



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

COURT (CHAMBER)

CASE OF AKKUS v. TURKEY

(Application no. 19263/92)

JUDGMENT

STRASBOURG

9 July 1997

In the case of Akkus v. Turkey¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr Thór VILHJÁLMSSON,
Mr F. GÖLCÜKLÜ,
Mr J. DE MEYER,
Mr A.N. LOIZOU,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr B. REPIK,
Mr P. KURIS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 21 February and 24 June 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 19 April 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 19263/92) against the Republic of Turkey lodged with the Commission under Article 25 (art. 25) by a Turkish national, Mrs Sariye Akkus, on 26 August 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1 (P1-1).

¹ The case is numbered 60/1996/679/869. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30). The lawyer was given leave by the President to use the Turkish language (Rule 27 para. 3). On 6 August 1996 the President granted the applicant legal aid (Rule 4 of the Addendum to Rules of Court A).

3. The Chamber to be constituted included ex officio Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 8 February 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr J. De Meyer, Mr S.K. Martens, Mr A.N. Loizou, Mr G. Mifsud Bonnici, Mr J. Makarczyk and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr B. Repik, substitute judge, replaced Mr Martens, who had resigned (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Turkish Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 29 November 1996 and the applicant's memorial on 2 December 1996. The Delegate of the Commission did not submit any observations.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 17 February 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr A. GÜNDÜZ,	<i>Agent,</i>
Mr M. ÖZMEN,	<i>Counsel,</i>
Mr F. POLAT,	
Ms A. EMÜLER,	
Mrs N. ERDIM,	
Mrs S. EMINAGAOGLU,	
Ms A. GÜNYAKTI,	<i>Advisers;</i>

(b) for the Commission

Mr J.-C. GEUS,	<i>Delegate;</i>
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(c) for the applicant

Mr K. BERZEG, of the Ankara Bar,	<i>Counsel.</i>
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The Court heard addresses by Mr Geus, Mr Berzeg, Mr Gündüz and Mr Özmen and also their replies to its questions.

At the hearing counsel for the applicant lodged documents relating to the application of Article 50 (art. 50). The Government chose not to reply thereto.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. In September-October 1987, the National Water Board (Devlet Su isleri), a State body responsible for dam construction, expropriated land belonging to Mrs Akkus and her husband, who died in 1992, in order to build the Altinkaya hydro-electric dam in the Kizilirmak Valley. The land, which was located in the village of Gökdogan (Sinop) had been used for growing rice. It now lies under water.

More than 3,000 families (17,000 people in all) were affected by the expropriations resulting from the dam construction scheme.

7. According to the applicant, a scientific study commissioned by the National Water Board and carried out by the Aegean Faculty of Agronomy found the land to be worth between 3,200 and 3,500 Turkish liras (TRL) per square metre whereas the amount paid in 1987 was between TRL 800 and 850.

8. A committee of experts of the National Water Board assessed the value of the applicant's land at TRL 122,000. That amount was paid to her when the expropriation took place.

9. On 12 October 1987 the applicant lodged an application with the Duragan Court of First Instance for increased compensation and requested that the rate of inflation be taken into account when determining the additional loss. On 22 June 1989 the court awarded her additional compensation of TRL 271,039 and simple default interest at the rate of 30% per annum from 4 September 1987, the date of the expropriation. The total compensation thus came to TRL 393,039. She was also awarded TRL 61,123 for legal costs.

10. The Board appealed to the Court of Cassation on points of law. Mrs Akkus filed a cross-appeal based on Article 105 of the Code of Obligations (see paragraph 14 below), in which she sought a ruling that the basis for calculating the additional loss should be the rate of inflation and not the rate of statutory interest for delay. On 17 September 1990 the Court of Cassation upheld the judgment at first instance.

11. The additional compensation was paid in February 1992, that is to say six months after the application was lodged with the European

Commission of Human Rights and approximately seventeen months after the Court of Cassation's decision.

12. Mrs Akkus now lives with her son-in-law, who provides for her needs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. By Law no. 3095 of 4 December 1984 the rate of interest on overdue State debts is 30% per annum. At the material time the average rate of inflation was 70% per annum and the rate of interest for delay payable on debts owed to the State was 7% per month (84% per annum) (section 51 of Law no. 6183 on the Collection of Debts due to the State and Cabinet Ordinance no. 89/14915).

14. Article 105 of the Code of Obligations provides:

"Where the loss sustained by the creditor exceeds the interest for late payment and the debtor is unable to show that the creditor has been at fault, it is for the debtor to make good the loss.

