CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF İHSAN AND SATUN ÖNEL v. TURKEY

(Application no. 9292/02)

JUDGMENT

STRASBOURG

21 September 2006

FINAL

12/02/2007

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 İhsan and Satun Önel v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 31 August 2006,

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

PROCEDURE

1. The case originated in an application (no. 9292/02) 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 two Turkish nationals, Mr İhsan Önel and Mrs Satun Önel, are Turkish nationals who were born in 1949 and 1948 respectively and live in Malatya.

2. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 13 December 2005 the Court decided to communicate the application to the Government. Under 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 General Directorate of the National Water Board expropriated two plots of land belonging to the applicants, for the construction of a dam.

5. On 6 October 1998, following the first applicant's request for increased compensation for the plot no. 484, the Baskil Civil Court of General Jurisdiction awarded him 14,241,020,000 Turkish liras (TRL) of additional compensation, plus an interest at the statutory rate, as of 22 June 1998.

6. On 4 March 1999 the Court of Cassation upheld the decision of the first instance court. On 9 February 2002 and 1 May 2003 TRL 25,281,500 and TRL 901,930 were paid to the applicant respectively.

7. On 14 February 2000 the second applicant filed a similar request with the Baskil Civil Court of General Jurisdiction, regarding the plot no. 311.

8. On 29 November 2000 the court accepted the applicant's request for increased compensation and awarded her TRL 46,396,000,000 of additional compensation, plus an interest at the statutory rate, as of 14 February 2000. On 14 February 2000 and 5 April 2001, TRL 172,512,450,000 and TRL 3,976,900,000 were paid to the applicant respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. 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

10. The applicants complained under Article 1 of Protocol No. 1 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. Article 1 of Protocol No. 1 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

11. The Government maintained that the applicants had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention since they did not request the rectification of the decisions of the Court of

Cassation and did not initiate execution proceedings to receive the additional compensation awarded by the domestic courts.

12. As regards the first limb of the Government's objection the Court notes that in Turkish law, rectification of a judgment provided under Article 440 of the Code on Civil procedure is a special remedy against decisions of the Court of Cassation by which the court can be requested by either party to review its own judgments even in the absence of new evidence (see *Karaduman v. Turkey*, no. 16278/90, Commission decision of 3 May 1993, Decisions and Reports (DR) 74, p. 93). It reiterates that the applicants are not obliged to make use of remedies which do not provide redress for their complaints (see, among other authorities, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, p. 34, § 62). In the instant case, the Court notes that the Court of Cassation upheld the decision of the first instance court concerning the increased compensation for the expropriation of their lands. It therefore considers that in the circumstances of the present case, the rectification of the judgment was not an effective remedy for the applicants' complaint.

13. As regards the second limb of the Government's objection the Court recalls that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004).

14. It follows that in the present case the applicants were not required, under Article 35 of the Convention, to request rectification of the Court of Cassation's decision and to initiate execution proceedings in order to exhaust domestic remedies. It consequently dismisses the Government's preliminary objections.

15. Nonetheless the Court finds that the application must be declared partially inadmissible for the following reason.

16. The Court observes that the applicants were the owners of two separate plots of land. Regarding the plot no. 311, which belonged to the second applicant, the Court notes that applying the calculation method adopted in the judgment of *Akkuş v. Turkey* case (see *Akkuş*, cited above, § 35) on the date of the finalisation of the first instance court's judgment or within a reasonable period thereafter, the applicant should have received TRL 78,873,200,000. On the date of the payment the amount of full compensation should have been TRL 130,703,000,000. The applicant received TRL 176,489,350,000, which is more than the full compensation. In these circumstances, the Court is of the opinion that the total amount of money paid to the applicant was satisfactory.

17. Consequently, the second applicant cannot be regarded as have endured a loss due to the interest rates applied and the deferral of payment. The Court concludes that the complaint lodged by the second applicant, regarding the plot no. 311 is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

18. 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, it finds that the first applicant's complaint regarding the plot no. 484 requires examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

19. 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, § 31).

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The first applicant sought compensation for pecuniary damage in the sum of 41,992 United States dollars, together with the interest running from 6 October 1998. He also claimed compensation for non-pecuniary damage, but he left it to the discretion of the Court.

24. The Government contested his claim.

25. Using the same method of calculation as in the *Akkuş* judgment (cited above, §§ 35-36 and 39) and having regard to the relevant economic data, the Court awards the first applicant 41,000 euros for pecuniary damage.

26. 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 first applicant.

B. Costs and expenses

27. The first applicant made no claim under this head.

C. Default interest

28. 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 first applicant's complaint concerning his right to property admissible and the remainder of the application inadmissible;

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 first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 41,000 (forty-one thousand euros) in respect of pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President