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

CASE OF AKA v. TURKEY

(107/1997/891/1103)

JUDGMENT

STRASBOURG

23 September 1998

In the case of Aka v. Turkey[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr N. VALTICOS,
Mr A.N. LOIZOU,
Sir John FREELAND,
Mr A.B. BAKA,
Mr K. JUNGWIERT,
Mr V. TOUMANOV,

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

Having deliberated in private on 1 July and 26 August 1998,

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 30 October 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 19639/92) against the Republic of Turkey lodged with the Commission under Article 25 by a Turkish national, Mr Mevlüt Aka, on 15 August 1991.

The Commission's request referred to Articles 44 and 48 (a) of the Convention and Rule 32 of Rules of Court A. 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.

Notes by the Registrar

1. The case is numbered 107/1997/891/1103. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. 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 § 3 (d), Mr K. Berzeg, a member of the Ankara Bar and the applicant's counsel, informed the registry on 28 November 1997 that Mr Mevlüt Aka had died and that his widow, Mrs Şefika Aka, and children wished to pursue the proceedings in his name and to be represented by Mr Berzeg (Rule 30).

3. On 20 January 1998 Mr Berzeg was given leave by the President to use the Turkish language in the written proceedings before the Court and the applicant was granted legal aid (Rule 27 § 3 and Rule 4 of the Addendum to Rules of Court A).

4. The Chamber to be constituted included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Bernhardt, the then Vice-President of the Court (Rule 21 § 4 (b)). On 31 January 1998, in the presence of the Registrar, Mr Bernhardt drew by lot the names of the other seven members, namely Mr F. Matscher, Mr N. Valticos, Mr A.N. Loizou, Sir John Freeland, Mr A.B. Baka, Mr K. Jungwiert and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 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, Mr A.Ş. Gözübüyük, on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence, the Registrar received the applicant's memorial and supplements thereto on 3, 6 and 28 April 1998 and the Government's memorial on 17 April 1998. On 15 May the applicant lodged a memorial in reply to the Government's memorial.

6. Subsequently, Mr Thór Vilhjálmsson, who had been elected Vice-President of the Court, replaced Mr Bernhardt, who had been elected President of the Court, as President of the Chamber (Rules 21 § 6 and 24 § 1).

7. On 1 July 1998 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was a Turkish citizen and was born in 1930. At the material time he lived in the village of Gökdoğan (district of Durağan – Sinop province).

9. At the beginning of September 1987 the National Water Board ("the *DSİ*" – *Devlet Su İşleri*), a State body responsible, *inter alia*, for dam construction, expropriated two plots of land belonging to the applicant in the village of Gökdoğan (Sinop).

Following the construction of the Altınkaya hydroelectric dam in the Kızılırmak valley, the land, which had been used for growing crops, was flooded, as was that of more than 3,000 families also affected by the scheme.

10. After title to the land had been transferred to the authorities on 4 September 1987, the *DSİ* paid the applicant a total of 4,370,962 Turkish liras (TRL) for the two plots of land (being TRL 1,380,000 and TRL 2,990,962 respectively).

11. On 2 October 1987 the applicant brought, in respect of the expropriation of each plot of land, an action in the Durağan Court of First Instance for increased compensation. The actions were registered under nos. 87/2837 and 87/2828.

12. During the proceedings the court ordered two on-site valuations by experts in order to assess whether the amounts fixed by the expropriating authorities were correct. The two panels of experts relied on the same criteria in preparing their valuations, namely the criteria set out in Law no. 2942 on expropriation rules. As, however, they did not use the same methods of calculation, their valuations differed, but both were higher than the amount that had been paid by the *DSİ* on expropriation.

An application by the parties for a third valuation was dismissed because the court considered that the two valuations had been based on criteria complying with the statutory requirements and contained sufficient relevant material to enable it to decide the case.

13. Subsequently, the applicant stated in writing that he accepted the lower of the expert valuations. The Court of First Instance noted his agreement and made an order in those amounts.

14. In action no. 87/2837, on 22 June 1989 the court ordered the *DSİ* to pay TRL 3,089,130 in additional compensation for expropriation. In action no. 87/2828 it awarded the applicant an additional TRL 3,895,692 on 10 May 1990. Those amounts bore simple interest for delay at the statutory rate of 30% a year running from 4 September 1987 (see paragraph 10 above).

