



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

THIRD SECTION

**CASE OF ŞİMŞEK v. TURKEY**

*(Application no. 72520/01)*

JUDGMENT

STRASBOURG

22 December 2005

**FINAL**

*22/03/2006*

*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 Şimşek v. Turkey,**

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr R. TÜRMEŒ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Ms I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 December 2005,

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

## PROCEDURE

1. The case originated in an application (no. 72520/01) 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 Piryan Şimşek (“the applicant”), on 7 January 2000.

2. The applicant was represented by Mr A. Akdağ, a lawyer practising in Afyon. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 24 September 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Freising, Germany.

5. On 8 February 1996 the Ministry of Public Works and Settlement (*Bayındırlık ve İskan Bakanlığı*) issued an order of expropriation for a plot of land belonging to the applicant in Dinar, a district attached to Afyon, following the earthquake which happened on 1 October 1995. A committee of experts assessed the value of the plot and the amount was paid to the applicant.

6. On 2 April 1997 the applicant brought an action for additional compensation before the Dinar Civil Court of First Instance.

7. On 14 August 1997 the first-instance court decided to award the applicant an additional compensation of 3,330,990,000 Turkish liras (TRL) plus interest at the statutory rate applicable at the date of the court's decision running from 2 April 1997.

8. On 22 October 1997 the Court of Cassation upheld the judgment of the Dinar Civil Court of First Instance.

9. On an unspecified date, the applicant requested rectification of the Court of Cassation's decision.

10. On 8 December 1997 the Court of Cassation dismissed the applicant's request.

11. On 20 April and 19 July 1999 the Ministry paid the applicant TRL 6,242,830,425 in additional compensation together with interest.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

12. 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

13. The applicant complained that the additional compensation for expropriation, which he had obtained from the authorities after eight months 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 accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

### A. Admissibility

14. The Government asked the Court, firstly, to dismiss the application as inadmissible for failure to comply with the six-month time-limit under Article 35 of the Convention. For the purposes of that provision, time had started to run on 20 April 1999. However, the applicant had not lodged his application with Court until 7 January 2000, that is eight months and seventeen days after the payment of the additional compensation awarded by the Dinar Civil Court of First Instance.

15. The Court observes that while the applicant received the additional compensation awarded by the first-instance court on 20 April 1999, payment of the interest was finally made by the authorities on 19 July 1999. By lodging his application with the Court on 7 January 2000, the applicant complied with the requirement set out in Article 35 of the Convention. This preliminary objection must therefore be dismissed.

16. It finds that, in the light of the principles it has established in its case-law (see, among other authorities, *Akkus v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV) 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

17. 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 *Akkus*, cited above, p. 1317, § 31, and *Aka*, cited above, p. 2682, §§ 50-51).

18. 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 to sustain 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 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.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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**

21. The applicant sought compensation for pecuniary damage in the sum of 12,181 German marks (DEM). He also claimed compensation for non-pecuniary damage of DEM 1,500.

22. The Government contested his claims.

23. 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 applicant 4,850 euros (EUR) for pecuniary damage.

24. The Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

### **B. Costs and expenses**

25. The applicant also claimed 2,000 new Turkish liras (YTL) for the costs and expenses incurred before the Court.

26. The Government made no observations on this point.

27. Making its own estimate based on the information available, the Court considers it equitable to award the applicant the global 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;
3. *Holds* that finding a violation constitutes a sufficient satisfaction for non-pecuniary damage;

4. *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 new Turkish liras at the rate applicable at the date of settlement:

(i) EUR 4,850 (four thousand eight 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;

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

Done in English, and notified in writing on 22 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Boštjan M. ZUPANČIČ  
President