



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

SECOND SECTION

CASE OF ERNEKAL v. TURKEY

(Application no. 52159/99)

JUDGMENT

STRASBOURG

13 September 2005

FINAL

13/12/2005

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 Ernekal v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO

Mr R. TÜRMEK,

Mr K. JUNGWIERT,

Mr M. UGREKHIDZE,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 25 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 52159/99) 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 a Turkish national, Mr Mühyettin Ernekal ("the applicant") on 19 February 1999.

2. The applicant was represented by Mr Mesut Beştaş and Ms Meral Beştaş, lawyers practising in Diyarbakır. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 18 March 2004 the Court declared the application partly inadmissible and decided to communicate the applicant's complaint concerning the alleged denial of his right to the peaceful enjoyment of his possessions. In a letter of 25 March 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 1949 and lives in Siirt.

5. On 20 December 1990 the General Directorate of National Roads and Highways expropriated three plots of land belonging to the applicant.

A committee of experts assessed the value of the plots of land and the relevant amount was paid to him.

6. Following the applicant's request for increased compensation, on 8 September 1998 the Baykan Civil Court of First-instance awarded him additional compensation of 114,180,000 Turkish liras (TRL)¹, plus interest at the statutory rate applicable at the date of the court's decision. In order to calculate the amount of increased compensation, the court consulted several experts.

7. The General Directorate of National Roads and Highways appealed against the judgment of 8 September 1998.

8. On 19 October 1998 the Court of Cassation upheld the judgment.

9. According to the order of the General Directorate of National Roads and Highways, the amount of TRL 248,595,000² was paid to the applicant on 22 December 1998. The applicant claimed that he was paid on 4 January 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. 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

11. The applicant complained that the additional compensation for expropriation, which he had obtained from the authorities after one year 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. He 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

1. Approximately 66 euros (EUR).

2. Approximately EUR 114.

accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

12. The Government averred that the applicant had not exhausted domestic remedies since he had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations. Under that provision, he would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if he had established that the losses exceeded the amount of default interest.

13. The applicant contended that the Government's objection should be rejected.

14. The Court observes that it dismissed a similar preliminary objection in the case of *Aka* (cited above, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

15. 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, the Court concludes that the application requires examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

16. 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).

17. 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 the additional compensation awarded by the domestic courts was attributable to the expropriating authority and caused the owner a loss in addition to that of the expropriated land. As a result of that delay and the length of the proceedings as a whole, 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant sought compensation for pecuniary damage in the sum of 1,000 euros (EUR).

21. The Government contested his claims.

22. 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 EUR 550 for pecuniary damage.

B. Costs and expenses

23. The applicant also claimed EUR 2,201 for the costs and expenses incurred before the Court.

24. The Government contested those claims.

25. 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

26. 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 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 taxes 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 550 (five hundred and fifty 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;

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

Done in English, and notified in writing on 13 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President