If the additional loss can be assessed immediately the court may determine the amount when giving its decision on the merits."

15. On 3 June 1991 the Fifth Civil Division of the Court of Cassation, which has jurisdiction in cases concerning compensation for expropriation, ruled as follows:

"The way in which creditors are compensated for the late payment of debt is through statutory interest. Since creditors are able, when resorting to enforcement measures, to claim the amount due to them plus interest, they are not entitled to claim any other form of compensation; accordingly, the decision to grant the creditor's claim, on the basis that the rate of inflation was high, was ill-founded..."

16. On 23 February 1994 (judgment E: 1993/5-600, K: 1994/80) the Court of Cassation, sitting as a full court, ruled as follows:

"Law no. 3095 was approved and came into force when inflation in the country was high with rates well over 30%. Notwithstanding that fact, the legislature fixed the rate of interest for delay at 30%. In the present case it would therefore be unlawful to award compound interest at a rate exceeding 30% on the erroneous basis that the rate of interest payable on bank deposits was applicable."

PROCEEDINGS BEFORE THE COMMISSION

17. Mrs Akkus applied to the Commission on 26 August 1991. She complained of an infringement of her right to the peaceful enjoyment of her possessions on account of the Water Board's delay in paying the additional

compensation for expropriation. She alleged a violation of Article 1 of Protocol No. 1 (P1-1).

18. The Commission declared the application (no. 19263/92) admissible on 10 January 1994. In its report of 27 February 1996 (Article 31) (art. 31), it expressed the opinion by twenty-two votes to six that there had been a violation of Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

19. In their memorial, the Government invited the Court, as their primary submission, to declare the application inadmissible for failure to comply with the six-month time-limit and to exhaust domestic remedies and, in the alternative, to dismiss it as being unfounded.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-compliance with the six-month time-limit

20. The Government invited the Court to dismiss Mrs Akkus's application pursuant to Article 26 of the Convention (art. 26) for non-compliance with the six-month time-limit. Time had in fact started to run not - as the Commission considered - when the compensation was actually paid to the applicant (March 1992), but on 17 September 1990, when the Court of Cassation delivered its judgment confirming the rate determined in the Duragan Court of First Instance's judgment of 1989 (see paragraph 10 above). The applicant had been affected by that judgment from the moment it was delivered.

21. The Court notes that the complaint before it is concerned solely with the national authorities' delay in paying the additional compensation and the damage sustained by the applicant as a result. The applicant could not have

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-IV), but a copy of the Commission's report is obtainable from the registry.

made such a complaint until some time after the final judgment of the Court of Cassation (see paragraph 10 above).

By applying to the Commission on 26 August 1991 - at which point the compensation due had still not been paid - the applicant satisfied the requirement of Article 26 (art. 26) in that regard. The objection must therefore be dismissed.

B. Failure to exhaust domestic remedies

22. In the Government's submission, Mrs Akkus had not exhausted domestic remedies as required by Article 26 of the Convention (art. 26) in that she had failed to rely on the provisions of the Convention before the Turkish courts and to exercise the remedy afforded by Article 105 of the Code of Obligations correctly (see paragraph 14 above).

23. The Court reiterates that in accordance with its settled case-law it will consider a preliminary objection provided that the State concerned has already raised that objection before the Commission - in principle when the question of admissibility is initially examined - in so far as the nature of the objection and the circumstances permitted.

As the Delegate of the Commission noted, it is apparent from the case file that those conditions were not satisfied in the instant case. The Government are therefore estopped from relying on this objection.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

24. The applicant complained that, at a time when the annual rate of inflation in Turkey had been 70%, she had been paid insufficient interest on additional compensation received following the expropriation of her land and the authorities had delayed in paying her the relevant amounts. She relied on Article 1 of Protocol No. 1 (P1-1), which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions (P1-1) shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

She complained that the authorities had calculated her compensation on the basis of the value her land had had when it was expropriated or when the court proceedings were commenced (see paragraphs 6 and 9 above). She criticised the Court of Cassation for refusing to take Article 105 of the Code of Obligations into consideration and for applying, in order to calculate the

additional compensation, the statutory rate of default interest instead of the rate of inflation. She pointed out that she was paid the additional compensation in February 1992 - four years and four months after the proceedings commenced and more particularly, seventeen months after the Court of Cassation's judgment - whereas before 1980 payment was being made in similar cases within at most two months. In addition, she said that in recent years the time taken for payment had depended on the good will of the administrative bureaucracy, which had sought by deferring payment to reduce the value of compensation for expropriation through the effect of inflation. Lastly, she regretted the lack of provisions in Turkish law enabling private persons to take enforcement measures in respect of debts owed to them by the State.

