



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

SECOND SECTION

CASE OF PAMUK v. TURKEY

(Application no. 131/02)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

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 Pamuk v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr R. TÜRMEK,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 131/02) 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, Mrs Nazlı Pamuk (“the applicant”), on 11 September 2001.

2. The applicant was represented by Mr O. Çirim, a lawyer practising in Izmir. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 4 October 2004 the Court 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Izmir.

5. In 1996 the General Directorate of National Roads and Highways expropriated land (plot no. 431/4) and a building which the applicant co-owned. The applicant received an amount determined by a committee of experts at the time of the expropriation.

6. On 5 January 1996 the applicant filed an action for additional compensation with the Izmir Civil Court of First Instance. On 27 December

1999 the first-instance court awarded the applicant additional compensation plus interest at the statutory rate applicable at the date of the court's decision. This judgment was quashed by the Court of Cassation on 17 April 2000.

7. On 4 December 2000 the first-instance court awarded the applicant additional compensation of 3,275,732,664 Turkish liras (TRL) (approximately 5,470 euros (EUR)), plus interest at the statutory rate applicable at the date of the court's decision, running from 12 January 1996. On 12 March 2001 the Court of Cassation upheld this judgment.

8. On 29 August 2001 the administration paid the applicant TRL 12,352,710,000 (approximately EUR 10,042) covering the additional compensation, interest, costs and expenses.

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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

10. The applicant complained that the additional compensation for expropriation, which she had obtained from the authorities only after lengthy court proceedings, had fallen in value, since the default interest payable had not kept pace with the very high rate of inflation in Turkey. She relied on Article 8 of the Convention and Article 1 of Protocol No. 1.

11. The Court considers that this complaint should be examined from the standpoint of Article 1 of Protocol No.1 alone, which provides:

“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

12. The Government maintained that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention since she had failed to request the Court of Cassation to rectify its judgment pursuant to Article 440 of the Code on Civil Procedure.

13. The applicant disputed the Government's argument.

14. The Court reiterates that it has already examined and rejected the Government's argument in previous cases (see, in particular, *Gök and Others v. Turkey*, nos. 71867/01, 71869/01, 73319/01 and 74858/01, §§ 47-48, 27 July 2006). The Court finds no particular circumstances, in the present application, which would require it to depart from that conclusion. Consequently, the Court rejects the Government's preliminary objection.

15. Thus, in the light of the principles it has established in its case-law (see, among other authorities, *Aka*, cited above) and of all the evidence before it, the Court considers that the application requires examination on the merits and that there are no grounds for declaring it inadmissible.

B. Merits

16. 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, in particular, *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV, § 31, and *Aka*, cited above, §§ 50-51).

17. Having examined the facts and arguments presented by the Government and the applicant, the Court considers that there is nothing to warrant a departure from its earlier findings. It concludes that as a result of the delay in paying the compensation, the low interest rates and the length of the proceedings as a whole, the applicant has had to bear an individual and excessive burden which 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.

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

II. 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. Damage

20. The applicant claimed 48,675 United States dollars (USD), (approximately EUR 36,273) and USD 14,000 (approximately EUR 10,433) in respect of pecuniary and non-pecuniary damage, respectively.

21. The Government contested these claims.

22. Using the same method of calculation as in the *Aka* judgment (cited above, §§ 55-56) and having regard to the relevant economic data and the applicant's claim, the Court awards the full amount claimed by the applicant in respect of pecuniary damage.

23. The Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

24. The applicant also claimed USD 1,930 (approximately EUR 1,438) for the costs and expenses incurred both before the domestic courts and before the Court.

25. The Government contested her claims.

26. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

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.

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 to the Convention;
3. *Holds* that finding a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;
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 amounts to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 36,273 (thirty six thousand two hundred and seventy three euros) in respect of pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President