



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

FIFTH SECTION

CASE OF MEMETALİ¹ GÜNDÜZ v. TURKEY

(Application no. 27633/02)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

12/02/2007

This version was rectified on 29 May 2007 under Rule 81 of the Rules of Court

¹ The applicant's first name reading "Mehmet Ali" was changed.

In the case of Memetali¹ Gündüz v. Turkey,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

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. 27633/02) 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, Mr Memetali¹ Gündüz, (“the applicant”) on 1 April 2002.

2. The applicant was represented before the Court by Mrs Günay Çelik, a lawyer practising in İstanbul.

3. On 20 June 2005 the Court (Third Section) 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.

4. On 10 February 2006 the Government made a friendly settlement proposal, which the applicant rejected with a letter from his representative, dated 6 March 2006.

5. 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

6. The applicant was born in 1931 and lives in İzmit.

¹ Rectified on 29 May 2007. The applicant’s first name reading “Mehmet Ali” was changed.

7. On 18 November 1981 the General Directorate of National Water Board (*Devlet Su İşleri Genel Müdürlüğü*) seized and later expropriated three plots of land belonging to the applicant for the construction of a dam. A committee of experts assessed the value of the plots and the relevant amount was deposited with a bank in the name of the applicant on 23 June 1982. However, the expropriation order and the document containing the information about the compensation were not served on the applicant.

8. On 1 May 1998 the applicant filed an action with the Akyaka Civil Court requesting compensation for seizure without an official expropriation (*kamulaştırmasız el koyma*). The court established that although the applicant was not notified, a *de facto* expropriation had taken place.

9. After conducting two on-site visits and taking two separate sets of expert reports into consideration, the court established what the then-current value of land would have been had the expropriation not taken place. On 14 October 1999 it awarded the applicant a corresponding in additional compensation plus interest at the statutory rate running from 1 May 1998, the date of the applicant's filing of that case. As the compensation amount was based on the then-current value of the land, and not on its 1981 value, the court rejected the applicant's request to run the interest from the date of the seizure.

10. On 10 October 2000 the Court of Cassation upheld the judgment. On 8 February 2001 the same court rejected a request for rectification.

11. On 24 October 2001 the due amount was paid to the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. 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

13. The applicant complained that the additional compensation for expropriation, which he had obtained from the authorities only by October 2001, had fallen in value, since the default interest payable had not kept pace with the high rate of inflation in Turkey.

He further complained under the same heading that the interest at the statutory rate had started to run from 1 May 1998 despite the fact that he had been deprived of his property rights on 18 November 1981.

He 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

14. The Government asked the Court to dismiss these complaints as inadmissible for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. The Government noted that the applicant lodged his application not within six months from the final domestic ruling but from its enforcement.

15. On numerous occasions, the Court has dismissed the same preliminary objection in earlier cases that followed the *Akkuş* jurisprudence cited above. It finds no reason in the present case that would warrant a departure from its well-established admissibility case law.

16. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 is twofold. First, he complains that the default interest had run from the filing of his case with the first instance court, and not from the *de facto* expropriation. He argued that the assessment should have taken into account the rate of inflation in Turkey from the expropriation in 1981 until the payment in 2001.

17. The Court notes that the applicant could have reasonably expected the statutory interest to run from the expropriation in 1981 if the much-lower value in 1981 had been taken as the basis on which to accrue interest. It is clear however that the assessment took into account the then-current value of the land – supposing that the expropriation had not taken place.

18. It follows that this limb of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

19. The second limb of the complaint concerns solely the authorities' delay in paying the additional compensation and the damage sustained by the applicant as a result. The Court finds that, in the light of the principles it has established in its case-law (see, among other authorities, *Akkuş*, 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

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

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 the additional compensation awarded by the domestic courts was attributable to the expropriating authority and caused the owner 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 applicant 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 applicant sought compensation for pecuniary damage in the sum of 136,000 euros (EUR). He also claimed compensation for non-pecuniary damage of EUR 10,000.

25. The Government contested his claims.

26. Using the same method of calculation as in the *Akkus* judgment (cited above, p. 1311, §§ 35-36 and 39) and having regard to the relevant economic data, the Court awards the applicant EUR 13,671 for pecuniary damage.

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

B. Costs and expenses

28. The applicant also claimed EUR 6,000 for the costs and expenses.

29. The Government contested this claim.

30. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant the sum of EUR 1,000 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 complaint under Article 1 of Protocol No. 1 inadmissible insofar as it relates to the accrual of statutory interest from the filing of the domestic application;
2. *Declares* the complaint under Article 1 of Protocol No. 1 admissible insofar as it relates to the authorities' delay in paying additional compensation;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
5. *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 13,671 (thirteen thousand six hundred and seventy-one 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;
6. *Dismisses* the remainder of the applicant's claims 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