



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

THIRD SECTION

CASE OF REÇBER v. TURKEY

(Application no. 52895/99)

JUDGMENT

STRASBOURG

2 February 2006

FINAL

02/05/2006

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 Reçber v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr L. CAFLISCH,

Mr R. TÜRMEŒ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 52895/99) 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, Ms Aysel Reçber (“the applicant”), on 13 September 1999.

2. The applicant was represented by Ms Nurhan Baylav, a lawyer practising in İstanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 10 March 2004 the Court (Third Section) decided to communicate the application to the Government. In a letter of 12 March 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 applicant was born in 1954 and lives in İstanbul.

5. On 14 December 1995 the Kocaeli Provincial Private Administration Office (*Kocaeli İl Özel İdare Müdürlüğü*) expropriated a plot of land belonging to the applicant. A committee of experts assessed the value of the plot and the relevant amount was paid to her when the expropriation took place.

6. Following the applicant's request for increased compensation, on 20 February 1998 the Gebze Civil Court of First-instance awarded her an additional compensation of 3,189,159,368 Turkish liras (TRL) plus interest at the statutory rate applicable at the date of the court's decision.

7. On 24 November 1998 the Court of Cassation upheld the judgment.

8. On 2 March 1999 the Court of Cassation rejected the applicant's request for rectification.

9. On 6 October 1999 the Kocaeli Provincial Private Administration paid the amount of TRL 7,049,472,900 to the applicant, interest included.

10. On 13 September 1999 the applicant lodged an application with the Court.

11. After the application was communicated to the Government, the applicant was requested to submit her observations on the merits of the case and also her just satisfaction claims until 9 September 2004. However, she failed to submit her observations within the required time-limit. She did not request any extension of time, either.

12. By registered letter of 29 May 2005 the applicant was informed that the Court had not received her observations and just satisfaction claims and that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

13. On 7 June 2005 the applicant submitted her observations on the merits of the case. However, she failed to submit her claims for just satisfaction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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

15. The applicant complained that the additional compensation for expropriation, which she had obtained from the authorities after more than two years and two 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. She relied on 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.”

A. Admissibility

16. The Government submitted that the applicant had not exhausted domestic remedies as required by Article 35 of the Convention, since she had failed to make proper use of the remedy available to her under Article 105 of the Code of Obligations. Under that provision, she would have been eligible for compensation for the loss allegedly sustained as a result of the delay in payment of the additional compensation had she established that the loss exceeded the amount of default interest. The Government further claimed that the damage allegedly suffered by the applicant had been caused by the legal interest rates. They argued that in the course of the proceedings before the domestic courts the applicant had already agreed to the application of the legal interest rates to her case and that therefore she could not be said to have raised her Convention grievances before the domestic authorities.

17. As to the first limb of the Government’s submissions, the Court observes that it dismissed a similar 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.

18. As to the second limb of the Government’s submissions, the Court notes that the legal interest rates applied to State debts are prescribed by law. Thus, it is obvious that even if the applicant had raised his complaint concerning the legal interest rates before the domestic authorities, she would not have been compensated (see *Çiloğlu and Others v. Turkey*, no. 50967/99, § 19, 28 October 2004).

19. The Court considers that, in the light of its findings in Turkish cases similar to the present one (see, among other authorities, the aforementioned *Aka* judgment) and of all the evidence before it, this application requires examination on the merits and that there are no grounds for declaring it inadmissible.

B. Merits

20. 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 *Aka*, cited above, p. 2682, §§ 50-51).

21. 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 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 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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.”

24. The Court points out that, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with any relevant supporting documents within the time-limit fixed for the submission of the applicant’s observations on the merits and that failure to comply with these requirements may result in the Chamber’s rejection of the claim in whole or in part.

25. In the instant case, on 12 July 2004, after receiving the Government’s observations on the admissibility and merits of the application, the applicant was invited to submit her observations and her claims for just satisfaction by 9 September 2004. On 29 May 2005 the applicant was informed that the Court had not received her observations and just satisfaction claims and that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. On 7 June 2005 she merely submitted her observations on the merits of the case and failed to submit her claims for just satisfaction. In these circumstances, the Court makes no award under Article 41 of the Convention.

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. *Dismisses* the applicant’s claim for just satisfaction.

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

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President