



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

SECOND SECTION

**CASE OF YILDIRIR v. TURKEY**

*(Application no. 21482/03)*

JUDGMENT  
*(Just satisfaction)*

*This version was rectified on 18 October 2011  
under Rule 81 of the Rules of Court*

STRASBOURG

5 April 2011

**FINAL**

*05/07/2011*

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



**In the case of Yıldırım v. Turkey,**

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Ireneu Cabral Barreto,

Dragoljub Popović,

Giorgio Malinverni,

András Sajó,

Işıl Karakaş, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 15 March 2011,

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

**PROCEDURE**

1. The case originated in an application (no. 21482/03) 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 Zekeriye Yıldırım (“the applicant”), on 21 May 2003.

2. In a judgment delivered on 24 November 2009 (“the principal judgment”), the Court held that the failure to award any compensation to the applicant upset, to his detriment, the fair balance which has to be struck between the protection of property and the requirements of the general interest, and that there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

3. Under Article 41 of the Convention the applicant sought just satisfaction for the finding of a violation of his rights under Article 1 of Protocol No. 1.

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.*, p. 9, § 50, and point 3 of the operative provisions).

5. In the absence of a referral request by the Government, within the meaning of Article 43 § 1 the principal judgment became final on 24 February 2010.

6. The applicant and the Government each submitted observations, on 18 March 2010 and 24 June 2010 respectively.

## 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. Pecuniary damage

#### 1. *The parties' submissions*

##### (a) The applicant

8. The applicant reiterated his claim for just satisfaction and asked the Court to award him 57,977 Turkish liras (TRL) (approximately 29,200 euros (EUR)) in respect of pecuniary damage. In this connection, the applicant provided an expert report dated 2 June 2003, which had been approved by a declaratory judgment (*tespit davası kararı*) of the Ankara Magistrates' Court.

9. The applicant asked the Court to add interest to the aforementioned amounts, running from the date of introduction of his application to the Court.

##### (b) The Government

10. The Government submitted that the applicant's just satisfaction claims should be dismissed, since he had failed to submit fresh claims following the delivery of the principal judgment. They also maintained that the amounts claimed by the applicant had never been brought before the domestic courts and that therefore they should be rejected by the Court.

11. The Government contended in the alternative that the amounts claimed by the applicant were excessive. They noted that while the applicant's property had been valued at TRL 57,977 by an expert in 2003, its location was a significant factor decreasing its value. In this connection, an assessment report prepared by a civil servant working at the Kızılcahamam Municipality stated that the damage suffered by the applicant in 2003 was actually TRL 42,588.9. Furthermore, the buildings which had been demolished by the administration had been situated in a protection zone in the vicinity of the Kurtboğazi Dam, which provided drinking water to Ankara. Accordingly, if the applicant wished to sell the property in question to a third person he would not be able to sell it at current market value.

12. The Government further submitted an assessment report dated 6 May 2010 issued by the General Directorate of National Real Estate attached to the Ministry of Finance (*Maliye Bakanlığı Milli Emlak Genel*

*Müdürlüğü*) (“the General Directorate”). The General Directorate had recalculated the value of the applicant’s property in question by updating the 2003 expert report submitted by the applicant, and had found that the current value of the property was TRL 100,071.87. The Government noted that the General Directorate had used objective criteria and that the amount found was the current maximum value of the property in question, had it been possible to sell it today.

## 2. The Court’s assessment

13. As regards the Government’s submission that the applicant failed to submit fresh claims for just satisfaction following the adoption of the principal judgment, the Court notes that by a letter dated 18 March 2010 the applicant reiterated his claims for just satisfaction and that this letter was transmitted to the Government by the Registry’s letter dated 13 July 2010. Accordingly, the Court rejects the Government’s allegations in this subject.

14. As to the Government’s argument that the applicant failed to raise his just satisfaction claims before the domestic courts, the Court reiterates that it has already dealt with this question in the principal judgment when examining the Government’s plea on non-exhaustion and has rejected it (see pp. 5-6, §§ 29-35 of the principal judgment). It follows that this argument must also be dismissed.

15. The Court reiterates that 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 *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I).

