



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

FIFTH SECTION

CASE OF KIR AND OTHERS v. TURKEY

(Application no. 67145/01)

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 Kır and Others v. Turkey,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr R. TÜRMEK,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSAS-NIKOLOVSKA,

Mr R. MARUSTE, *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. 67145/01) 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 five Turkish nationals, Ms Habibe Kır, Ms Feriştah Çenesiz, Mr Hasan Çenesiz, Ms Fatma Ekiz and Mr Ali Çenesiz (“the applicants”), on 19 November 2000.

2. The applicants were represented by Mr Mahmut Akdoğan, 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 30 September 2004 the Court (Third Section) declared the application inadmissible in respect of Mr Ali Çenesiz and decided to communicate the application to the Government in respect of the rest of the applicants. 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.

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 Ms Habibe Kır, Ms Feriştah Çenesiz, Mr Hasan Çenesiz and Ms Fatma Ekiz were born in 1926, 1941, 1951 and 1951 respectively and live in Mersin.

6. On 17 December 1992 the General Directorate of National Roads and Highways expropriated plots of land belonging to the applicants in Mersin in order to build a motorway. A committee of experts assessed the value of the plots and the relevant amounts were paid to them when the expropriation took place.

7. On 28 December 1994, following the applicants' requests for increased compensation, the Mersin Civil Court awarded them an additional compensation of 131,387,300 Turkish liras (TRL) plus interest at the statutory rate, applicable at the date of the court's decision, running from the date of transfer of title deeds of the plots of land.

8. On 14 September 1998 the Court of Cassation upheld the judgment of the Mersin Civil Court.

9. On 22 June 2000 the General Directorate of National Roads and Highways paid the amount of TRL 556,290,000 to the applicants, interest included.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. 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).

THE LAW

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

11. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities after more than three years and eight 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. 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

12. The Court finds that, in the light of the principles it has established in its case-law (see, among other authorities, *Akkus*, 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

13. 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 *Akkus*, cited above, p. 1317, § 31).

14. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

16. The applicants also complained under Article 6 § 1 of the Convention of the unreasonable length of the court proceedings.

A. Admissibility

17. 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

18. In the light of its findings with regard to Article 1 of Protocol No. 1, the Court considers that no separate examination of the case under Article 6 § 1 is necessary.

III. 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. Pecuniary and non-pecuniary damage

20. The applicants sought compensation for pecuniary damage in the sum of 11,409 US dollars (USD). They also claimed compensation for non-pecuniary damage of USD 5,000.

21. The Government contested their claims.

22. Using the same method of calculation as in the *Akkuş* judgment (cited above, p. 1311, §§ 35-36 and 39) and having regard to the relevant economic data, the Court awards the applicants 397 euros (EUR) for pecuniary damage.

23. 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.

24. The applicants also claimed USD 1,552¹ for the legal fees, costs and expenses incurred before the Court.

25. The Government contested those claims.

26. The Court considers that the claimed costs and expenses were necessarily and actually incurred and are fully documented. Accordingly, the Court considers that the applicants should be awarded the full amount claimed.

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.

¹ Approximately EUR 1,300.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *Holds* that, given its finding of a violation of Article 1 of Protocol No. 1, it is unnecessary to examine the complaint under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 that may be chargeable, to be converted into New Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 397 (three hundred ninety seven euros) in respect of pecuniary damage;
 - (ii) EUR 1,300 (one thousand three 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
Registrar

Peer LORENZEN
President