



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

SECOND SECTION

CASE OF KÖSE v. TURKEY

(Application no. 37616/02)

JUDGMENT

STRASBOURG

7 December 2010

FINAL

07/03/2011

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

In the case of Köse v. Turkey,

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

Ireneu Cabral Barreto, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 16 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 37616/02) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Turkish nationals, Bozan Köse, İbrahim Halil Köse, Mehmet Köse, Meryem Köse, Müslüm Köse and Zöhre Köse (“the applicants”), on 17 May 1997.

2. The applicants were represented by Mr M. Erkmen, a lawyer practising in Şanlıurfa. The Turkish Government (“the Government”) were represented by their Agent.

3. On 4 November 2008 the Court declared the application partly inadmissible in respect of Mr Müslüm Köse, Mr Mehmet Köse, Mr Bozan Köse and Ms Meryem Köse and decided to communicate the application to the Government in respect of the other applicants, İbrahim Halil Köse and Zöhre Köse, in relation to parcels nos. 155, 193, 157, 195, 27, 150, 171, 135, 203 and 129 owned by them. It also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants İbrahim Halil Köse and Zöhre Köse are Turkish nationals who were born in 1955 and 1927 respectively and live in Şanlıurfa. They are represented before the Court by Mr M. Erkmén, a lawyer practising in Şanlıurfa.

5. On an unspecified date the Ministry of Energy and Natural Resources expropriated several plots of land, namely parcels nos. 155, 193, 157, 195, 27, 150, 171, 135, 203 and 129, belonging to the applicants in the Meteler village of Birecik, in Şanlıurfa, for the construction of the Birecik Dam.

6. In 1996, the applicants commenced proceedings before the Birecik Civil Court for additional compensation for their respective plots. Following the applicants' requests, the Birecik Civil Court of First Instance awarded them additional compensation plus interest at the statutory rate. However, no interest was awarded for parcels nos. 203 and 129. The Ministry of Energy and Natural Resources appealed and the Court of Cassation upheld the judgments of the first instance court.

7. In February and June 1997 the administration made payments to the applicants of additional compensation. The details regarding the proceedings and payments are indicated in the table below:

NAMES OF THE APPLICANTS	DATE ON WHICH THE APPLICANTS INITIATED PROCEEDINGS FOR ADDITIONAL COMPENSATION	DATE OF FIRST-INSTANCE COURT DECISION	DATE OF COURT OF CASSATION DECISION	AMOUNT OF ADDITIONAL COMPENSATION AWARDED (in Turkish liras (TRL))	DATES AND AMOUNTS OF PAYMENT (INCLUDING STATUTORY INTEREST AT THE RATE OF 30 % PER ANNUM AND COSTS) (in TRL)
İ. Halil Köse Zöhre Köse (parcel no. 155)	19/03/1996	26/08/1996	18/11/1996	1,868,488,592	14/02/1997 2,324,891,115
İ. Halil Köse Zöhre Köse (parcel no. 193)	19/03/1996	26/08/1996	18/11/1996	2,161,447,064	14/02/1997 2,698,610,288
İ. Halil Köse Zöhre Köse (parcel no. 157)	19/03/1996	26/08/1996	18/11/1996	1,063,296,256	14/02/1997 1,300,603,385

NAMES OF THE APPLICANTS	DATE ON WHICH THE APPLICANTS INITIATED PROCEEDINGS FOR ADDITIONAL COMPENSATION	DATE OF FIRST-INSTANCE COURT DECISION	DATE OF COURT OF CASSATION DECISION	AMOUNT OF ADDITIONAL COMPENSATION AWARDED (in Turkish liras (TRL))	DATES AND AMOUNTS OF PAYMENT (INCLUDING STATUTORY INTEREST AT THE RATE OF 30 % PER ANNUM AND COSTS) (in TRL)
İ. Halil Köse Zöhre Köse (parcel no. 195)	19/03/1996	26/08/1996	18/11/1996	1,850,677,152	14/02/1997 2,301,699,955
İ. Halil Köse Zöhre Köse (parcel no. 27)	19/03/1996	27/08/1996	27/12/1996	406,275,000	10/06/1997 495,477,646
İ. Halil Köse Zöhre Köse (parcel no. 150)	19/03/1996	5/07/1996	25/11/1996	209,207,112	14/02/1997 228,681,850
İ. Halil Köse Zöhre Köse (parcel no. 171)	19/03/1996	26/08/1996	18/11/1996	772,542,480	14/02/1997 931,692,931
İ. Halil Köse Zöhre Köse (parcel no. 135)	19/03/1996	26/08/1996	25/11/1996	627,694,984	14/02/1997 747,662,131
İ. Halil Köse (parcel no. 203)	19/03/1996	27/08/1996	23/12/1996	2,667,498,900	10/06/1997 2,595,161,406
İ. Halil Köse (parcel no. 129)	19/03/1996	11/10/1996	23/12/1996	688,410,160	10/06/1997 632,468,110

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. The relevant domestic law and practice are set out in the cases of *Akkuş v. Turkey* (9 July 1997, *Reports of Judgments and Decisions* 1997-IV), *Aka v. Turkey* (23 September 1998, *Reports* 1998-VI), *Gaganuş and Others v. Turkey* (no. 39335/98, §§ 15-19, 5 June 2001), and *Ak v. Turkey* (no. 27150/02, §§ 11-13, 31 July 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

9. The applicants complained that they had suffered financial loss due to the insufficient interest rates applied on the additional compensation received following the expropriation of their properties and that the authorities had delayed in paying them the relevant amounts.