16. The Contracting States parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under Article 1 of the Convention to secure the rights and freedoms guaranteed. If the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. If however national law does not allow, or allows only partial, reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

17. In the principal judgment the Court found that the lack of any domestic remedy to afford the applicant redress for the loss of his property had impaired the full enjoyment of his right to property (see p. 9, § 45 of the principal judgment). Thus, in the circumstances of the present case, an award of compensation for the pecuniary loss in question seems to be the most appropriate just satisfaction for the applicant.

18. In this context, the Court reiterates that when the basis of the violation found is the lack of any compensation, rather than the inherent

illegality of the taking, the compensation need not necessarily reflect the full value of the property (see *I.R.S. and Others v. Turkey* (just satisfaction), no. 26338/95, §§ 23-24, 31 May 2005; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 254-259, ECHR 2006-V; and *Stornaiuolo v. Italy*, no. 52980/99, §§ 82-91, 8 August 2006).

19. In such cases, in determining the amount of adequate compensation, the Court must base itself on the criteria laid down in its judgments regarding Article 1 of Protocol No. 1 and according to which, without payment of an amount reasonably related to its value, deprivation of property would normally constitute a disproportionate interference which could not be considered justifiable under Article 1 of Protocol No. 1. The provision did not, however, guarantee a right to full compensation in all circumstances since legitimate objectives of “public interest” may call for less than reimbursement of the full market value (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI).

20. In view of the above, the Court notes that the applicant claimed TRL 57,977 (approximately EUR 29,000), based on an assessment report that was prepared in 2003, plus interest, to obtain the current value of the property that was demolished by the authorities. In this connection, the Government furnished a re-evaluation report which indicated that the current maximum value of the property in question was TRL 100,071.87 (approximately EUR 50,400) (see paragraph 12 above).

21. In view of the above, the Court deems it appropriate to fix a lump sum that would correspond to the applicant’s legitimate expectations of obtaining compensation for the approximate value of his house that was demolished by the authorities. It thus awards the applicant EUR 50,000 in respect of pecuniary damage.

### **B. Non-pecuniary damage**

22. The applicant claimed TRL 100,000 (approximately EUR 46,500) for non-pecuniary damage for the stress and anxiety suffered by his family.

23. The Government stated that the finding of a violation was sufficient just satisfaction in the circumstances of the case.

24. The Court considers that the applicant must have experienced frustration and stress having regard to the nature of the breach. It therefore awards the applicant EUR 2,500 in respect of non-pecuniary damage (see *Schembri and Others v. Malta* (just satisfaction), no. 42583/06, § 22, 28 September 2010).

### **C. Costs and expenses**

25. The applicant did not submit any claim in respect of costs and expenses.

26. The Government asked the Court not to make an award, given the applicant's failure to submit any claim under this title.

27. In the absence of any quantified claim, the Court makes no award under this head (Rule 60 of the Rules of Court).

#### **D. Default interest**

28. 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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable on the date of settlement:

(i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage<sup>1</sup>;

(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;

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

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<sup>1</sup> Rectified on 18 October 2011: the text was "for costs and expenses" in the former version of the judgment.

Done in English, and notified in writing on 5 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Françoise Tulkens  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Sajó is annexed to this judgment.

F.T.  
S.H.N.



## CONCURRING OPINION OF JUDGE SAJÓ

In the present case, the Court deems it appropriate to fix a lump sum that would correspond to the applicant's legitimate expectations of obtaining compensation for the approximate value of his house that was demolished by the authorities. In granting a lump sum, the Court is of the opinion that the applicant has no right to full compensation, as the guarantee of a right to full compensation in all circumstances does not necessarily apply since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI).

I find that the conditions for applying compensation below the full market value depend on very specific considerations which have to be narrowly construed, being exceptions to the general rule of full compensation. The existence of unique historical circumstances is present in the cases cited. There is no specific reason given for the approach taken by the Court, which grants the lump sum in view of the above-cited jurisprudence. The applicant submitted an expert's report dated 2 June 2003, which had been approved by a declaratory judgment (*tespit davası kararı*) of the Ankara Magistrates' Court. The Government submitted a recalculation, by updating the 2003 expert's report submitted by the applicant. Under these circumstances there is a clear basis on which to determine the full value of the property at the time of the expropriation, and inflation is properly taken care of. It is of course very fortunate that the lump sum awarded equals the actual loss; but it is very unfortunate that the impression is created that the award does not reflect the full value, or that special circumstances exist in the present case to allow a departure from awarding full compensation.