



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

SECOND SECTION

CASE OF KUTLU v. TURKEY

(Application no. 65914/01)

JUDGMENT

STRASBOURG

4 July 2006

FINAL

04/10/2006

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 Kutlu v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 65914/01) 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, Hüseyin Hikmet Kutlu (“the applicant”), on 23 June 1999.

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

3. On 20 March 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 1922 and lives in İstanbul.

5. In 1997 the Bakırköy Municipality expropriated land (plot nos. 154/36 and 154/3) belonging to the applicant in İstanbul. A committee of experts assessed the value of the land and the relevant amount was paid to the applicant when the expropriation took place.

6. On 9 January 1997 the applicant filed two separate actions for additional compensation with the Bakırköy Civil Court of First Instance.

7. In respect of plot no. 154/36, the first-instance court, on 16 October 1997, awarded the applicant additional compensation of 1,768,970,000 Turkish liras (TRL) (approximately 8,840 euros (EUR)), plus interest at the statutory rate, applicable at the date of the court's decision, running from 10 January 1997. On 31 March 1998 the Court of Cassation upheld the judgment of the first-instance court. On 21 October 1998 the Municipality's request for a rectification of the decision was dismissed by the Court of Cassation. This latter decision was served on the applicant on 30 November 1998.

8. In respect of plot no. 154/3, the first-instance court, on 20 May 1998, awarded the applicant additional compensation of TRL 6,487,209,968 (approximately EUR 23,000), plus interest at the statutory rate, applicable at the date of the court's decision, running from 9 January 1997. On 1 December 1998 the Court of Cassation upheld the judgment of the first-instance court. On 10 June 1999 the Municipality's request for a rectification of the decision was dismissed by the Court of Cassation. This latter decision was served on the applicant on 2 August 1999.

9. In the meantime, on 7 April 1999 the Municipality paid the applicant, in total, TRL 15,972,726,000 (approximately EUR 39,438) covering additional compensation, interest, costs and expenses.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The relevant domestic law and practice are outlined in the *Aka v. Turkey* judgment of 23 September 1998 (*Reports of Judgments and Decisions* 1998-VI, §§ 17-25), and *Akkuş v. Turkey* judgment of 9 July 1997 (*Reports* 1997-IV, §§ 13-16).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

11. The applicant complained that the rate of interest for delays, payable on the additional compensation for expropriation, was too low and that the expropriating authority had further delayed in settling the relevant amounts. 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

12. The Government maintained that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention since he did not raise the substance of his complaint before the domestic courts and had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations. The Government further maintained that the applicant had failed to comply with the six-month rule. In this regard, they submitted that the applicant should have lodged his complaint with the Court within six months following the Court of Cassation’s decision.

13. The applicant refuted the allegations of the Government.

14. The Court reiterates that it has already examined and rejected the Government’s similar preliminary objections (see, in particular, *Acar v. Turkey*, no. 52133/99, §§ 13-14, 13 September 2005, and *Kelali and Others v. Turkey*, no. 67585/01, §§ 12-13, 24 January 2006). The Court finds no particular circumstances, in the instant case, which would require it to depart from its findings in the above-mentioned cases. Consequently, the Court rejects the Government’s preliminary objections.

15. It finds that, in the light of the principles it has established in its case-law (see, among other authorities, *Akkuş and Aka*, cited above) and of all the evidence before it, this complaint requires examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

16. The Court has found a violation of Article 1 of Protocol No. 1 in a number of cases raising similar issues to those arising here (see, in particular, *Akkuş*, cited above, §31, and *Aka*, cited above, §§ 50-51).

17. 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 the protection of the right to the peaceful enjoyment of possessions.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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. Damage

20. The applicant claimed 34,258 United States dollars (USD), (approximately EUR 26,490) and USD 1,000 (approximately EUR 773) in respect of pecuniary and non-pecuniary damage respectively.

21. The Government contested these claims.

22. Using the same method of calculation established in the *Aka and Akkuş* judgments (cited above, §§ 55-56, and §§ 35-36 and 39, respectively), and having regard to the relevant economic data and the applicant’s claim, the Court awards the full amount claimed by the applicant in respect of pecuniary damage.

23. 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

24. The applicant also claimed USD 2,000 (approximately EUR 1,547) for the costs and expenses incurred both before the domestic courts and before the Court.

25. The Government contested his claims.

26. 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 considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C. Default interest

27. 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 to the Convention;
3. *Holds* that finding a violation constitutes sufficient just satisfaction for any 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 amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 26,490 (twenty six thousand four hundred and ninety euros) in respect of pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President