



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

SECOND SECTION

CASE OF KELALI AND OTHERS v. TURKEY

(Application no. 67585/01)

JUDGMENT

STRASBOURG

24 January 2006

FINAL

24/04/2006

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 Kelali 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,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 67585/01) 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 Ms Müstakime Kelali, Ms Şengül Akın, Ms Atiye Demir, Ms Hatice Kuş, Ms Ayşe Köse, Ms Şenel Tabur, Mr Levent Kelali, Mr Ahmet Metin Kelali, Mr Durmuş Çetin Kelali, Mr İbrahim Ethem Kelali and Mr Tekin Kelali (“the applicants”) on 15 November 2000.

2. The applicants were represented by Mr Mahmut Akdoğan, a lawyer practising in Mersin. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 15 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 applicants live in Mersin.

5. On 27 March 1996 the General Directorate of National Roads and Highways expropriated two plots of land belonging to the applicants in Mersin in order to build a motorway. 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 14 October 1997 the Mersin Civil Court of First-instance awarded them additional compensation of 1,503,941,200 Turkish liras (TRL), plus interest at the statutory rate, applicable at the date of the court's decision, running from 25 May 1994, the date of the seizure of the plots by the General Directorate of National Roads and Highways.

7. On 16 February 1999 the Court of Cassation upheld the judgment of the Mersin Civil Court of First-instance.

8. On 16 May 2000 the General Directorate of National Roads and Highways paid the applicants TRL 4,442,320,000 (approximately 7,694 euros (EUR), interest included).

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. 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

10. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities after almost three 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. They relied on Article 1 of Protocol No. 1, which reads in so far 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.”

A. Admissibility

11. The Government asked the Court to dismiss the application as inadmissible for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. For the purposes of that provision, time had started to run on 16 February 1999. However, the applicants had not

lodged their application with Court until 15 November 2000, which is almost one year and nine months after the final domestic decision.

12. The Court notes that the complaint before it concerns solely the authorities' delay in paying the additional compensation and the damage sustained by the applicants as a result.

13. Payment was finally made by the authorities on 16 May 2000. By lodging their application with the Court on 15 November 2000, the applicants complied with the requirement set out in Article 35 § 1 of the Convention. The preliminary objection of the Government must therefore be dismissed.

14. The Court finds that, in the light of the principles it has established in its case-law (see, among other authorities, *Akkus v. Turkey*, 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

15. 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).

16. 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 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicants also complained under Article 6 § 1 of the Convention of the unreasonable length of the court proceedings.

A. Admissibility

19. The Government requested the Court to declare this complaint inadmissible for non-compliance with the six-month rule since the Court of Cassation upheld the first-instance court's judgment on 16 February 1999, whereas the application was lodged with the Court on 15 November 2000,

which is more than six months after the final decision in domestic law was given.

20. The Court reiterates that it has accepted in cases concerning length of proceedings the principle that enforcement of a judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 (see the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1383-1384, §§ 20-24, and pp. 1410-1411, §§ 16-20 respectively).

21. The Court observes that the additional compensation awarded by the domestic courts was paid to the applicants on 16 May 2000. It therefore considers that the “determination” within the meaning of Article 6 ended on that date. The Court notes that the application was lodged on 15 November 2000, that is within six months of the payment.

22. In the light of the foregoing, the Court dismisses the Government’s preliminary objection.

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

24. In the light of its findings with regard to Article 1 of Protocol No. 1, the Court considers that no separate examination of the case under Article 6 § 1 is necessary.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants sought compensation for pecuniary damage in the sum of 10,563 United States dollars (USD) (approximately EUR 8,553). They also claimed compensation for non-pecuniary damage of USD 5,000 (approximately EUR 4,043).

27. The Government contested their claims.

28. Using the same method of calculation as in the *Akkus* judgment (cited above, p. 1311, §§ 35-36 and 39) and having regard to the relevant

economic data, the Court awards the applicants, jointly, EUR 3,862 for pecuniary damage.

29. The Court considers that the finding of a violation of Article 1 of Protocol No. 1 constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

30. The applicant also claimed USD 292.02 (approximately EUR 236) for the costs and expenses incurred before the domestic courts and USD 42 (approximately EUR 35) for the proceedings before the Court.

31. The Government contested those claims.

32. According to the Court's case-law, an applicant is entitled to reimbursement of 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 35 for the proceedings before the Court.

C. Default interest

33. 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* that it is unnecessary to examine separately the complaint under Article 6 § 1 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
5. *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 amounts, to be converted into New Turkish liras at the rate applicable at the date of settlement:

- (i) EUR 3,862 (three thousand eight hundred and sixty-two euros) in respect of pecuniary damage;
 - (ii) EUR 35 (thirty-five euros) in respect of costs and expenses;
 - (iii) any taxes that may be chargeable on the above amounts;
- (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President