



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

THIRD SECTION

CASE OF PEMBE AND OTHERS v. TURKEY

(Application no. 49398/99)

JUDGMENT

STRASBOURG

21 July 2005

FINAL

21/10/2005

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 Pembe and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Ms R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 49398/99) 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 four Turkish nationals, Ms Gülizar Pembe, Mr Mıstık Ateş, Mr İsmail Karapınar and Ms Yüksel Bozkaya ("the applicants"), on 14 June 1999.

2. The applicants were represented by Mr Ş. Ensari and Mr M. Ensari, lawyers practising in İskenderun. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 27 May 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 and the length of the proceedings to the Government. 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. The applicants were born in 1945, 1935, 1948 and 1938 respectively and live in İskenderun and Belen respectively.

5. In 1993 the applicants' plots of land in İskenderun were expropriated by the General Directorate of National Roads and Highways. A committee of experts assessed the value of these lands and the determined amounts were paid to them when the expropriation took place.

6. On 20 August, 10 October and 21 November 1996 respectively, the applicants filed separate actions for compensation with the İskenderun Civil Court of First Instance.

7. On 19 September 1997 the first-instance court ordered the administration to pay Mıstık Ateş 41,410,845,000 Turkish liras (TRL) plus interest at the statutory rate, running from 7 August 1996, the date on which the ownership of the property was transferred to the National Water Board.

8. On 25 September 1997 the first-instance court ordered the administration to pay Gülizar Pembe TRL 6,467,500,000 plus interest at the statutory rate, running from 11 September 1996, the date on which the ownership of the property was transferred to the National Water Board.

9. On the same day, the first-instance court ordered the administration to pay Yüksel Bozkaya TRL 80,274,368,000 plus interest at the statutory rate, running from 23 October 1996, the date on which the ownership of the property was transferred to the National Water Board.

10. On 7 October 1997 the first-instance court ordered the administration to pay İsmail Karapınar TRL 13,075,000,000 plus interest at the statutory rate, running from 11 September 1996, the date on which the ownership of the property was transferred to the National Water Board.

11. The Court of Cassation upheld the above-mentioned judgments of the İskenderun First Instance Court on 11 May, 20 May and 25 May 1998 respectively.

12. On 8 April, 13 April, 12 May and 4 June 1999 respectively, the administration paid the applicants the amounts due together with interest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice are outlined in the *Aka v. Turkey* judgment of 23 September 1998 (*Reports of Judgments and Decisions* 1998-VI, §§ 17-25), and *Akkuş v. Turkey* judgment of 9 July 1997 (*Reports* 1997-IV, §§ 13-16).

THE LAW

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

14. The applicants complained that they had been paid insufficient interest on additional compensation received following the expropriation of their land and that the authorities had delayed in paying them the relevant amounts. 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

15. The Government, in their observations dated 2 March 2005 on the claims of just satisfaction of the applicants, submitted 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.

16. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. The Court observes that the Government did not raise the objection of non-exhaustion in their observations dated 13 December 2004 on the admissibility and merits of the application. Moreover, there are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection in their observations on the admissibility and merits of the application.

17. Consequently, the Government are estopped and their objection must therefore be dismissed.

18. The Court finds that, in the light of the principles it has established in its case-law (see, among other authorities, the aforementioned *Aka* and *Akkuş* judgments) 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

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

20. 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.

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

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

22. The applicants also complained about the length of the court proceedings. They relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

23. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

24. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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. Damage

26. The applicants sought compensation for pecuniary damage in the global sum of 165,490 United States dollars (USD). They also claimed compensation for non-pecuniary damage of EUR 20,000 (EUR 5,000 for each applicant).

27. The Government contested their claims.

28. 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 Gülizar Pembe, Mıstık Ateş, İsmail Karapınar and Yüksel Bozkaya EUR 3,070, EUR 21,800, EUR 7,670 and EUR 49,820 respectively for pecuniary damage.

29. 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

30. The applicants claimed in respect of representation fees, 10 % of the amount attributed to them by the Court as damages. They further claimed, without specifying any amount, costs and expenses.

31. The Government maintained that only actually incurred expenses can be reimbursed. In this connection, they submitted that all costs and expenses must be documented by the applicant or his representative and that rough figures or rough lists cannot be considered as relevant and necessary documents to prove the expenditure. They further contested to the amount requested by the applicants in respect of the representation fees.

32. Making its own estimate based on the information available, the Court considers it equitable to award the applicants the global sum of EUR 500 under this head (see, among many others, *Uğur and Others v. Turkey*, no. 49690/99, § 26, 7 October 2004).

C. Default interest

33. 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 6 § 1 of the Convention;
4. *Holds* that the finding of a violation constitutes a sufficient satisfaction for non-pecuniary damage;
5. *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 Gülizar Pembe EUR 3,070 (three thousand and seventy euros) in respect of pecuniary damage;
 - (ii) to Mıstık Ateş EUR 21,800 (twenty one thousand and eight hundred euros) in respect of pecuniary damage;
 - (iii) to İsmail Karapınar EUR 7,670 (seven thousand six hundred and seventy euros) in respect of pecuniary damage;
 - (iv) to Yüksel Bozkaya EUR 49,820 (forty nine thousand eight hundred and twenty euros);
 - (v) to the applicants jointly EUR 500 (five hundred euros) in respect of their 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President