15. The Court of Cassation upheld those decisions on 17 September 1990 and 6 September 1991 respectively.

16. The additional compensation awarded in action no. 87/2837 was paid to the applicant on 30 January 1992. It came to TRL 7,097,276, of which TRL 4,008,146 was interest for delay due up to December 1991.

In action no. 87/2828 the applicant received the sum of TRL 10,116,692 on 7 January 1993, TRL 6,221,000 of which was interest for delay calculated up to December 1992.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

17. The relevant part of Article 46 of the Constitution, relating to expropriations, provides:

> "... Compensation for expropriation shall be paid immediately and in cash... If deferred payment is permitted by statute ... interest for delay at the maximum rate laid down for State debts shall be payable on the part that is not paid immediately..."

At the material time 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).

B. Law no. 3095 of 4 December 1984

18. By Law no. 3095 the rate of interest on overdue State debts is 30% per annum.

C. The Code of Obligations

19. Article 105 of the Code of Obligations ("CO") provides:

> "Where the loss sustained by the creditor exceeds the interest due for delay 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."

In practice, the loss for which compensation may be claimed under this provision is the loss caused by the lapse of time between the date the debt is due and the date it is paid.

D. The Court of Cassation's case-law

20. On 3 June 1991 the Court of Cassation (Fifth Civil Division), 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..."

The Government referred to another judgment delivered by the same division (judgment no. 96/13828 of 22 October 1996), in which the Court of Cassation had allowed an application for compensation under Article 105 CO. The decision concerned alleged additional loss resulting from the authorities' delay in repaying a sum to which they had not been entitled. However, the claims in that case were based on the fact that in order to pay the amount supposedly due the plaintiff had had to close a deposit account before term, thereby losing interest.

Nonetheless, the practice of the Court of Cassation and in particular of its Thirteenth Division (see judgments nos. 95/267 and 96/9985) in cases not concerning expropriation appears to be to allow compensation for losses of that type under Article 105 CO in disputes between private individuals. On this point, it should be observed that the presidential committees of the Court of Cassation, responsible for ensuring that the case-law is consistent, tend to dismiss grounds of appeal based on differences in the practice of the various divisions, as they consider that decisions are made on a case by case basis in the light of the particular facts concerned and consequently do not need to be harmonised.

21. In a leading judgment of 23 February 1994 the Court of Cassation, sitting as a full court, ruled for the first time on the adverse effects of inflation, holding:

> "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."

22. On 19 June 1996 the Court of Cassation, sitting as a full court, delivered another leading judgment in which it decided the issue of the applicability of Article 105 CO (see paragraph 19 above) to claims for loss sustained as a result of inflation. It held as follows:

> "... the rate of interest provided for by Law no. 3095 ... constitutes lump-sum compensation for damage without the need for proof of loss... Since the rate of default interest (interest for delay in payment) is fixed by statute in the light of the economic problems (inflation, monetary erosion ...) the country is experiencing, it is impossible to adduce the same factors (inflation, monetary erosion ...) as clear evidence of the additional loss referred to in Article 105 of the Code of Obligations, or to affirm that

> the resulting disadvantages constitute the actual damage suffered. Otherwise, the legislature's decision that the compensation for those disadvantages would be 30% would no longer make any sense. If the legislature, having had regard to all the economic problems, has, by virtue of the legislative power conferred on it by the Constitution, fixed the rate of compensation for loss resulting from those problems, it cannot be accepted that the damage for which compensation is due amounts to 60% or 70% rather than 30%, on the implied ground that the [legislature's] assessment was unfounded... It is obvious that inflation, which has a considerable impact in the current economic climate of the country, exceeds [the rate of] 30% laid down by ... Law no. 3095 and that [in consequence] the creditor's loss through late payment is not covered. However, in so far as it exceeds the 30% rate fixed by the legislature, that loss does not come within Article 105 of the Code of Obligations... As the legislature, pursuant to its legislative power, considered that the loss amounted to 30%, a judicial decision applying a higher rate of loss on the ground that inflation exceeds 30% would constitute an encroachment on the legislature's jurisdiction..."

23. In practice, leading judgments must be followed by the courts below when those courts decide issues similar to those previously considered by the Court of Cassation, sitting as a full court.

E. Economic factors

24. In January 1992 and 1993 the average exchange rate of the US dollar was, according to the exchange rate applied by the Central Bank of Turkey, TRL 5,332.59 and TRL 8,711.80 respectively.

