



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

FOURTH SECTION

CASE OF GÜLŞEN AND OTHERS v. TURKEY

(Application no. 54902/00)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

This version was rectified on 4 March 2008 under Rule 81 of the Rules
of the Court.

In the case of Gülşen and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr R. TÜRMEŖ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 3 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 54902/00) 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 seven Turkish nationals, the heirs of Mr Bedaettin Bahattin Gülşen¹ (Meserret Gülşen, Asiye Gülşen (Tunçer), Ayşe Gülşen (Dal), Ali Gülşen, Aliye Gülşen (Gamçici) and Fikret Gülşen), Mr Hüsnü Aksoy, Mr Aziz Yıldırım, Mr Aykut Kocaman, Mr Kamil Dağlı, Mr Ahmet Güzel and Mr Sinan Erbil (“the applicants”) on 6 January 2000.

2. The applicants were represented by Ms Nurhan Baylav, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 18 June 2004 the Court decided to communicate the application to the Government. In a letter of 21 June 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.

¹ Rectified on 4 March 2008. The name of the deceased applicant Mr Bedaettin Bahattin Gülşen was replaced by his heirs.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1927, 1947, 1952, 1965 and 1950 respectively and live in Kocaeli and Istanbul.

5. In 1996 the Kocaeli Provincial Private Administration Office (*Kocaeli İl Özel İdare Müdürlüğü*) expropriated plots of land belonging to the applicants. A committee of experts assessed the value of the plots and the relevant amount was paid to the applicants.

6. Following the applicants' request for increased compensation, on 9 October and 16 October 1998 the Gebze Civil Court of First Instance awarded them additional compensation plus interest at the statutory rate applicable at the date of the court's decision in respect of each of the applicants.

7. On 3 May, 21 June, 22 June, and 25 October 1999 the Court of Cassation upheld the Gebze Civil Court of First Instance's judgments in respect of Aziz Yıldırım, Aykut Kocaman, Kamil Dağlı and Ahmet Güzel, Bedaettin Bahattin Gülşen¹, Hüsnü Aksoy and Sinan Erbil, respectively.

8. By decisions of 30 June 1999, 1 July 1999, 10 September 1999, 25 October 1999 and 26 October 1999, the Court of Cassation rejected the applicants' requests for the rectification of its decisions.

9. On 23 March 2000, 22 January and 24 January 2001 the Kocaeli Provincial Private Administration paid the amounts due to Kamil Dağlı and Ahmet Güzel, Bedaettin Bahattin Gülşen¹, Sinan Erbil, Hüsnü Aksoy, Aykut Kocaman and Aziz Yıldırım respectively. Details are indicated in the table below:

NAMES OF THE APPLICANTS	AMOUNT OF INITIAL COMPENSATION PAID TO THE APPLICANT (In Turkish liras)	DATE ON WHICH THE APPLICANTS INITIATED PROCEEDINGS FOR ADDITIONAL COMPENSATION	AMOUNT OF ADDITIONAL COMPENSATION (INTERESTS AND LEGAL COSTS ARE NOT INCLUDED) (Turkish liras)	DATE AND AMOUNTS OF PAYMENT (INCLUDING STATUTORY INTEREST AT THE RATE OF 30 % ,50 % & 60 % PER ANNUM AND COSTS) (Turkish liras)
Bedaettin Bahattin Gülşen ¹ (plot no. 21/550)	959,167,500	8.11.1996	3,037,359,693	22.01.2001 8,703,805,400
Sinan Erbil (plot no. 528)	1,178,050,000	16.10.1996	2,238,367,715	22.01 & 27.03.2001 6,441,942,100 & 541,064,000

