CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF DOST AND OTHERS v. TURKEY

(Application no. 45712/99)

JUDGMENT

STRASBOURG

26 July 2005

FINAL

26/10/2005

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 Dost and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 5 July 2005,

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

PROCEDURE

1. The case originated in an application (no. 45712/99) 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 Adem Dost, Mr Şeker Dost and Mr Osman Cinel ("the applicants") on 12 November 1998.

2. The applicants were represented by Mr İbrahim Gemici, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 17 June 2004 the Court decided to communicate the application to the Government. In a letter of 22 June 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 applicants were born in 1956, 1954 and 1955 respectively and live in Munich, Germany.

5. In 1995 the Sakarya Governor's office expropriated a plot of land belonging to the applicants. A committee of experts assessed the value of the plot of land and the relevant amount was paid to them when the expropriation took place.

6. Following the applicants' request for increased compensation, on 11 September 1997 the Sakarya Civil Court of First-instance awarded them an additional compensation of 865,267,950 Turkish liras (TRL)[1] plus interest at the statutory rate running from 12 December 1995, the date on which the title-deed to the land had been transferred to the Sakarya Governor's Office. In the course of the proceedings, the court conducted on-site visits and requested three expert reports which concluded that the land in question was development land (*arsa*). In view of a judgment rendered by the Joint Civil Chambers of the Court of Cassation which ruled that the lands within the vicinity of the Sakarya organised industrial zone should be considered as agricultural lands, the court decided that it would not take the three expert reports into account. It therefore relied on a fourth expert report which served as a conciliation report for a calculation of the amount due to the applicants.

7. The applicants appealed against the judgment of the Sakarya Civil Court of First-instance. In their submissions, the applicants contested the court's decision to take solely the last expert report into consideration.

8. On 12 February 1998 the Court of Cassation upheld the judgment of the Sakarya Civil Court of First-instance.

9. On 1 April 1998 the Sakarya Governor's Office paid the amount of TRL 1,513,641,033[2] to the applicants.

10. On 26 May 1998 the Court of Cassation rejected the applicants' request for rectification.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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

12. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities only after two years and six months' court proceedings, had fallen in value, since the default interest payable had not kept pace with the very high rate of inflation

[1] Approximately 503 euros (EUR).
[2] Approximately EUR 879.

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

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

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

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

17. The applicants complained that they had been denied a fair hearing within a reasonable time. They invoked Article 6 § 1 of the Convention, which reads as follows:

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

18. The applicants complained that the proceedings before the domestic courts were long and thus in contravention of the reasonable time requirement under Article 6 § 1 of the Convention. They further alleged that they had been denied a fair trial because the domestic courts had disregarded three expert reports and had taken into account solely the fourth expert report which had qualified the land in question as agricultural land and had awarded them an amount inferior than to real value of the land.

19. The Government disputed the applicants submissions and argued that the proceedings in question were fair and in compliance with the reasonable time requirement laid down in Article 6 § 1.

A. Admissibility

20. The Court notes that the complaint concerning the length of the proceedings 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.

21. As to the complaint concerning the fairness of the proceedings, the Court points out that according to the Court's well-established case-law, the establishment of the facts and the assessment of the evidence are primarily matters of the domestic courts and that the Court's supervisory jurisdiction is limited to ensuring that the applicants' Convention rights have not been breached (see, among many others, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

22. That being so, in view of a judgment rendered by the Joint Civil Chambers of the Court of Cassation which ruled that the lands within the vicinity of the Sakarya organised industrial zone should be considered as agricultural lands, the Sakarya Civil Court of First-instance decided to disregard three expert reports and to obtain a fourth one which would serve as a conciliation report. The court then took the findings included in this report into consideration and rendered its judgment concerning the amount of compensation. Having regard to the documents contained in the case-file, including the minutes of the hearings held before the Sakarya Civil Court of First-instance and the subsequent judgments concerning the dispute, the Court concludes that there is nothing to indicate that the proceedings in question were arbitrary or were otherwise unfair so as to raise an issue under Article 6 of the Convention.

23. In the light of the above considerations, the Court notes that the complaint under Article 6 § 1 in respect of the fairness of the proceedings is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court therefore declares this complaint inadmissible.

B. Merits

24. In the light of its findings with regard to Article 1 of Protocol No. 1, the Court considers that it is unnecessary to subject the complaint concerning the length of proceedings to a separate examination under Article 6 § 1 of the Convention.

IV. 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. Pecuniary and non-pecuniary damage

26. The applicants sought compensation for pecuniary damage in the sum of 1,009,000 German marks (DEM).[3] They also claimed compensation for non-pecuniary damage of DEM 500,000.[4]

27. The Government did not comment on this point.

28. Using the same method of calculation as in *Aka* cited above, pp. 2683-84, §§ 55-56, and having regard to the relevant economic data, the Court awards the applicants EUR 11,597 for pecuniary damage.

29. The Court considers that the finding of a violation of Article 1 of Protocol No. 1 constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

30. The applicants also claimed DEM 30,000[5] for the costs and expenses incurred before the domestic courts and the Court. However, they have failed to furnish any supporting documents.

31. The Government did not comment on the applicants' claim.

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

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[3] Approximately EUR 515,894.
[4] Approximately EUR 255,646.
[5] Approximately EUR 15,339.

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 complaints concerning the alleged violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention in respect of the length of the proceedings admissible and the remainder of the application inadmissible;

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 concerning the length of the proceedings under Article 6 § 1 of the Convention;

4. *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 11,597 (eleven thousand five hundred and ninety-seven euros) in respect of pecuniary damage;
      (ii) 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;

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

Done in English, and notified in writing on 26 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President