25. The effects of inflation in Turkey are indicated in the lists of the retail price index published by the State Institute of Statistics. According to the relevant list, if the base index for the months of September and October 1987 (when title to the expropriated property was transferred to the authorities and the proceedings were issued in the Durağan Court of First Instance – see paragraphs 10–11 above) is taken as 100, the inflation index had by January 1992 (when the additional compensation in case no. 87/2837 was paid – see paragraph 16 above) reached 1006.06 and 1783.48 by January 1993 (when the additional compensation in case no. 87/2828 was paid – see paragraph 16 above).

PROCEEDINGS BEFORE THE COMMISSION

26. Mr Aka applied to the Commission on 15 August 1991. He relied on Article 1 of Protocol No. 1, complaining that his right to respect for his property had been infringed in that the award of additional compensation by the Durağan Court of First Instance and the interest thereon for delay had been insufficient. He also complained that the proceedings before that court had taken longer than was permitted by Article 6 § 1 of the Convention.

27. On 16 January 1996 the Commission declared inadmissible the complaints concerning the length of the proceedings (Article 6 § 1) and the insufficiency of the compensation awarded (Article 1 of Protocol No. 1).

However, it declared the application (no. 19639/92) admissible on 14 October 1996 in so far as it concerned the insufficiency of the rate of interest for delay in payment of the additional compensation. In its report of 9 September 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 1 of Protocol No. 1. The full text of the Commission's opinion and of the concurring opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

28. The applicant invited the Court to hold that there had been a violation of Article 1 of Protocol No. 1 and to award him just satisfaction under Article 50 of the Convention.

29. In their memorial the Government requested the Court, as their principal submission, to dismiss the application for failure to exhaust domestic remedies and, in the alternative, to find that there had on the facts of the case been no violation of the rights guaranteed by Article 1 of Protocol No. 1.

AS TO THE LAW

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

30. The applicant complained that the rate of interest for delay payable on the additional compensation for expropriation was too low and that the expropriating authority had delayed in settling the relevant amounts. He said that he was the victim of a breach of Article 1 of Protocol No. 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.

1. *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* 1998), but a copy of the Commission's report is obtainable from the registry.

> The preceding provisions 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."

The Government contested that argument. The Commission agreed with it.

A. The Government's preliminary objection

31. The Government pleaded failure to exhaust domestic remedies in that the applicant had not brought an action for reparation under Article 105 of the Code of Obligations (see paragraph 19 above).

Relying on a judgment of the Court of Cassation of 22 October 1996 (see paragraph 20 above), they submitted that it would have been possible for the applicant to obtain reparation for the alleged loss resulting from the delay in payment of the additional compensation if he had established that he had sustained damage "over and above that which [had been] compensated for by interest for delay". In the Government's submission, the difference between the current rate of inflation and the statutory rate of interest for delay "[did] not necessarily create an entitlement to additional compensation" within the meaning of Article 105, but the applicant could nonetheless have taken advantage of that provision if he had been able to prove that he had "personally sustain[ed] actual loss as a result of the delay in – or lack of – payment" of which he complained.

32. The applicant replied that the position under the case-law following the leading judgments delivered by the Court of Cassation, sitting as a full court, on 23 February 1994 and 19 June 1996 (see paragraphs 21–22 above) regarding the application of Law no. 3095 and Article 105 of the Code of Obligations (see paragraphs 18–19 above) had made it futile to claim reparation in respect of monetary depreciation where debts due by the State were concerned.

33. The Commission considered that in the instant case the remedy referred to by the Government would have had no prospect of success.

34. The Court reiterates that for the purposes of Article 26 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court in that regard (see, among other authorities, the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, §§ 66 and 68).

35. The Court notes that under Turkish law the leading judgments of the Court of Cassation, sitting as a full court, are authoritative and binding on the courts below as regards the issues decided in them (see paragraph 23 above).

In that connection, it observes that the Court of Cassation, sitting as a full court, having firstly held that the statutory rate of 30% laid down in Law no. 3095 applied without exception (see paragraph 21 above), went on to deliver another leading judgment on 19 June 1996 concerning the exact issue raised in the present case. In that case the Court of Cassation expressly stated that the courts would encroach on the legislature's discretionary power if they decided to increase the statutory rate of interest for delay, which had been fixed at 30% in Law no. 3095 (see paragraph 22 above), on the ground that the difference between that rate and the rate of inflation amounted to a loss within the meaning of Article 105 of the Code of Obligations (see paragraph 19 above).

