CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF KAYIHAN AND OTHERS v. TURKEY

(Application no. 42124/98)

JUDGMENT

STRASBOURG

8 April 2004

FINAL

08/07/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kayıhan and Others v. Turkey,

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

Mr I. CABRAL BARRETO, *President*,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 18 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 42124/98) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nineteen Turkish nationals ("the applicants"), whose names and birth dates appear in the annex.

2. The applicants were represented by the first applicant, Mr Mehmet Yaşar Kayıhan, who is the President of the Kırıkkale Regional Administrative Court. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 10 July 2001 the Court decided to communicate the application to the Government. In a letter of 27 May 2003 the Court informed the parties that in accordance with Article 29 §§ 1 and 3 of the Convention it would decide on both the admissibility and merits of the application.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

4. The General Directorate of National Water Board, a state body responsible for dam construction, expropriated plots of land belonging to the applicants in Hilvan, Şanlıurfa in order to build the Atatürk Dam. Expropriation took place in November 1994. A committee of experts

assessed the value of the plots of land belonging to the applicants and this amount was paid to them when the expropriation took place.

5. Following the applicants' requests for increased compensation, the Hilvan Court of First Instance awarded them 3,878,470,910 Turkish Liras (TRL) of additional compensation plus interest at the statutory rate of 30% per annum, namely the rate applicable at the date of the court's decision. The domestic court had fixed 8 January 1995 as the date from which the statutory rate of interest run. On 12 March 1996, on the Directorate's appeal, the Court of Cassation upheld the first instance court's decision. On 7 November 1997 the administration paid 8,716,708,000 Turkish Liras (TRL) as the additional compensation awarded to the applicants together with the interest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

6. The relevant domestic law and practice are set out in the *Aka v. Turkey* judgment of 23 September 1998 (*Reports of Judgments and Decisions* 1998-VI, pp. 2674-76, §§ 17-25).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

7. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities only after two years and ten months of court proceedings, had fallen in value, since the default interest payable had not kept pace with the very high rate of inflation in Turkey. they relied on Article 1 of Protocol No. 1, which reads as follows:

> "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 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."

A. Admissibility

8. The Government maintained that the applicants had not exhausted domestic remedies as required by Article 35 of the Convention, as they had failed to make proper use of the remedy available to them under Article 105 of the Code of Obligations. Under that provision, they would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if they had established that the losses exceeded the amount of default interest.

9. The Court observes that it dismissed a similar preliminary objection in the case of *Aka v. Turkey* (judgment of 23 September 1998, *Reports* 1997-VI, pp. 2678-79, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

B. Merits

10. The Court has found a violation of Article 1 of Protocol No. 1 in a number of cases that raise similar issues to those arising here (see *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV, p. 1317, § 31 and *Aka* cited above, p. 2682, §§ 50-51).

11. Having examined the facts and arguments presented by the Government, the Court considers that there is nothing to warrant a departure from its findings in the previous cases. It finds that the delay in paying for the additional compensation awarded by the domestic courts was attributable to the expropriating authority and caused the owner to sustain loss additional to that of the expropriated land. As a result of that delay and the length of the proceedings as a whole, the Court finds that the applicants have had to bear an individual and excessive burden that has upset the fair balance that must be maintained between the demands of the general interest and protection of the right to the peaceful enjoyment of possessions.

12. Consequently, there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL NO. 1

13. The applicants also complained under Article 14 of the Convention in conjunction with Article 1 of Protocol 1 of the exceptional situation which was favourable to the State as a result of the difference between the rate of interest payable on debts owed to the State (around 84% per annum) and the rate of interest on overdue State debts (30% per annum) at the material time.

A. Admissibility

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

15. In the light of its findings with regard to Article 1 of Protocol No. 1, the Court considers that no separate examination of the case under Article 14 in conjunction with Article 1 of Protocol 1 is necessary.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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 and non-pecuniary damage

17. The applicants sought compensation for pecuniary damage in the sum of 68,000 US dollars (USD). They also claimed compensation for non-pecuniary damage of 5000 US dollars (USD).

18. The Government made no observations on this point.

19. Using the same method of calculation as in the *Aka* judgment (cited above, pp. 2683-84, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants 27,700 euros (EUR) for pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement.

20. The Court observes that the applicants sustained actual non-pecuniary damage. Ruling on an equitable basis, the Court finds that in the circumstances of the present case finding a violation constitutes a sufficient satisfaction.

B. Costs and expenses

21. The applicants did not seek the reimbursement of costs and expenses relating to the proceedings before the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. 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 1 of Protocol No. 1;

3. *Holds* that it is unnecessary to examine the complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums plus any tax, stamp duty or imposts that may be chargeable at the date of payment, to be converted into Turkish liras at the rate applicable at the date of settlement, EUR 27,700 (twenty-seven thousand seven hundred euros) in respect of pecuniary damage;
   (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Ireneu CABRAL BARRETO
President

APPENDIX

List of the applicants

1. Mehmet Yaşar Kayıhan, who was born in 1945, resides in Kırıkkale.
2. İbrahim Kayıhan, who was born in 1936, resides in Şanlıurfa.
3. Medine Kayıhan, who was born in 1928, resides in Şanlıurfa.
4. Mahmut Kayıhan, who was born in 1954, resides in Şanlıurfa.
5. İsmet Kayıhan, who was born in 1965, resides in Şanlıurfa.
6. Leyla Yaman Kayıhan, who was born in 1956, resides in Şanlıurfa.
7. Fehime Korkmaz Kayıhan, who was born in 1958, resides in Şanlıurfa.
8. Mehmet Kayhan Kayıhan, who was born in 1932, resides in Şanlıurfa.
9. Ahmet Kayıhan, who was born in 1934, resides in Şanlıurfa.
10. Makbule Bilici Kayıhan, who was born in 1922, resides in Şanlıurfa.
11. Gülçin Ulutaş Kayıhan, who was born in 1930, resides in Şanlıurfa.
12. Münevver Ulutaş Mercan, who was born in 1950, resides in Şanlıurfa.
13. Nadire Ulutaş Ekdemir, who was born in 1954, resides in Şanlıurfa.
14. Nihal B. Bayram, who was born in 1957, resides in Şanlıurfa.
15. Mehmet Ulutaş, who was born in 1959, resides in Şanlıurfa.
16. Faruk Ulutaş, who was born in 1960, resides in Şanlıurfa.
17. Murat Ulutaş, who was born in 1972, resides in Şanlıurfa.
18. Mürüvvet Ulutaş Güloğlu, who was born in 1961, resides in Şanlıurfa.
19. Bahar Ulutaş Özkalender, who was born in 1968, resides in Şanlıurfa.