CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF UYANIK v. TURKEY

(Application no. 49514/99)

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 Uyanık 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. TÜRMEN,
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. 49514/99) 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 Mehmet Ali Uyanık ("the applicant") on 6 July 1998.

2. The applicant was represented before the Court by Mr Selahattin Sarıkaya, a lawyer practising in Ankara. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 17 June 2003 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 applicant was born in 1937 and lives in Ankara.

5. On an unspecified date in 1990 the General Directorate of National Roads and Highways expropriated a plot of land belonging to the applicant in Ankara in order to build the Ankara Central Motorway. The authorities

paid him the value of the land, assessed by a committee of experts, when the expropriation took place.

6. Following the applicant's request, on 21 December 1993 the Ankara Civil Court awarded him additional compensation plus interest at the statutory rate applicable.

7. On 20 June 1994 the Court of Cassation upheld that judgment.

8. On 4 February 1998 the amount of 3,600,000,000 Turkish liras (TRL) was paid to the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. The relevant domestic law and practice are set out in the case of *Akkuş v. Turkey* (judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, §§ 13-16).

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 only obtained from the authorities in February 1998, had fallen in value, since the default interest payable had not kept pace with the high rate of inflation in Turkey. He 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 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

12. 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*, cited above, p. 1317, § 31).

13. 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 owner to sustain 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 the protection of the right to the peaceful enjoyment of possessions.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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

16. In his observations concerning just satisfaction, the applicant reiterated his earlier claims contained in his application form and sought compensation for pecuniary damage in the sum of 25,026 US dollars (USD). He also claimed compensation for non-pecuniary damage in the amount of TRL 2,000,000,000.

17. The Government contested these amounts and asked the Court to award no just satisfaction.

18. Using the same method of calculation as in the *Akkuş* judgment and having regard to the relevant economic data, the Court awards the applicant the amount claimed in full, i.e., 20,700 euros (EUR) for pecuniary damage.

19. The Court considers that the finding of a violation of Article 1 of Protocol No. 1 constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

20. The applicant also claimed the amount of TRL 1,000,000,000 for the costs and expenses incurred before the domestic courts and the Court.

21. The Government contested this amount and asked the Court to award no compensation for costs and expenses.

22. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant the sum of EUR 500 under this head.

C. Default interest

23. 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;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

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 sums, to be converted into New Turkish liras at the rate applicable at the date of settlement:
      (i) EUR 20,700 (twenty thousand seven hundred euros) in respect of pecuniary damage;
      (ii) EUR 500 (five hundred 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 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President