A. Admissibility

10. The Government firstly submitted that the expropriation procedure with respect to parcels nos. 155, 27, 135 and 129 were annulled by the State pursuant to Article 22 of the Code of Expropriation on 24 September 2001. The applicants subsequently took their properties back by exchange of the expropriation compensation they were paid. The applicants, therefore, lacked victim status concerning these parcels. The Government further contended that the applicants had not exhausted domestic remedies as required by Article 35 of the Convention, as they had failed to make proper use of the remedy available to them under Article 105 of the Code of Obligations. Under that provision, they would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if they had established that the losses exceeded the amount of default interest.

11. The applicants maintained their allegations.

12. As to the Government's preliminary objection as regards the annulment of the expropriation procedure with respect to parcels nos. 155, 27, 135 and 129, the Court notes that Article 22 of the Code of Expropriation provides for an optional right for the former owners of the expropriated land to get back their property in return for payment of the same amount of compensation that they were paid in the event that the State decides to annul the expropriation. In the present case, the Court observes that the applicants chose to avail themselves of this optional right and regained their full property rights over the parcels in question. The Court, in this regard, underlines that the applicants were not asked to make any further payment other than the amount of compensation that they had been paid by the State at the time of the expropriation nor did the State apply any interest rate whatsoever. Therefore, the Court considers that the principle of *restitutio in integrum* was ensured in respect of the impugned parcels of the applicants. Consequently, the Court decides to declare this part of the application inadmissible for being manifestly ill-founded pursuant to Article 35§ 3 and 4 of the Convention.

13. As to the Government's other objection concerning non-exhaustion of domestic remedies, the Court observes that it dismissed a similar argument in the case of *Aka*, cited above, §§ 34-37. It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

14. The Court notes that the application, is therefore, not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention as far as it concerns parcels nos. 193, 157, 195, 150, 171 and 203. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. As regards the merits of the case, the Court reiterates that it has found a violation of Article 1 of Protocol No. 1 in a number of cases that raise similar issues to those arising here (see *Aka*, cited above, §§ 50-51). Having examined the facts and arguments presented by the Government, the Court considers that there is nothing to warrant a departure from this conclusion reached in the previous cases. It finds that the difference between the values of the amounts due to the applicants when their properties were expropriated and when they were actually paid caused them to sustain a loss which upset the fair balance that should have been maintained between the protection of the right to property and the demands of the general interest.

16. Consequently, there has been a violation of Article 1 of Protocol No. 1 in relation to parcels nos. 193, 157, 195, 150, 171 and 203.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicants claimed in the sum of 156,774 US dollars (USD) in respect of pecuniary damage and USD 6,000 in respect of non-pecuniary damage.

19. The Government contested these claims and asserted that they were excessive and speculative.

20. Using the same method of calculation as in the *Aka* judgment (cited above, §§ 53-57) and having regard to the relevant economic data, the Court awards the applicants Mr İbrahim Halil Köse and Ms Zöhre Köse, jointly, 31,409 euros (EUR) for pecuniary damage in relation to all parcels indicated above, except parcel no. 203.

21. The Court also awards the applicant İbrahim Halil Köse EUR 5,083 in respect of his pecuniary damage in relation to parcel no. 203.

22. The Court further considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants (see *Mesut Yurtsever v. Turkey*, no. 42086/02, § 23, 19 July 2007).

B. Costs and expenses

23. The applicants also claimed USD 10,000 for the costs and expenses incurred before the Commission and the Court. They did not produce any supporting documents.

24. The Government contested this claim.

25. According to the Court's case law, an applicant is entitled reimbursement of 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, the applicants have neither substantiated nor documented that they have actually incurred the costs claimed. Accordingly, the Court makes no award under this head.

C. Default interest

26. 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 in relation to the property issue concerning parcels nos. 193, 157, 195, 150, 171 and 203, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that finding a violation constitutes sufficient satisfaction for any non-pecuniary damage sustained;

4. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 31,409 (thirty-one thousand four hundred and nine euros), jointly to Mr İbrahim Halil Köse and Ms Zöhre Köse, and EUR 5,083 (five thousand and eighty-three euros) to Mr İbrahim Halil Köse, in respect of pecuniary damage, 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Ireneu Cabral Barreto
President