25. The Commission concluded that there had been a violation of Article 1 of Protocol No. 1 (P1-1) because of the extent of the applicant's loss; it estimated that Mrs Akkus had received TRL 390,000 whereas, if the national authorities had taken full account of the monetary depreciation during the seventeen months which elapsed between determination of the additional compensation and its actual payment, she would have received approximately TRL 594,000.

26. The Government disagreed. They pointed out that the State had paid Mrs Akkus compensation of TRL 122,000 before entering into possession of the land, and additional compensation of TRL 271,039 with 30% interest after the proceedings to reassess the value of the land (see paragraph 9 above). Even supposing that inflation had not been taken into account when calculating those amounts, the Government relied on the Court's case-law to the effect that if the compensation was reasonably proportional to the value of the expropriated property, the conditions laid down in Article 1 of Protocol No. 1 (P1-1) were satisfied. That was particularly so where large-scale schemes for the benefit of thousands of people were concerned; requiring the State to provide compensation in full would hinder it in the realisation of such schemes. Further, the applicant could not claim in the instant case that she had borne an "individual and excessive burden", as it had been her decision, at her own risk, not to take advantage of the possibility afforded her by Article 105 of the Code of Obligations; what was more, even her lawyer had admitted in an article published in a Turkish daily newspaper that the expropriation value of certain properties, including the applicant's, as assessed by the valuations committee and determined by the courts, was considerably higher than their market value.

Lastly, the Government relied on their wide margin of appreciation in setting and applying interest rates, which were an integral part of their policy for the creation and sound management of public services. The high rate of interest payable on debts owed to the State was intended to ensure that there was no disruption of public services and was also a form of

indirect taxation intentionally decided upon by the legislature in the exercise of its powers.

27. As the situation of which the applicant complains concerns her "entitle[ment] to the peaceful enjoyment of [her] possessions", the Court must examine whether a fair balance has been maintained between the demands of the general interest and the requirements of the protection of the individual's fundamental rights; in that regard, the terms and conditions on which compensation is payable under domestic legislation and the manner in which they were applied in the applicant's case must be considered (see the *Lithgow and Others v. the United Kingdom* judgment of 8 July 1986, Series A no. 102, p. 50, para. 120).

28. The Court notes at the outset that the applicant, whose land was expropriated to enable a hydro-electric dam to be built, was awarded compensation that was paid to her when the expropriation took place (see paragraph 8 above). The Duragan Court of First Instance subsequently awarded her additional compensation plus interest at the rate of 30% per annum from the date of expropriation (see paragraph 9 above).

It is not the Court's task here to rule on the valuation of the land carried out by the committee of experts of the National Water Board or on the amount of the additional compensation. The scope of the dispute is determined by the Commission's decision on admissibility and solely concerns the alleged damage sustained by Mrs Akkus because of the authorities' delay in paying her the compensation due.

29. In that respect, the Court has previously held that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay (see, *mutatis mutandis*, the *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, p. 90, para. 82). Abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated, putting him in a position of uncertainty especially when the monetary depreciation which occurs in certain States is taken into account. The Court notes on this subject that in Turkey the rate of interest payable on debts owed to the State - 84% per annum - is such as to encourage debtors to pay promptly; on the other hand, individual creditors of the State risk substantial loss if the State fails to pay or delays payment.

30. In the instant case, the additional compensation together with interest at the rate of 30% per annum was paid to the applicant in February 1992, that is to say seventeen months after the Court of Cassation's judgment, at a time when inflation rates in Turkey had reached 70% per annum.

This difference - due solely to delay on the part of the authorities - between the value of the applicant's compensation as finally determined by the Court of Cassation and its value when actually paid caused Mrs Akkus

to sustain separate loss in addition to the loss deriving from the expropriation of her land.

31. By deferring payment of the compensation for seventeen months, the national authorities rendered that compensation inadequate and, consequently, upset the balance between the protection of the right to property and the requirements of the general interest.

There has therefore been a violation of Article 1 of Protocol No. 1 (P1-1).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

32. Article 50 of the Convention (art. 50) provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

33. Mrs Akkus claimed 50,000 US dollars (USD) for pecuniary damage. In her submission, on 17 September 1990 when the Court of Cassation delivered its judgment the total amount payable to her would have been TRL 739,162 if year-on-year inflation of 70% had been taken into account. She asserted in her memorial that by paying her a total of TRL 758,200 in February 1992 the national authorities had paid her less than half the sum due.

