



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

THIRD SECTION

CASE OF KOÇAK AND OTHERS v. TURKEY

(Application no. 42432/98)

JUDGMENT

STRASBOURG

19 May 2004

FINAL

10/11/2004

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 Koçak and Others v. Turkey,

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr R. TÜRMEŖ,

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 29 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 42432/98) 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 two Turkish nationals, Mr İsmet Koçak and Mr Hasan Koçak (“the applicants”), on 4 June 1998.

2. The applicants were represented by Mr Kazım Berzeg, a lawyer practising in Ankara. 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 15 July 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 applicants were born in 1943 and 1939 respectively and live in Istanbul.

5. On 6 September 1993 the General Directorate of National Roads and Highways expropriated plots of land belonging to the applicants in Istanbul. A committee of experts assessed the value of the plots of land belonging to

the applicants and compensation was paid to them when the expropriation took place.

6. On 4 February 1994, following the applicants' request for increased compensation, the Kartal First Instance Court awarded them additional compensation of 48,410,250,000 Turkish liras (TRL) plus interest at the statutory rate of 30% per annum, namely the rate applicable at the date of the court's decision. The date, 6 September 1993 was fixed by the domestic court for the running of the statutory rate of interest. The parties appealed.

7. On 12 May 1994 the Court of Cassation quashed the decision of the first instance court. On 2 November 1994 the first instance court re-examined the case and amended the amount of the additional compensation to TRL 45,692,700,000. The decision became final since none of the parties appealed. On 29 December 1997 the administration paid the applicants TRL 95,426,696,000 as the additional compensation together with interest. The interest on the additional compensation was calculated at the statutory rate applicable between the date of the decision of the first instance court in favour of the applicant and 31 December 1997.

8. Between 1993 and 1999 the rate of inflation averaged 81.7% per annum.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. 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

10. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities only after three years one month and twenty seven days 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

11. 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.

12. 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

13. 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* cited above, p. 1317, § 31; and *Aka* cited above, p. 2682, §§ 50-51).

14. 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.

15. 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

16. The applicants complain under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention 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

17. 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

18. 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

19. 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

20. The applicants sought compensation for pecuniary damage in the sum of 3,458,806 US dollars (USD). They also claimed compensation for non-pecuniary damage of USD 500,000.

21. The Government made no observations on this point.

22. Using the same method of calculation as in the *Akkuş* judgment (cited above, pp. 2683-84, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants 1,000,000 euros (EUR) for pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement.

23. 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

24. The applicants also claimed USD 50,000 for the costs and expenses incurred before the Commission and the Court.

25. The Government left the issue of costs to the Court's discretion.

26. In the light of the information in its possession and its case-law on the subject, the Court considers it reasonable to award the applicants the sum of EUR 1,000, covering costs under all heads, to be converted into Turkish liras at the rate applicable at the date of settlement of this amount.

C. Default interest

27. 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* that finding a violation constitutes a sufficient satisfaction for non-pecuniary damage;
5. *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:
 - (i) EUR 1,000,000 (one million euros) in respect of pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President