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

SECOND SECTION

CASE OF CEVDET AND HATİCE YILMAZ v. TURKEY

(Application no. 88/02)

JUDGMENT

STRASBOURG

20 September 2005

FINAL

20/12/2005

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 Cevdet and Hatice Yılmaz 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 R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 88/02) 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 two Turkish nationals, Mr Cevdet Yılmaz and Ms Hatice Yılmaz ("the applicants"), on 20 September 2001.

2. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 26 April 2004 the Court decided to communicate the application to the Government. In a letter of 28 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 applicants live in Izmir.

5. On 7 June 1996 the General Directorate of National Roads and Highways expropriated plots of land belonging to the applicants. A committee of experts assessed the value of the plots of land and the relevant amount was paid to the applicants when the expropriation took place.

6. Following the applicants' request for increased compensation, on 22 June 1998 the Bornova Civil Court of First-instance awarded them additional compensation plus interest at the statutory rate.

7. On 8 December 1998 the Court of Cassation quashed the judgment.

8. On 27 July 1999 the Bornova Civil Court of First-instance awarded the applicants additional compensation plus interest at the statutory rate.

9. On 12 October 1999 the Court of Cassation quashed the judgment.

10. On 15 May 2000 the Bornova Civil Court of First-instance awarded the applicants additional compensation of 9,976,332,312 Turkish liras (TRL)[1] plus interest at the statutory rate applicable at the date of the court's decision, running from 26 February 1998, the date on which the title deed to the land had been transferred to the General Directorate of National Roads and Highways in the land registry.

11. On 11 September 2000 the Court of Cassation upheld the judgment.

12. On 13 August 2001 the General Directorate of National Roads and Highways paid the applicants TRL 28,686,390,000[2].

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

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

14. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities only after two and a half years 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. The applicants did not invoke any Articles of the Convention. However, their complaint raises issues under Article 1 of Protocol No. 1, which reads insofar as relevant 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."

1. Approximately 5,667 euros (EUR).
2. Approximately EUR 16,295.

A. Admissibility

15. 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.

16. The Court observes that it dismissed a similar preliminary objection in the case of *Aka v. Turkey* (judgment of 23 September 1998, *Reports* 1997-IV, pp. 2678-79, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

17. 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, the application requires examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

18. 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).

19. 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 owners 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants sought compensation for pecuniary damage in the sum of 71,013,258 United States dollars (USD)[1].

23. The Government contested their claims.

24. Using the same method of calculation as in the aforementioned *Akkuş* judgment and having regard to the relevant economic data, the Court awards the applicant EUR 4,500 for pecuniary damage.

B. Costs and expenses

25. The applicants also requested reimbursement of the costs and expenses incurred before the Court. They left the amount of reimbursement to the Court's discretion.

26. The Government contested the claim.

27. Making its own estimate based on the information available, the Court considers it reasonable to award the applicants the 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 of the Convention;

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1. Approximately EUR 58,749,300.

3. *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 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 4,500 (four thousand five hundred 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President