



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

FOURTH SECTION

CASE OF ASLANGIRAY AND OTHERS v. TURKEY

(Application no. 48262/99)

JUDGMENT

STRASBOURG

31 May 2005

FINAL

12/10/2005

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 Aslangiray and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr R. TÜRMEŖ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 48262/99) 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 three Turkish nationals, Mr Ali Aslangiray, Mrs Fatma Özbilge and Mrs Gülsüm Özbilge ("the applicants"), on 4 May 1999.

2. The applicants were represented by Mr R.T. Bektaş, 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 8 July 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning insufficient interest payable in respect of additional compensation, the delay of the authorities in payment of the additional compensation, the length of the proceedings and the difference between the rates of interest payable on debts owed to and by the State and the fact that State debts were not subject to enforcement proceedings. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. On 19 July 1993 the applicants brought separate actions before the Baskil Civil Court of First Instance against the National Water Board. They alleged that their plots of land had been illegally seized by the administration for dam construction without any payment being made and requested compensation in this respect.

5. On 2 December 1993 the Baskil Civil Court of First Instance held that the cases should be characterised as compensation claims arising from expropriation rather than compensation claims arising from the illegal seizure of the applicants' land since a committee of experts had assessed the value of the land and this amount had been paid by the authorities to those who were indicated as the owners of the land in the Land Registry. The court ordered the administration to pay the applicants an amount of increased compensation, plus interest at the statutory rate, running from 1986, when the plots of lands were submerged in the waters of the dam.

6. On 6 October 1994 the Court of Cassation quashed the judgments of the first-instance court and held that the cases could not be characterised as compensation claims arising from expropriation. The applicants requested rectification of the decisions of the Court of Cassation.

7. On 7 March 1995 the Court of Cassation rectified its decisions, holding that the cases could be characterised as compensation claims arising from expropriation. It quashed the judgments of the first-instance court only in respect of the date from which the statutory rate of interest began to run from.

8. On 9 October 1997 the first-instance court abided by the ruling of the Court of Cassation. It accordingly ordered the administration to pay Ali Aslangiray, Fatma Özbilge and Gülsüm Özbilge 303,510,000 Turkish liras (TRL) (approximately 1,540 euros (EUR)), TRL 216,503,800 (approximately EUR 1,100) and TRL 424,914,000 (approximately EUR 2,155) respectively, plus interest at the statutory rate, running from 19 August 1993, the date on which the ownership of the property was transferred to the National Water Board. The National Water Board appealed.

9. On 17 March 1998 the Court of Cassation upheld the judgments of the Baskil Civil Court of First Instance.

10. On 2 April 1998 the decisions of the Court of Cassation were served on the applicants.

11. On 11 November 1998 the administration paid the applicants the amounts due together with interest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice are set out in the case of *Akkuş v. Turkey* (judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, §§ 13-16).

THE LAW

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

13. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities after almost eight 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

14. The Government asked the Court, firstly, to dismiss the application as inadmissible for failure to comply with the six-month time-limit under Article 35 of the Convention. For the purposes of that provision, time had started to run on 17 March 1998. However, the applicants had not lodged their application with Court until 4 May 1999, that is almost fourteen months after the final domestic decision.

15. The Court notes that the complaint before it is concerned solely with the authorities’ delay in paying the additional compensation and the damage sustained by the applicants as a result.

16. Payment was finally made by the authorities on 11 November 1998. By lodging their application with the Court on 4 May 1999, the applicants complied with the requirement set out in Article 35 of the Convention. This preliminary objection must therefore be dismissed.

17. Secondly, 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.

18. 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.

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

B. Merits

20. 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).

21. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicants also complained under Article 6 § 1 of the Convention of the unreasonable length of the court proceedings.

A. Admissibility

24. 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

25. 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 6 § 1 is necessary.

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

26. The applicants complained under Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 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 and the rate of interest on overdue State debts at the material time and of the fact that State debts were not subjected to enforcement procedures like ordinary debts.

A. Admissibility

27. 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

28. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants sought compensation for pecuniary damage in the global sum of 313,298 United States dollars (USD) (approximately EUR 244,380). They also claimed compensation for non-pecuniary damage of USD 1,500,000 (approximately EUR 1,170,050).

31. The Government contested their claims.

32. 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 Ali Aslangiray, Fatma Özbilge and Gülsüm Özbilge EUR 340, EUR 235 and EUR 480 respectively for pecuniary damage.

33. The Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

34. The applicant did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court.

C. Default interest

35. 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* that it is unnecessary to examine the complaint under Article 6 § 1 of the Convention;
4. *Holds* that it is unnecessary to examine the complaint under 14 of the Convention;
5. *Holds* that finding a violation constitutes a sufficient satisfaction for non-pecuniary damage;
6. *Holds*
 - (a) that the respondent State is to pay, 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 new Turkish liras at the rate applicable at the date of settlement:
 - (i) to Ali Aslangiray EUR 340 (three hundred and forty euros) in respect of pecuniary damage;
 - (ii) to Fatma Özbilge EUR 235 (two hundred and thirty-five euros) in respect of pecuniary damage;
 - (iii) to Gülsüm Özbilge EUR 480 (four hundred and eighty 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President