36. It is clear from those judgments that creditors of the State cannot rely on the means of redress invoked by the Government to afford them a prospect of obtaining damages for loss resulting from monetary depreciation exceeding interest for delay awarded under Law no. 3095 (see, *mutatis mutandis*, the Yağcı and Sargın v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 17, § 42). Moreover, the Government have not produced any court decision capable of leading to a different conclusion, as the judgment of 22 October 1996 of the Fifth Civil Division of the Court of Cassation, on which they rely, is of no relevance here (see paragraph 20 above).

37. Consequently, the Court holds that the Government have failed to establish the adequacy and effectiveness of the remedy provided by Article 105 of the Code of Obligations (ibid. and see, as the most recent authority, the Dalia v. France judgment of 19 February 1998, *Reports* 1998-I, pp. 87–88, § 38).

It therefore dismisses the preliminary objection.

B. Merits of the complaint

1. Arguments of the participants in the proceedings

38. The applicant said that the Government had wrongly likened the present case to the Akkuş v. Turkey case (judgment of 9 July 1997, *Reports* 1997-IV) and emphasised that his application concerned not only the authority's delay in paying the additional compensation awarded by the Durağan Court of First Instance, but also, and primarily, the loss he had sustained between the date he had brought proceedings before that court and

the date he had received the relevant sums. He observed that the rate of inflation during that period had been more than 70%, whereas interest for delay in the payment of additional compensation had been only 30% per annum.

Mr Aka pointed out that the payments had been made more than four and five years respectively after the expropriation of the plots of land and maintained that the consequences of those delays, combined with the high monetary depreciation obtaining at the time in Turkey, had created an unjustified imbalance between his personal interests and the public interest on whose account the measures had been taken.

39. Referring to the Court's case-law, the Government said that Article 1 of Protocol No. 1 did not require payment of full compensation in all cases of expropriation. If an obligation was imposed on States to provide compensation in full, it would prevent them launching large-scale schemes, such as those in the instant case, for the benefit of thousands of people.

The Government accepted with regard to Article 1 of Protocol No. 1 that a fair balance had to be struck between the demands of the general interest of the community and the requirements of the protection of individual rights. However, they contended that States had a wide margin of appreciation in seeking that "fair balance" and, in particular, in determining rates of interest for delay. It was not therefore for the Court to decide whether the law applied in the instant case offered the most satisfactory solution to the problem or whether the legislature should have exercised its discretionary power differently.

Further, it would be difficult to conclude in the present case that the applicant had borne an "individual and excessive burden". The public works for which the expropriations had been made represented a very substantial cost for the authority. In addition, a "fair balance" would have been maintained if the applicant had brought proceedings under Article 105 of the Code of Obligations. That provision played a very important role in striking the balance owing to the flexibility of the procedure it laid down in order to remedy any adverse effects on people whose property had been expropriated.

40. The Commission noted that the awards of additional compensation had been paid to the applicant four years and three months and five years and three months, respectively, after the expropriation. In its opinion, the rate of interest for delay awarded under Law no. 3095 was not reasonably proportionate to the high level of monetary depreciation obtaining during those periods when the average rate had been 67%. It considered that if inflation during those periods had been taken into account by the national authorities, Mr Aka should have received 28,051,771 Turkish liras (TRL) for the first plot of land and TRL 59,077,779 for the second (see paragraphs 16 above and 55 below).

2. The Court's assessment

41. The Court observes that the compensation awarded to the applicant for the expropriation of two plots of land by the National Water Board ("the *DSİ*" – *Devlet Su İşleri*) on 4 September 1987 (see paragraph 10 above) amounted, on the date of expropriation, to TRL 1,380,000 and TRL 2,990,962 respectively. The applicant's actions for increased compensation (see paragraph 11 above) in the Durağan Court of First Instance were successful. In its judgments of 22 June 1989 and 10 May 1990 – which became final as a result of the judgments of the Court of Cassation on 17 September 1990 and 6 September 1991 (see paragraph 15 above) – the Durağan Court of First Instance held that those amounts were insufficient and ordered the *DSİ* to pay an additional TRL 3,089,130 for one of the plots and an additional TRL 3,895,692 for the other. Pursuant to Law no. 3095 the sums thus determined bore interest for delay at the rate of 30% per annum running from 4 September 1987, the date of the expropriation (see paragraphs 12–14 above).

The *DSİ* did not pay the additional compensation, however, until 30 January 1992 and 7 January 1993 respectively, that is to say more than sixteen months after the Court of Cassation's judgments and four years and three months after the expropriation of the first plot of land and five years and three months after the expropriation of the second (see paragraph 16 above).

