



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

THIRD SECTION

CASE OF DÖNMEZ v. TURKEY

(Application no. 48990/99)

JUDGMENT

STRASBOURG

29 April 2004

FINAL

29/07/2004

*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 Dönmez v. Turkey,

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

Mr G. RESS, *President*,

Mr P. KÜRIS,

Mr R. TÜRMEZ,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs H.S. GREVE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 48990/99) 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 Ali Dönmez ("the applicant"), on 10 May 1999.

2. The applicant was represented by Mr Özkan and Mr Özdoğan, lawyers practising in İzmir. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 2 October 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 applicant was born in 1936 and lives in İzmir.

5. On 11 February 1993 the General Directorate of National Roads and Highways, expropriated plots of land belonging to the applicant in Balçova, İzmir. A committee of experts assessed the value of the plots of land belonging to the applicant and compensation was paid to him when the expropriation took place.

6. Following the applicant's request for increased compensation, the Izmir First Instance Court awarded him additional compensation at the statutory rate of 30% per annum, namely the rate applicable at the date of the court's decision. The date 4 August 1995 was fixed by the domestic court for the running of the statutory rate of interest. On 28 December 1998, on the General Directorate's appeal, the Court of Cassation upheld the decision of the first instance court. On 17 May 2000 the administration paid the applicant 3,919,570,000 Turkish Liras as the additional compensation awarded to him together with interest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

7. 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

8. The applicant complained that at a time when the annual rate of inflation in Turkey had been very high, he had been paid insufficient interest on additional compensation received following the expropriation of his land and the authorities had delayed in paying him the relevant amounts. He 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

9. The Government maintained that the applicant had not exhausted domestic remedies as required by Article 35 of the Convention, as he had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations. Under that provision, he would have been

eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if he had established that the losses exceeded the amount of default interest.

10. The Court observes that it dismissed a similar preliminary objection in the case of *Aka v. Turkey* (cited above, pp. 2678-79, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

11. It finds that, in the light of the principles it has established in its case-law (see, among other authorities, *Aka*, cited above) and of all the evidence before it, the application requires examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

12. 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).

13. 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 applicant has 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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

16. The applicant sought compensation for pecuniary damage in the sum of 130,983 US dollars (USD). He also claimed compensation for non-pecuniary damage of USD 2,500.

17. The Government contested the applicant's claims.

18. 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 applicant 26,800 euros (EUR) for pecuniary damage.

19. 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

20. The applicant 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

21. 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 finding a violation constitutes a sufficient satisfaction for non-pecuniary damage;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 26,800 (twenty-six thousand eight hundred euros) in respect of pecuniary damage, 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;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President