



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

THIRD SECTION

CASE OF YAYAN v. TURKEY

(Application no. 66848/01)

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 Yayan 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. 66848/01) 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 Hasan Yayan (“the applicant”), on 16 November 2000.

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

3. On 7 October 2004 the Court (Third Section) decided to communicate the application to the Government. In a letter of 7 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

4. The applicant was born in 1942 and lives in Antalya.

5. On 9 July 1997 the General Directorate of National Airports 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 him when the expropriation took place.

6. Following the applicant's request for increased compensation, on 20 March 1998 the Antalya Civil Court of First-instance awarded him additional compensation plus interest at the statutory rate.

7. On 16 June 1998 the Court of Cassation quashed the judgment.

8. On 20 December 1999 the Antalya Civil Court of First-instance awarded the applicant an additional compensation of 3,184,691,136 Turkish liras (TRL) plus interest at the statutory rate applicable at the date of the court's decision running from 18 December 1997, the date on which the title deed to the land had been transferred to the General Directorate of National Airports.

9. On 4 April 2000 the Court of Cassation upheld the judgment of the First-instance court.

10. On 18 May 2000 the Court of Cassation rejected the parties' request for rectification.

11. On 20 July 2000 the General Directorate of National Airports paid the amount of TRL 7,636,830,000 to the applicant.

12. After the application was communicated to the Government, the applicant was requested to submit his observations on the merits of the case and also her just satisfaction claims until 23 March 2005. However, he failed to submit them within the required time-limit. He did not request any extension of time, either.

13. By registered letter of 27 May 2005 the applicant was informed that the Court had not received his observations and just satisfaction claims and that the Court might strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant did not intend to pursue the application.

14. On 8 August 2005 the applicant submitted his observations containing his just satisfaction claims.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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

16. The applicant complained that the additional compensation for expropriation, which he had obtained from the authorities after more than

two years and four 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 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

17. The Government maintained that the applicant had not exhausted domestic remedies as required by Article 35 of the Convention, as he had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations. Under that provision, he would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if he had established that the losses exceeded the amount of default interest.

18. The Court observes that it dismissed a similar objection in the case of *Aka* (cited above, pp. 2678-79, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government’s objection.

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

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 23 February 2005, after receiving the Government’s observations on the admissibility and merits of the application, the applicant was invited to submit his claims for just satisfaction, but he did not do so within the required time-limit. On 27 May 2005 the applicant was informed that the Court had not received his observations and just satisfaction claims and the Court might strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant did not intend to pursue the application. However, the applicant did not react to the Court’s warning letter for three months and on 8 August 2005 he submitted his observations and just satisfaction claims. In these circumstances, the Court considers that the applicant failed to comply with the time-limits and to display due diligence in submitting his observations and just satisfaction claims. Accordingly, 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