



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

SECOND SECTION

CASE OF DERİLGİN AND OTHERS v. TURKEY

(Application no. 44713/98)

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 Derilgen and Others 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. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *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. 44713/98) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nine Turkish nationals, Mr Mehmet Derilgen, Mr Yusuf Uşaklı, Mr Hüseyin Uşaklı, Mrs Ayşe Çelimli, Mrs Gülşen Işık, Mr Yılmaz Çelimli, Mr Kamil Çelimli, Mr Metin Çelimli and Mrs Şenay Taşkın (“the applicants”), on 24 September 1998.

2. By a letter dated 2 March 2004 the applicants’ representative informed the Court that the applicant Şenay Taşgın had died on 3 May 1999 and that her heirs Mr Ünal Taşgın, Mrs Münevver Taşgın (Bulut), Mrs Neslihan Taşgın and Mr Şükrü Taşgın, wished to pursue her application (also “the applicants”).

3. The applicants were represented by Mrs N. Menderes, a lawyer practising in Aydın. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

4. On 16 October 2001 the Court decided to communicate the application. In a letter of 19 October 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

5. In 1996 the General Directorate of National Roads and Highways (*Devlet Karayolları Genel Müdürlüğü*), a State body responsible, *inter alia*, for motorway construction, expropriated a plot of land belonging to the applicants in Aydın in order to build a motorway. A committee of experts assessed the value of the applicants' land and the sum fixed thereby was paid when the expropriation took place.

6. Following the applicants' request for increased compensation, on 12 September 1996 the Aydın Civil Court of First Instance awarded them additional compensation of 4,911,300,000 Turkish liras (TRL) (approximately 44,092 euros (EUR)) plus interest at the statutory rate applicable at the date of the court's decision, running from 17 January 1996.

7. On 20 February 1997 the judgment of 12 September 1996 became final.

8. On 7 May 1998 the administration paid the applicants TRL 8,532,488,000 (approximately EUR 30,616).

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. 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, §§ 17-25).

THE LAW

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

10. 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

11. The Government maintained 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. 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 had exceeded the amount of default interest.

12. 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.

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

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 *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV, p. 1317, § 31, and *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 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 to sustain 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 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. The applicants sought compensation for pecuniary damage in the global sum of TRL 31,685,716,000 (EUR 16,843). They also claimed compensation for non-pecuniary damage of TRL 10,000,000,000 (approximately EUR 5,315).

19. The Government contested their claims.

20. 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 the applicants the amount claimed in full for pecuniary damage.

21. 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

22. The applicants did not seek the reimbursement of any costs and expenses in connection with the proceedings before the Court.

C. Default interest

23. 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 applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 16,843 (sixteen thousand eight hundred and forty-three euros) in respect of pecuniary damage, plus any taxes that may be chargeable, which sum is to be converted into new Turkish liras at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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