



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

SECOND SECTION

CASE OF MÜRVEF FİDAN AND OTHERS v. TURKEY

(Application no. 48983/99)

JUDGMENT

STRASBOURG

26 September 2006

FINAL

26/12/2006

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 Mürvet Fidan and Others 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. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Mr D. POPOVIĆ, *judges*,

and Mrs S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 5 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 48983/99) 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, Mürvet Fidan, Murat Fidan, Hikmet Fidan, Zehra Fidan and Elif Özbilge (“the applicants”).

2. The applicants were represented by Mr Refik Timuçin Bektaş, a lawyer practising in Ankara.

3. On 26 October 2004 the Court declared the application partly inadmissible and decided to communicate the following complaints to the respondent Government:

- the national authorities' delay in paying additional compensation for expropriation and damage sustained by the applicants as a result of the low interest rate applied to State debts, despite the high inflation in Turkey;
- the length of the proceedings and the exceptional situation which was favourable to the State as a result of the difference between the rate of interest payable on unpaid debts owed *to* the State and the rate of interest on debts owed *by* the State at the material time; and
- the fact that the latter were not subject to enforcement procedures, unlike the former.

4. In a letter of 28 October 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. All of the applicants live in Baskil, Turkey.

6. On 19 July 1993 each of them brought separate actions before the Baskil Civil Court against the National Water Board. They alleged that their plots of land were illegally seized by the administration for a dam construction without any payment, and requested compensation.

7. On 18 November 1993 the court ruled that the cases should be characterised as compensation claims arising from *de facto* expropriations rather than claims for illegal seizures. The court established that a committee of experts had assessed the value of the expropriated land in advance and that the authorities had paid the resulting amounts to the owners registered in the local land registry. The court ordered the administration to pay the applicants an amount of increased compensation, plus interest at the statutory rate, starting from 1986 when the land was submerged in the waters of the dam.

8. On 6 October 1994 the Court of Cassation quashed these judgments, holding that the cases could not be characterised as compensation claims arising from expropriation. Upon the applicants' request, however, the Court of Cassation reversed its decision and held, on 10 March 1995, that the cases could in fact be characterised as compensation claims arising from expropriation. It proceeded to quash the judgments of the first-instance court only in respect of the date from which the statutory rate of interest began to run.

9. By decisions of 21 December 1995 and 25 January 1986, the Baskil Civil Court ordered the administration to pay the applicants a certain amount of compensation, plus interest running from 1986, despite the earlier rulings of the Court of Cassation regarding the starting date from which interest was to be calculated.

10. On 20 November 1996 the Plenary Court of Cassation quashed the judgments of the Baskil Civil Court. The same court rejected the applicants' rectification request on 2 May 1997.

11. On 9 October 1997 the Baskil Civil Court ordered the administration to pay the applicants 315,650,000, 297,439,800, 265,571,250, 404,680,000 and 708,190,000 Turkish liras (TRL) respectively, plus interest at the statutory rate running from 19 August 1993, the date on which the land was transferred to the National Water Board.

12. On 17 March 1998 the Court of Cassation upheld these judgments. On 2 April 1998 the Court of Cassation's rulings were served on the applicants.

13. On 9 December 1998 the administration paid TRL 934,027,000 to Ms Mürvet Fidan, 884,579,000 TRL to Mr Murat Fidan, TRL 790,746,000 to Mr Hikmet Fidan, TRL 1,190,092,000 to Ms Zehra Fidan and TRL 2,041,230,000 to Ms Elif Özbilge.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice are set out in the *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

15. The applicants complained that the additional compensation for expropriation, which they had obtained from the authorities only by December 1998, had fallen in value, since the statutory rate of interest had not kept pace with the 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

16. The Government did not submit any preliminary objections concerning this complaint.

17. The Court notes that, in the light of the principles it has established in its case-law (see, among other authorities, *Akkuş v. Turkey*, 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

18. 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. 2682, §§ 50-51).

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

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

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

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

A. Admissibility

22. The Government argued that the applicants had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, since they had not, at any stage of the proceedings, claimed that the length of the proceedings had exceeded the “reasonable time” limit.

23. The Court notes that, even if the applicants had complained about the length of proceedings before the domestic courts, they would not have been afforded adequate redress for that grievance. Thus, it dismisses the Government's preliminary objection.

24. 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

25. In the light of its findings with regard to Article 1 of Protocol No. 1 (paragraph 20 above), the Court does not consider that a separate examination of the merits of the case under Article 6 § 1 is necessary.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

26. Lastly, the applicants complained under Article 14, in conjunction with Article 1 of Protocol No. 1, of the difference between the rate of interest payable on debts owed *to* the State and the rate of interest payable

on debts owed *by* the State at the material time, and of the fact the latter were not subject to enforcement procedures.

Admissibility

27. The Court recalls that Article 14 is designed to safeguard individuals, or groups of individuals, placed in comparable situations, from all discrimination in the enjoyment of the rights and freedoms set forth in the Convention and the Protocols (see *National Union of Belgian Police v. Belgium*, judgment of 27 October 1975, Series A no. 19, p. 15, § 44). In other words, this Article affords protection against discrimination “among persons in relevantly similar situations” (see *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192, p. 15, § 60).

28. The applicants' complaint relates to a difference in treatment of the State and individuals in the context of their respective debts. However, the State and individuals cannot be considered to be “similarly situated persons”. Moreover, the applicants did not claim that the State discriminated against them *vis-à-vis* other individuals. The complaint therefore falls outside the scope of Article 14 and must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants sought compensation for pecuniary damage only. However they left the amount of compensation to the Court's discretion.

31. The Government made no observations on this point.

32. Using the same method of calculation as in the *Akkuş* judgment (cited above, pp. 2683-84, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants a total of 1,762 euros (EUR) for pecuniary damage, as follows:

- EUR 255 to Ms Mürvet Fidan;
- EUR 209 to Mr Murat Fidan;
- EUR 196 to Mr Hikmet Fidan;
- EUR 349 to Ms Zehra Fidan; and

- EUR 753 to Ms Elif Özbilge.

B. Costs and expenses

33. The applicants also requested the costs and expenses incurred before the Court and left the amount at the Court's discretion.

34. The Government made no observations on this point.

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

C. Default interest

36. 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 complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *Holds* that it is unnecessary to examine the merits of the complaint under Article 6 § 1 of the Convention separately;
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 Turkish liras at the rate applicable at the date of settlement:
 - (i) in respect of pecuniary damage
 - EUR 255 (two hundred and fifty-five euros) to Ms Mürvet Fidan;
 - EUR 209 (two hundred and nine euros) to Mr Murat Fidan;
 - EUR 196 (one hundred and ninety-six euros) to Mr Hikmet Fidan;
 - EUR 349 (three hundred and forty-nine euros) to Ms Zehra Fidan;
 - EUR 753 (seven hundred and fifty-three euros) to Ms Elif Özbilge;

- (ii) EUR 500 (five hundred euros) to the applicants, jointly, in respect of costs and expenses;
- (iii) plus any taxes that may be chargeable at 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.

Done in English, and notified in writing on 26 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President