CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF KOKOL AND OTHERS v. TURKEY

(Application no. 68136/01)

JUDGMENT

STRASBOURG

29 March 2005

FINAL

29/06/2005

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 Kokol and Others v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 68136/01) 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 eight Turkish nationals, Mr Erdoğan Kokol, Mr Kenan Kokol, Mr Taner Kokol, Ms Hürriyet Kokol, Mr Nazım Kokol, Mr Rahim Kokol, Ms Halime Zorlu and Ms Naide Bakır ("the applicants"), on 1 July 1998.

2. The applicants were represented by Mr Y. Selvi, 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 15 May 2001 the Court decided to communicate the application to the Government. In a letter of 27 November 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. THE CIRCUMSTANCES OF THE CASE

4. In 1991, the General Directorate of National Roads and Highways (*Devlet Karayolları Genel Müdürlüğü*), a State body responsible, *inter alia*, for motorway construction, expropriated four plots of land belonging to the applicants in Ankara in order to build the Ankara Central Motorway. A

committee of experts assessed the value of the land and the sum so fixed was paid to them when the expropriation took place.

5. Following the applicants' requests for increased compensation, on 2 February 1995 the Ankara Civil Court of First Instance awarded them additional compensation of 2,752,155,000 Turkish liras (TRL) (approximately 7,483 euros (EUR)), plus interest at the statutory rate applicable at the date of the court's decisions, running from 1 August 1992.

6. On 22 December 1997 the Court of Cassation upheld the judgment of 2 February 1995.

7. On 19 January 1998 the decision of the Court of Cassation was served on the applicants.

8. On 18 March 1998 the administration paid the applicants TRL 7,614,418,000 (approximately EUR 20,705) in additional compensation together with interest.

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, §§ 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 four years and eleven 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

11. The Government maintained that the applicants had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, because 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* (cited above, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

13. It finds that, in the light of the principles it has established in its case-law (see, among other authorities, the aforementioned *Aka* judgment) 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

14. 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, § 31, and *Aka*, cited above, §§ 50-51).

15. Having examined the facts and arguments presented by the Government and the applicants, the Court considers that there is nothing to warrant a departure from its findings in the previous cases. It finds that as a result of the delay in paying the compensation, the low interest rates and the length of the proceedings as a whole, 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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 damage

18. The applicants sought compensation for pecuniary damage in the global sum of 60,000 United States dollars (EUR 49,305).

19. The Government contested their claim.

20. Using the same method of calculation as in the *Aka* judgment (cited above, §§ 55-56) and having regard to the relevant economic data and the applicants' claim, the Court awards the applicants the amount claimed in full for pecuniary damage.

B. Costs and expenses

21. The applicants also claimed TRL 1,000,000,000 (approximately EUR 2,720) for the costs and expenses incurred before the Commission and the Court. The applicants did not produce any supporting documents.

22. The Government did not make any comment on the applicant's claim.

23. Making its own estimate based on the information available, the Court considers it equitable to award the applicants the global sum of EUR 1,000 under this head.

C. Default interest

24. 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 of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following global sums plus any tax that may be chargeable at the date of payment, to be converted into the national currency at the rate applicable at the date of settlement:

(i) EUR 49,305 (forty-nine thousand three hundred and five 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President