



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

THIRD SECTION

CASE OF HASAN KAYA v. TURKEY

(Application no. 33696/02)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Hasan Kaya v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr R. TÜRMEŖ,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 33696/02) 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 Hasan Kaya, on 15 July 2002.

2. The applicant was represented by Mr M. Özbekli, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 4 April 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 applicant was born in 1961 and lives in Diyarbakır.

5. On 10 August 1999 the Diyarbakır Provincial Private Administration Office (*Diyarbakır İl Özel İdare Müdürlüğü*) expropriated the plots of land belonging to the applicant in Diyarbakır. A committee of experts assessed the value of these plots of land and this amount was paid to the applicant when the expropriation took place.

6. On 20 October 1999 the applicant brought an action before Diyarbakır Civil Court of First Instance, requesting increased compensation.

7. On 22 January 2002 the Diyarbakır Civil Court of First Instance awarded the applicant additional compensation of 118,212,590,355 Turkish

liras (TRL) (approximately 97,861 euros (EUR)) plus interest at the statutory rate applicable at the date of the court's decision, running from 8 October 1999.

8. On 12 March 2002 the Court of Cassation upheld the judgment of the first-instance court.

9. On 15 March 2002 the administration paid the applicant a total sum of TRL 281,371,870,000 (approximately 237,519 euros (EUR)).

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The relevant domestic law and practice are set out in the *Aka v. Turkey* judgment of 23 September 1998 (*Reports of Judgments and Decisions* 1998-VI, pp. 2674-76, §§ 17-25).

THE LAW

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

11. The applicant complained that he had been paid insufficient interest on additional compensation received following the expropriation of his land and that the authorities had delayed in paying him the relevant amount. He relied on Article 1 of Protocol No. 1, which 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

12. The Government maintained that the applicant had not exhausted domestic remedies as required by Article 35 of the Convention, as he had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations. Under that provision, he would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if he had established that the losses exceeded the amount of default interest.

13. The Court observes that it dismissed a similar preliminary objection in the case of *Aka v. Turkey* (judgment of 23 September 1998, *Reports*

1998-VI, pp. 2678-79, §§ 34-37). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

14. It finds that, in the light of the principles it has established in its case-law (see, among other authorities, the aforementioned *Aka v. Turkey*) and of all the evidence before it, the application requires examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

15. 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; and *Aka*, cited above, p. 2682, §§ 50-51).

16. 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 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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.”

19. The applicant sought compensation for pecuniary damage in the sum of 47,285 US dollars (USD).

20. The Government contested this claim.

21. The Court notes that the applicant was awarded TRL 118,212,590,355 in additional compensation, with a statutory rate of interest. He received TRL 281,371,870,000 on 15 March 2002. According to the method of calculation in the *Aka* judgment (cited above, pp. 2683-84, §§ 55-56) he should have received TRL 328, 594,110,000 if inflation over the relevant periods (20 October 1999 and 15 March 2002) had been taken into account. Thus the applicant suffered pecuniary damage of TRL 47,444,447,447 at that time. Having regard to the relevant economic data provided by the State Statistics Institute, the Court considers that this amount today corresponds to TRL 82,769,935,500 when updated. On the

basis of the average exchange rates applied by the Turkish Central Bank that amounts tallies with the sum of EUR 44,192. Accordingly, the Court awards that amount for pecuniary damage.

B. Costs and expenses

22. The applicant also claimed compensation for costs and expenses but he left it to the discretion of the Court.

23. The Government contested this claim.

24. According to the Court's case law, an applicant is entitled 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 1,000 covering costs under all heads.

C. Default interest

25. 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;
3. *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 plus any tax, stamp duty or imposts that may be chargeable at the date of payment, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 44,192 (forty four thousand one hundred and ninety two 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President