*lack of venue in terms of time*”, that the trial expenses be left on the applicant.

President
Alparslan ALTAN

Member
Osman Alifeyyaz PAKSÜT

Member
Engin YILDIRIM

Member
Celal Mümtaz AKINCI

Member
Muammer TOPAL