



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

SECOND SECTION

CASE OF ÖZER AND OTHERS v. TURKEY

(Application no. 42708/98)

JUDGMENT

STRASBOURG

20 December 2005

FINAL

20/03/2006

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 Özer 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 29 November 2005

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

PROCEDURE

1. The case originated in an application (no. 42708/98) 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 eleven Turkish nationals, Mr Saffet Özer (Aksungur), Mr Hüsnü Aksungur, Mr Sabri Aksungur, Mr Muharrem Aksungur, Ms Hafize Uğuz (Özer), Mr İsmail Aksungur, Mr Rahmi Özer, Mr Sinan Özer, Ms Akkız Çelik, Ms Nazife Aksungur and Mr Recep Aksungur (“the applicants”), on 2 June 1998.

2. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

3. By a letter dated 19 November 2001, the applicants’ representative informed the Court that the applicant İsmail Aksungur had died on 28 October 2001 and that his heirs Mr Sabri Aksungur, Mr Muharem Aksungur and Mr Recep Aksungur wished to pursue his application.

4. The applicants were represented by Mr G.C. Ekşiođlu, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

5. On 2 October 2001 the Court decided to communicate the application to the Government. In a letter of 17 March 2005, the Court informed the parties that, in accordance with Article 29 § 3 of the Convention, it would decide on both the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In 1993, the General Directorate of National Roads and Highways (*Devlet Karayolları Genel Müdürlüğü*), a State body responsible, *inter alia*, for motorway construction, expropriated a part of a plot of land in Ankara belonging to the applicants and several other persons. A committee of experts assessed the value of the applicants' land and the sum fixed thereby was paid when the expropriation took place.

7. On 28 December 1993 the applicants, along with twenty-one co-owners, lodged a case with the Ankara Civil Court of First Instance, requesting increased compensation.

8. On 14 September 1994 the Ankara Civil Court of First Instance awarded the plaintiffs additional compensation of 5,305,080,000 Turkish liras (TRL) (approximately 126,200 euros (EUR)) plus interest at the statutory rate applicable at the date of the court's decision, running from 15 February 1993. The amount of compensation that was awarded to the applicants was TRL 2,269,264,010 (approximately EUR 53,980).

9. On 30 January 1995 the Court of Cassation upheld the judgment of the first-instance court.

10. On 17 February 1998 the administration paid the plaintiffs a total of TRL 13,208,453,000 (approximately EUR 53,900). The applicants received TRL 5,649,955,705 (approximately EUR 23,000).

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, §§ 17-25).

THE LAW

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

12. 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

13. 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.

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

15. 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

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 *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV, p. 1317, § 31, and *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 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 the 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 applicants sought compensation for pecuniary damage in the global sum of EUR 175,000,000. They also claimed compensation for non-pecuniary damage of EUR 70,000.

21. The Government contested their claims.

22. Using the same method of calculation as in the *Akkus* judgment (cited above, pp. 2683-84, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants, jointly, EUR 80,000 in pecuniary damages.

23. 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

24. The applicants also claimed EUR 36,000 for the costs and expenses incurred before the domestic courts and the Court.

25. The Government contested their claims.

26. According to the Court's case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

27. 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 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 new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 80,000 (eighty thousand euros) in respect of pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President