



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

THIRD SECTION

CASE OF YAYLA v. TURKEY

(Application no. 70289/01)

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 Yayla 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. 70289/01) 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, Ms Nefise Nafize Yayla (“the applicant”), on 26 April 2001.

2. The applicant was represented by Mr Bilal İstek, a lawyer practising in Izmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 5 April 2004 the Court decided to communicate the application to the Government. In a letter of 8 April 2004, 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. The applicant was born in 1940 and lives in Izmir.

5. On 6 February 1998 the General Directorate of National Airports expropriated a plot of land belonging to the applicant. A committee of experts assessed the value of the plot of land and the relevant amount was paid to her when the expropriation took place.

6. Following the applicant's request for increased compensation, on 29 April 1999 the Antalya Civil Court of First-instance awarded her additional compensation plus interest at the statutory rate.

7. On 20 October 1998 the Court of Cassation quashed the judgment of the First-instance court.

8. On 18 April 2000 the Antalya Civil Court of First-instance awarded the applicant an additional compensation of 3,400,000,000 Turkish liras (TRL) plus an interest at the statutory rate applicable at the date of the court's decision.

9. On 27 June 2000 the Court of Cassation upheld the judgment of the Antalya Civil Court of First-instance.

10. On 26 October 2000 the Court of Cassation rejected the General Directorate of National Airports' request for rectification.

11. On 7 December 2000 the General Directorate of National Airports paid the amount of TRL 8,138,266,000 to the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. 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

13. The applicant complained that the additional compensation for expropriation, which she had obtained from the authorities only after two years and nine months' court proceedings, had fallen in value, since the default interest payable had not kept pace with the very high rate of inflation in Turkey. She 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 averred that the applicant had not exhausted remedies available to her in domestic law since she had failed to make proper use of the remedy available to her under Article 105 of the Code of Obligations. Under that provision, she would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation had she established that the losses exceeded the amount of default interest.

15. The Court observes that it dismissed a similar 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.

16. In the light of the principles it has established in similar cases (see, among other authorities, *Aka*, cited above) and of all the evidence before it, the Court concludes that the application requires an examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

17. 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 *Aka*, cited above, p. 2682, §§ 50-51).

18. 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 a 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant sought compensation for pecuniary damage in the sum of 40,817 United States dollars (USD). She also claimed compensation for non-pecuniary damage of USD 5,000.

22. The Government contested her claims.

23. 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 7,122 euros (EUR) for pecuniary damage.

24. The Court considers that the finding of a violation of Article 1 of Protocol No. 1 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

25. The applicant also claimed USD 3,251 for the costs and expenses incurred before the domestic courts and USD 3,000 for those incurred before the Court.

26. The Government contested those claims.

27. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant a global sum of EUR 500 under this head.

C. Default interest

28. 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 the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant;
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, 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 7,122 (seven thousand one hundred and twenty-two euros) in respect of pecuniary damage;
 - (iii) EUR 500 (five hundred 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;
5. *Dismisses* the remainder of the applicant's 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