42. Considering the case as a whole, the Court observes at the outset that there is no material difference between the facts and the legal position here and the facts and the legal position it has previously considered in the case of Akkuş cited above (pp. 1303 et seq.), except, however, for the subject matter of the disputes, which differ substantially in scope.

Mr Aka's application concerns the insufficiency of the statutory interest for delay intended to compensate for the loss caused by high monetary depreciation during the periods of four years and two months and five years and two months respectively that started with the bringing of the proceedings in the Durağan Court of First Instance (see paragraphs 11 and 38 above) and ended with actual payment of the sums awarded by that court (see paragraph 16 above). In the Akkuş case cited above, on the other hand, the only issue concerned the authorities' delay in paying the additional compensation (ibid. p. 1309, § 28).

43. Thus described and delimited, the situation of which the applicant complains unquestionably comes within the second sentence of the first paragraph of Article 1 of Protocol No. 1, which governs expropriations.

44. According to the Court's well-established case-law, an interference, including one resulting from expropriations intended to secure the realisation of large-scale public-works schemes, must – as the Government indeed acknowledged in their memorial – strike a "fair balance" between

the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom judgment of 23 October 1997, *Reports* 1997-VII, p. 2353, § 80).

45. In order to assess whether such a "fair balance" was preserved between the various interests concerned, the Court must consider 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 (see, *mutatis mutandis*, the Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, p. 50, § 120, and the Akkuş judgment cited above, p. 1309, §§ 27 and 29).

46. The Court notes, firstly, that the amount of compensation awarded for expropriation by the Durağan Court of First Instance (see paragraph 14 above) is not in issue. It is not therefore necessary to consider that aspect of the case.

47. Secondly, the Court observes that the Government contended that setting the rate of interest for delay came within the wide margin of appreciation which the Contracting States enjoy in deciding the terms and conditions on which compensation is to be paid following an expropriation (see paragraph 39 above).

The Court is well aware that the national authorities have a margin of appreciation and that it may be important for them to limit the amount of interest payable on debts due by the State. Nevertheless, it cannot decline to verify whether the "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights has been preserved (see paragraph 44 above). To that end, the Court must ensure that a reasonable relationship of proportionality between the means employed and the aim pursued has been maintained and that no disproportionate burden has been imposed on the person who has been deprived of his property (see, *mutatis mutandis*, the Lithgow and Others judgment cited above, p. 50, § 120).

48. The Court notes that during the periods under consideration in the instant case (see paragraph 42 above) inflation in Turkey reached 70% per annum (see paragraph 25 above and paragraph 49 of the Commission's report – and, *mutatis mutandis*, the Akkuş judgment cited above, p. 1310, § 30). Yet, under Law no. 3095 the rate of interest for delay payable on the amounts due to Mr Aka was 30% per annum. It has to be said that that exceptional situation is favourable to the State, which may not be as diligent in complying with its obligations as its creditors may legitimately expect it to be, and contrasts with the position of debtors of the State, who in practice are required to pay interest for delay at a rate that is nearer to the rate of

inflation (see paragraph 17 above and paragraph 52 of the Commission's report – and the Akkuş judgment cited above, p. 1310, § 29; cf. the Lithgow and Others judgment cited above, pp. 58–59, §§ 144–47).

49. As the Court has already said in the Akkuş judgment, 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 (see the Akkuş judgment cited above, p. 1310, § 29). The same applies to abnormally lengthy delays in administrative or judicial proceedings in which such compensation is determined, especially when people whose land has been expropriated are obliged to resort to such proceedings in order to obtain the compensation to which they are entitled (see paragraphs 10–15 above).

50. The Court considers that the difference between the value of the amounts due to Mr Aka when his land was expropriated and when actually paid – which difference was due solely to failings on the part of the expropriating authority – caused him to sustain a separate loss which, coupled with the loss of his land, upset the fair balance that should have been maintained between the protection of the right to property and the demands of the general interest (see, *mutatis mutandis*, the Akkuş judgment cited above, p. 1310, §§ 30–31).

51. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

52. Article 50 of the Convention 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

53. The applicant said that he agreed with the Commission's conclusions (see paragraph 40 above and paragraph 55 below) as to what would constitute an adequate level of compensation for the monetary depreciation over the periods concerned in the present case. He asked the Court to award him a total of 9,557 US dollars (USD) for pecuniary damage, that amount being equivalent to the sums the Commission had calculated in Turkish liras.

