CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF YUSUF GENÇ v. TURKEY

(Application no. 44295/98)

JUDGMENT

STRASBOURG

7 February 2006

FINAL

07/05/2006

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 Yusuf Genç 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. TÜRMEN,
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 17 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 44295/98) 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 a Turkish national, Mr Yusuf Genç ("the applicant"), on 1 July 1998.

2. The applicant was represented by Mr M. Sözer, 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 16 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 §§ 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 1929 and lives in Mersin.

5. The General Directorate of National Roads and Highways (*Devlet Karayolları Genel Müdürlüğü*), a State body responsible, *inter alia*, for motorway construction, expropriated four plots of land belonging to the applicant in İçel in order to build a motorway. A committee of experts

assessed the value of the land and the sum so fixed was paid to him when the expropriation took place.

6. On 26 December 1995 the applicant requested increased compensation. Accordingly, on 13 November 1996 the Mersin Civil Court of First Instance awarded him additional compensation of 4,500,000,000 Turkish liras (TRL) (approximately 35,976 euros (EUR)), plus interest at the statutory rate applicable at the date of the court's decision, running from 26 December 1995.

7. On 2 February 1998 the Court of Cassation upheld the judgment of 13 November 1996.

8. On 13 April 1998 the administration paid the applicant TRL 8,475,906,000 (approximately EUR 31,684) in additional compensation, together with interest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. 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

10. The applicant complained that the additional compensation for expropriation, which he had obtained from the authorities only after 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 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

11. The Government maintained that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, because 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.

12. 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.

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

14. 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, § 31, and *Aka*, cited above, §§ 50-51).

15. Having examined the facts and arguments presented by the Government and the applicant, the Court considers that there is nothing to warrant a departure from its findings in the previous cases. It finds that, as a result of the delay in paying the compensation, the low interest rates and the length of the proceedings as a whole, 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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 damage

18. The applicant claimed for pecuniary damage a sum of 43,773.02 United States dollars (USD) (EUR 35,856), plus interest for the loss he has endured since 13 April 1998.

19. The Government contested his claim.

20. Using the same method of calculation as in the *Aka* judgment (cited above, §§ 55-56) and having regard to the relevant economic data and the applicant's claim, the Court awards the applicant EUR 61,000 for pecuniary damage.

B. Costs and expenses

21. The applicant also claimed reimbursement of the costs and expenses incurred before the Commission and the Court, but left the amount to the discretion of the Court. He did not produce any supporting documents.

22. The Government did not make any comment on the applicant's claim.

23. Making its own estimate based on the information available, the Court considers it equitable to award the applicant the global sum of EUR 1,000 under this head.

C. Default interest

24. 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 applicant within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following global sums plus any tax 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 61,000 (sixty-one 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President