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

FIFTH SECTION

CASE OF ACUN AND YUMAK v. TURKEY

(Application no. 67112/01)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

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 Acun and Yumak v. Turkey,

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

Mr P. Lorenzen, *President*,
Mr R. Türmen,
Mr K. Jungwiert,
Mr V. Butkevych,
Mrs M. Tsatsa-Nikolovska,
Mr J. Borrego Borrego,
Mrs R. Jaeger, *judges*,
and Mrs C. Westerdiek, *Section Registrar*,

Having deliberated in private on 3 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 67112/01) 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 two Turkish nationals, Ms Dudu Acun and Mr Ahmet Yumak (“the applicants”) on 26 January 2001.

2. The applicants were 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 5 April 2004 the Court decided to communicate the application to the Government. In a letter of 8 April 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1944 and 1951 respectively and live in Antalya.

6. On 10 December 1997 the General Directorate of National Airports expropriated a plot of land belonging to the applicants. A committee of

experts assessed the value of the plot of land and the relevant amount was paid to the applicants when the expropriation took place.

7. On 30 December 1997 the applicants filed an action with the Antalya Civil Court of First-instance requesting additional compensation. On 20 April 1998 the First-instance court awarded them additional compensation plus interest at the statutory rate.

8. On 21 February 2000 the Court of Cassation quashed the judgment of the Antalya Civil Court of First-instance, finding that the amount awarded was too high.

9. On 22 December 2000 the Antalya Civil Court awarded the applicants additional compensation of 8,185,550,750 Turkish Liras (TRL) (approximately 5,100 euros (EUR)) plus interest at the statutory rate applicable at the date of the court's decision, running from 19 December 1997, the date on which the title deed to the land had been transferred. The judgment of the court became final on 18 January 2001.

10. On 12 January 2001 the authorities paid the applicants the sum of TRL 21,896,872,000 (approximately EUR 13,700), including interest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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

12. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities only after three years 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. They 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

13. The Government asked the Court, firstly, to dismiss the application since the applicants had failed to fulfil the requirement of having a victim status. They alleged that since the additional compensation had been paid twenty-one days after the judgment became final, the applicants had not suffered any delay. They further asserted that the applicants had failed to exhaust the domestic remedies available to them since they had not appealed to the Court of Cassation for the allegedly low amount of additional compensation.

14. The Court notes that the applicants' complaint concerns the time elapsed between the expropriation of the plot of land and the payment of the additional compensation. It observes that, subsequent to their request, the domestic courts awarded the applicants an additional compensation, which could have been considered satisfactory only if it had been paid within a reasonable time following the expropriation of the plot of land. Having regard to the fact that the applicants lodged an action with the domestic courts on 30 December 1997, it appears that the additional compensation was paid to the applicants more than three years after they requested compensation.

15. As to the applicants' failure to appeal against the judgment of 22 December 2000, the Court is of the opinion that it cannot be expected from the applicants to appeal against a judgment in their favour. Furthermore, the Court observes that the applicants do not complain about the amount of additional compensation. They rather complain of the loss that they had sustained as a result of the delay in payment of the additional compensation.

16. In light these considerations, the Court dismisses the Government's objections as to the applicants' victim status.

17. Lastly, the Government maintained that the applicants had not exhausted domestic remedies as required by Article 35 of the Convention, as they had failed to make proper use of the remedy available to them under Article 105 of the Code of Obligations. Under that provision, they would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if they 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 v. Turkey* (judgment of 23 September 1998, *Reports* 1997-VI, pp. 2678-79, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

19. Thus, in light of the principles it has established in its case-law (see, among other authorities, *Aka v. Turkey*, cited above) and of all the evidence before it, the Court considers that 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 owners 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 applicants have 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."

A. Pecuniary and non-pecuniary damage

24. The applicants sought compensation for pecuniary damage in the sum of 5,292 United States dollars (USD). They also claimed compensation for non-pecuniary damage in the amount of USD 10,000.

25. The Government contested their claims.

26. Using the same method of calculation as in the *Aka* judgment (cited above, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants the amount claimed in full for pecuniary damage, i.e. EUR 4,400.

27. 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 applicants.

B. Costs and expenses

28. The applicants also claimed USD 900 for the costs and expenses incurred before the Court.

29. The Government contested those claims.

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

C. Default interest

31. 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 non-pecuniary damage sustained by the applicants;

4. *Holds*

   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums plus any tax, stamp duty or imposts that may be chargeable at the date of payment, to be converted into Turkish liras at the rate applicable at the date of settlement:

      (i) EUR 4,400 (four thousand four hundred euros) in respect of pecuniary damage;

      (ii) EUR 500 (five hundred 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;

5. *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK	Peer LORENZEN
Registrar	President