54. The Government contended that if the Court decided to award the applicant compensation for pecuniary damage as just satisfaction, the amount should be determined by the method used in the Akkuş judgment. In accordance with the reasoning followed in that judgment, the duration of the alleged loss was to be calculated with effect from the end of a reasonable period – which the Government submitted should be three months – after the delivery of the Court of Cassation's judgments in the instant case. The period to be taken into consideration was therefore thirteen months for the payment made in proceedings no. 87/2837 and thirteen and a half months for that made in proceedings no. 87/2828 (see paragraphs 15–16 above). The Government stated that the average rate of inflation during those periods was 58.5% and 56.5% respectively. They calculated the total amount of Mr Aka's actual loss to be TRL 4,350,347.

55. The Commission considered that in order to assess the pecuniary damage sustained by the applicant it was necessary to take into account the difference between the rate of interest for delay (30%) and the average rate of inflation between October 1988 and December 1992 (67% per annum). It concluded that the TRL 7,097,276 and TRL 10,116,692 paid as additional compensation in proceedings no. 87/2837 and no. 87/2828 (see paragraph 16 above) came to only 25.3% and 17.12% respectively of the amounts – TRL 28,051,771 and TRL 59,077,779 – the applicant should have received if inflation over the relevant periods had been taken into account (see paragraph 40 above and paragraphs 32–33 and 54 of the Commission's report).

56. The Court refers to its findings on the scope of the dispute and on the period to be taken into consideration in the instant case (see paragraph 42 above). Having regard to its conclusions in paragraphs 48–50 above, it agrees with the Commission's analysis and, like the Commission, holds that the loss sustained by Mr Aka is equal to the difference between the amounts that were actually paid on 30 January 1992 and 7 January 1993 and the amounts he would have received if the additional compensation had been adjusted to take into account monetary depreciation from 4 September 1987, when the plots were expropriated (see paragraph 40 above and, *mutatis mutandis*, the Akkuş judgment cited above, p. 1311, § 35) or, at the latest, 2 October 1987, when the proceedings before the Durağan Court of First Instance were issued and which is the date relied on by the applicant (see paragraph 38 above).

57. Having performed its own calculation in the light of the relevant economic data available to it (see paragraphs 24–25 above), the Court considers that it can accept the figure of TRL 69,915,582 advanced by the Commission as being the total amount of pecuniary damage (see paragraphs 40 and 55 above).

On the basis of the average exchange rates applied by the Turkish Central Bank on the dates when the additional compensation was paid (see paragraph 24 above), that amount tallies with the sum of USD 9,557 claimed by the applicant (see paragraph 53 above). Having regard to the exceptional circumstances noted above (see paragraph 48), the Court awards that amount for pecuniary damage.

B. Non-pecuniary damage, and costs and expenses

58. The applicant claimed USD 20,000 as reparation – to the extent that reparation was possible – for the non-pecuniary damage which he and his family had suffered through the poverty and insecurity they had endured through not receiving sufficient compensation for the expropriation of their land, which had been their only means of subsistence and their only home.

He also sought USD 10,000 for the costs and expenses he had incurred in order to defend his interests before the Turkish courts and the Convention institutions.

59. The Government affirmed that an award of compensation for loss of that type would amount to unjust enrichment. As to costs and expenses, only those that were reasonable and justified could be reimbursed.

60. The Court considers that the members of the Aka family have suffered definite non-pecuniary damage as a result of the events that constituted a violation of the Convention. Making its assessment on an equitable basis in accordance with Article 50, it awards them compensation of USD 1,000.

As to costs and expenses, the Court notes that the applicant has not furnished any evidence to support his claim under this head. Consequently, it cannot be accepted (see, *mutatis mutandis*, the Pressos Compania Naviera S.A. and Others v. Belgium judgment of 3 July 1997 (*Article 50*), *Reports* 1997-IV, p. 1299, § 24).

C. Default interest

61. The Court considers it appropriate to set default interest on the sums awarded in US dollars at the annual rate of 5.5%.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that
   (a) the respondent State is to pay to the applicant's heirs who continued the proceedings in his name, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of payment:
      (i) 9,557 (nine thousand five hundred and fifty-seven) US dollars for pecuniary damage;
      (ii) 1,000 (one thousand) US dollars for non-pecuniary damage;
   (b) these amounts shall bear simple interest at an annual rate of 5.5% from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* 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 23 September 1998.

Signed: THÓR VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar