



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

SECOND SECTION

CASE OF KEMAL TURHAN v. TURKEY

(Application no. 4397/08)

JUDGMENT

STRASBOURG

3 November 2011

FINAL

03/02/2012

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

In the case of Kemal Turhan v. Turkey,

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

Françoise Tulkens, *President*,

David Thór Björgvinsson,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 11 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 4397/08) 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 Kemal Turhan (“the applicant”), on 15 January 2008. The applicant was represented by Mr A.F. Demirkan, a lawyer practising in Bursa. The Turkish Government (“the Government”) were represented by their Agent.

2. On 12 June 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

3. The applicant was born in 1961 and lives in Bursa.

4. In 2004 the General Directorate of Highways seized a plot of land belonging to the applicant without any formal expropriation, for the construction of a highway. The applicant brought an action before the Karacabey Civil Court to obtain compensation for the *de facto* expropriation of his property. He requested 5,500 Turkish liras (TRY) as compensation from the court and reserved his right to increase this claim in due course.

5. On 15 June 2006 the Karacabey Civil Court awarded the applicant TRY 5,500 as compensation for the *de facto* expropriation of his land, as requested, plus interest. The applicant initiated execution proceedings before the Bursa Execution Office to obtain that amount (file no. 2009/2810).

6. On 13 March 2007 the Court of Cassation upheld the judgment of the first-instance court.

7. The applicant subsequently brought an additional action ("*ek dava*") before the Karacabey Civil Court to obtain further compensation for his land in the light of the expert report obtained during the previous proceedings, which had valued the land at a rate higher than that initially requested by him.

8. On 24 May 2007 the Karacabey Civil Court awarded the applicant TRY 36,896.75, plus interest. The applicant initiated another set of execution proceedings before the Bursa Execution Office to obtain the amount awarded (file no. 2007/6187).

9. On 16 October 2007 the Court of Cassation upheld the judgment of the Karacabey Civil Court.

10. On 23 March and 13 November 2009 the administration paid TRY 8,920 and 53,081 respectively. According to the information provided by the applicant, there has been no outstanding debt in the execution files.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

11. The applicant complained that the authorities' prolonged failure to fully comply with the binding and enforceable judgments in his favour violated his right to a court under Article 6 of the Convention and his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No.1.

12. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

13. The Court observes that even though the authorities discharged the final payment on 13 November 2009 of the debt arising from Karacabey Civil Court's judgments, the Government failed to make any submissions which would justify the delay of twenty four months in the enforcement of the judgments in the applicant's favour.

14. The Court notes that it has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to those raised in the present case (see, for instance, *Burdov v. Russia*, no. 59498/00, §§ 34-42, ECHR 2002-III; *Kaçar and Others v. Turkey*, nos. 38323/04, 38379/04, 38389/04, 38403/04, 38423/04, 38510/04, 38513/04, and 38522/04, §§ 22-25, 22 July 2008; and *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 65-88, 15 January 2009). There are no arguments in the case capable of persuading the Court to reach a different conclusion.

15. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the authorities' failure to duly execute the judgments of Karacabey Civil Court.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage and costs and expenses

16. The applicant claimed TRY 20,000 (approximately 9,500 euros (EUR)) in respect of pecuniary damage, corresponding to the potential rental income he had been deprived of since the de facto expropriation of his land. As regards non-pecuniary damage, the applicant claimed that he had suffered distress and hardship on account of the non-payment of the domestic judgment debts and requested compensation for this in an amount to be determined by the Court. As for costs and expenses, the applicant requested the Court to make an award for the work conducted by his lawyers in the present case, leaving the amount to be determined by the Court.

17. The Government contested these claims.

18. The Court notes that it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 by reason of the delayed execution of final judicial decisions.

19. The Court further notes that where a domestic judgment in an applicant's favour was executed, the Court does not make any award in respect of initial judgment debt. In this respect, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it, therefore, rejects this claim.

20. On the other hand, the Court considers that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Consequently, taking into account the circumstances of the case, in particular the period of delay in the enforcement of domestic court judgments, and making its assessment on an

equitable basis, the Court awards the applicant EUR 2,400 as non-pecuniary damage.

21. As for costs and expenses, the Court notes that according to its case law, an applicant is entitled to reimbursement of his or her 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 lack of any quantified submissions, the Court makes no award under this head.

B. Default interest

22. 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 and Article 1 of Protocol No. 1;
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 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Stanley Naismith
Registrar

Françoise Tulkens
President