34. The Government considered the claim to be "totally unreasonable" as it exceeded the value of all the expropriated land, of which the applicant had owned only a fifth. They also pointed out that the average rate of inflation in Turkey between 1988 and 1992 was 61% per annum.

35. The Court notes that on 17 September 1990 the Court of Cassation upheld the judgment of the Duragan Court of First Instance. The Court of First Instance had awarded Mrs Akkus additional compensation of TRL 271,039 plus simple interest at the rate of 30% per annum from 4 September 1987 and TRL 61,123 for legal costs (see paragraph 9 above). On the date of the Court of Cassation's judgment, or within a reasonable period (for instance three months) thereafter, the applicant ought therefore to have received TRL 576,097. As, however, the payment was made in February 1992 (seventeen months later) she in fact received approximately TRL 772,276 according to the Court's calculations.

Having regard to the conclusions it reached in paragraphs 30 and 31 above, the Court considers that the damage sustained by the applicant is

equal to the difference between the amount actually paid in February 1992 and the amount she would have received if the sum of TRL 576,097 she was owed had been adjusted to take account of depreciation over a period of at least fourteen months; on the basis of a rate of inflation in the region of 70% per annum, the sum due to her when payment was made was TRL 1,046,192. Consequently, the total amount of her loss comes to TRL 273,916, or approximately USD 48, Mrs Akkus having formulated her claim in that currency and the Government having raised no objection to her so doing.

36. In the circumstances, the Court therefore considers it appropriate to award the applicant compensation of USD 48, to be converted into Turkish liras at the rate applicable at the date of payment.

B. Non-pecuniary damage

37. Mrs Akkus maintained that her position had become extremely precarious because the compensation she had received for the expropriation of her land was insufficient. Not only had she lost all means of subsistence, her memories and the security which the protective environment of the village had provided, she had also been obliged to seek refuge in her son-in-law's home and his financial support, a humiliating position to be in under Turkish family tradition. She claimed by way of reparation for her non-pecuniary damage, to the extent that it could be made good, USD 50,000.

38. The Government and the Delegate of the Commission expressed no views.

39. The Court considers that the applicant has definitely sustained non-pecuniary damage, which it assesses on an equitable basis at USD 1,000.

C. Costs and expense

40. Mrs Akkus claimed USD 23,960 for costs and expenses incurred in Turkey and before the Convention institutions.

41. The Government replied that that amount was not certain, reasonable or based on concrete evidence.

42. In the light of the criteria established in its case-law, the Court holds on an equitable basis that the applicant should be awarded the sum of USD 5,000 to be converted into Turkish liras on the date of payment, from which should be deducted 8,968 French francs already paid by way of legal aid for fees and travel and subsistence.

D. Default interest

43. The Court considers it appropriate to provide for payment of default interest at the annual rate of 5% since the sums have been awarded in US dollars.

FOR THESE REASONS, THE COURT

1. Dismisses by eight votes to one the Government's preliminary objections;
2. Holds by seven votes to two that there has been a violation of Article 1 of Protocol No. 1 (P1-1);
3. Holds by seven votes to two that
 - (a) the respondent State is to pay to the applicant, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of payment:
 - (i) 48 (forty-eight) US dollars as compensation for pecuniary damage;
 - (ii) 1,000 (one thousand) US dollars for non-pecuniary damage;
 - (iii) 5,000 (five thousand) US dollars for costs and expenses less 8,968 (eight thousand nine hundred and sixty-eight) French francs already received by way of legal aid;
 - (b) these amounts, determined in US dollars, shall bear simple interest at an annual rate of 5% from the expiry of the above-mentioned three months until settlement;
4. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 July 1997.

Rudolf BERNHARDT
President

For the Registrar
Paul MAHONEY
Deputy Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 53 para. 2 of Rules of Court A, the dissenting opinion of Mr Thór Vilhjálmsson, joined by Mr Mifsud Bonnici, is annexed to this judgment.

R.B.
P.J.M.

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON,
JOINED BY JUDGE MIFSUD BONNICI

In this case the respondent State failed to pay the applicant a sum of money on time. Since the rate of statutory interest was lower than the rate of inflation, she suffered a loss. Inflation is and has been a serious problem in many countries and governments view the fight against inflation as a major part of their economic policy. Rules on human rights are not an effective instrument in this battle. The general impact of inflation means that it affects economic life as a whole and the repercussions on individuals, even if frequently serious, are rarely - or at least not in this case, in my opinion - individual and specific. I find that Article 1 of Protocol No. 1 (P1-1) is not applicable.