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Hüsnü Aksoy (plot no.18/528)	1,178,050,000	16.10.1996	2,238,367,715	22.01.2001 6,441,942,100
Kamil Dağlı & Ahmet Güzel (plot no. 7/326)	5,075,000,000	24.10.1996	11,841,659,900	28.03.2000 28,035,567,300
Aziz Yıldırım (plot nos. 15/488 & 15/461)	6,115,000,000 & 3,932,500,000	8.11.1996	14,268,325,180 & 9,175,828,090	22.01.2001 40,918,610,700 & 26,499,453,300
Aykut Kocaman (plot nos. 13/429 & 13/482)	3,110,000,000 & 3,425,000,000	8.11.1996	7,256,662,520 & 7,991,662,100	22.01.2001 20,714,629,200 & 19,983,379,800

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 TO THE CONVENTION

11. The applicants complained that the authorities had delayed in paying them the additional compensation and that, at a time when the annual rate of inflation in Turkey had been very high, they had been paid insufficient interest. 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

12. The Government maintained that the applicants had not exhausted domestic remedies as required by Article 35 of the Convention, as they had failed to make proper use of the remedy available to them under Article 105 of the Code of Obligations. Under that provision, they would have been eligible for compensation for the losses allegedly sustained as a result of the

delays in payment of the additional compensation if they 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* (cited above, 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, *Aka v. Turkey*, cited above) and of all the evidence before it, the application requires examination on the merits and there are no grounds for declaring it inadmissible. It should therefore be declared admissible.

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 *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 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 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.”

A. Pecuniary and non-pecuniary damage

19. The applicants each sought compensation for pecuniary damage. In particular:

- The heirs of Mr Bedaettin Bahattin Gülşen¹ (Meserret Gülşen, Asiye Gülşen (Tunçer), Ayşe Gülşen (Dal), Ali Gülşen, Aliye Gülşen (Gamçici) and Fikret Gülşen) claimed 263,086 US dollars (USD);
- Sinan Erbil claimed USD 227,568;
- Hüsnü Aksoy claimed USD 227,568;
- Kamil Dağlı and Ahmet Güzel claimed USD 1,492,092;
- Aziz Yıldırım claimed USD 1,556,628 in respect of plot no. 15/488 and USD 1,001,053 for plot no. 15/461; and
- Aykut Kocaman claimed USD 791,678 in respect of plot no. 13/429 and USD 871,864 for plot no. 13/482.

20. The applicants did not claim compensation for non-pecuniary damage.

21. The Government submitted that the applicants' claims were excessive.

22. Using the same method of calculation as in the *Aka* judgment (cited above, pp. 2683-84, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants the following sums in respect of pecuniary damage:

- EUR 27,200 for the heirs of Mr Bedaettin Bahattin Gülşen¹ (Meserret Gülşen, Asiye Gülşen (Tunçer), Ayşe Gülşen (Dal), Ali Gülşen, Aliye Gülşen (Gamçici) and Fikret Gülşen);
- EUR 21,650 for Sinan Erbil;
- EUR 21,650 for Hüsnü Aksoy;
- EUR 111,650 for Kamil Dağlı and Ahmet Güzel
- EUR 209,500 for Aziz Yıldırım (aggregate of two plots); and
- EUR 141,650 for Aykut Kocaman (aggregate of two plots).

B. Costs and expenses

23. The applicants did not submit any claim for costs and expenses.

C. Default interest

24. 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.

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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 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants for pecuniary damage, 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 27,200 for the heirs of Mr Bedaettin Bahattin Gülşen¹ (Meserret Gülşen, Asiye Gülşen (Tunçer), Ayşe Gülşen (Dal), Ali Gülşen, Aliye Gülşen (Gamçici) and Fikret Gülşen);
 - (ii) EUR 21,650 for Sinan Erbil;
 - (iii) EUR 21,650 for Hüsnü Aksoy;
 - (iv) EUR 111,650 for Kamil Dağlı and Ahmet Güzel;
 - (v) EUR 209,500 for Aziz Yıldırım; and
 - (vi) EUR 141,650 for Aykut Kocaman.
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President

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