



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

SECOND SECTION

CASE OF BORA v. TURKEY

(Application no. 14719/03)

JUDGMENT
(Just satisfaction)

STRASBOURG

25 January 2011

FINAL

20/06/2011

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

In the case of Bora v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Stanley Naismith, *Registrar*,

Having deliberated in private on 4 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 14719/03) 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 Sabri Bora (“the applicant”), on 8 March 2003.

2. In a judgment delivered on 9 February 2010 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention (see *Bora v. Turkey*, no. 14719/03, 9 February 2010).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 800,000 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage. In addition, the applicant, without specifying an amount, requested the reimbursement for the costs and expenses incurred before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 29, and point 3 of the operative provisions).

5. The principal judgment became final on 9 May 2010.

6. The applicant and the Government each filed observations on the outstanding issue.

THE LAW

7. 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

1. *Pecuniary damage*

8. In his observations dated 2 June 2010 the applicant claimed EUR 800,000 in respect of pecuniary damage. This sum corresponded to the value of land no. 46. In his observations dated 20 September 2010 the applicant also referred, without any further elaboration, to loss of rent and costs and expenses.

9. The Government claimed that the amount requested was unsubstantiated. Moreover, they, relying on the findings of an experts' report dated 12 July 2010 and its annexes including photographs, submitted that the applicant had not suffered any pecuniary damage as the land that had been allocated to him was of higher value than his original land. According to the report the applicant's current plot of land (no. 2624/6) was evaluated as worth 302,000 Turkish liras (TRL) (approximately EUR 153,651) whereas his original plot of land (no. 2627/8) was evaluated as worth TRL 215,000 (approximately EUR 109,387).

10. The applicant objected to the above report on the ground that the experts' report was not objective. In addition, he contested the calculated value of the land in question.

11. In accordance with the Court's settled jurisprudence, a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). Since in the instant case restitution is impossible due to the transfer of the applicant's original property to *bona fide* third persons, the Court considers that the respondent Government should pay the difference of value between his original and current property provided that there is no hindrance such as that noted in the first-instance court's judgment of 29 May 1995 for its peaceful enjoyment (see *Bora v. Turkey*, § 24, cited above).

12. According to the expert report submitted by the Government, the applicant's current plot of land has a higher value than his original plot of land and there appears to be no longer a building on it belonging to third-

persons hindering the applicant's right to peaceful enjoyment of his property. The applicant has objected to the contents of this report. However, he has failed to submit relevant documents to prove the contrary. Moreover, he has neither elaborated nor submitted documentation regarding his other requests for pecuniary damage in the form loss of rent or costs and expenses. In view of the above the Court dismisses the applicant's request for pecuniary damage.

2. Non-pecuniary damage

13. The applicant claimed EUR 200,000 in respect of non-pecuniary damage.

14. The Government contested that claim.

15. The Court sees no reason to doubt that the applicant suffered distress as a result of the non-enforcement of the judgment in his favour, which is why a finding of a violation alone would not constitute sufficient just satisfaction within the meaning of Article 41.

16. Having regard to the above and on the basis of equity, as required by Article 41, the Court awards the applicant EUR 9,360 under this head.

B. Default interest

17. 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. 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 9,360 (nine thousand three hundred and sixty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President