



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

SECOND SECTION

CASE OF TAŞATAN v. TURKEY

(Application no. 60580/00)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

24/09/2007

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 Taşatan v. Turkey,

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

Mr A.B. BAKA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 60580/00) 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 a Turkish national, Mr Cevdet Taşatan ("the applicant"), on 2 June 2000.

2. The applicant was represented by Mr N. Cem, 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 14 March 2005 the Court decided to give notice of 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1945 and lives in Istanbul.

5. On 3 August 1983 the General Directorate of National Roads and Highways expropriated a plot of land belonging to the applicant. A committee of experts assessed the value of the expropriated land and this amount was paid to him when the expropriation took place.

6. Following the applicant's request for increased compensation, on 5 November 1993 the Küçükçekmece Civil Court of First Instance awarded

him additional compensation plus interest at the statutory rate running from the date of the expropriation.

7. On 5 November 1993 the Court of Cassation quashed the judgment of the first-instance court in respect of the commencement date for the calculation of the interest.

8. On 21 July 1994 Küçükçekmece Civil Court of First Instance confirmed its previous judgment.

9. On 10 October 1994 the Court of Cassation upheld the aforementioned judgment.

10. In the meantime, the applicant initiated execution proceedings (*icra takibi*) against the General Directorate of Highways via the Istanbul Bailiff's Office in order to enforce the payment of the compensation awarded by the first instance court.

11. On 6 January 1998 the applicant was paid 6,846,778,000 Turkish liras (TRL).

12. On 19 July 1999 the applicant filed an action with the Ankara Civil Court of First Instance and requested compensation for the loss sustained as a result of late payment and inflation, pursuant to Article 105 of the Code of Obligations.

13. On 28 December 1999 the Ankara Civil Court of First Instance dismissed the applicant's request. On 12 May 2000 the Court of Cassation upheld the aforementioned judgment.

14. According to the letter dated 5 April 2004 from the Istanbul Bailiff's Office, the General Directorate of Highways still owed TRL 625,000,000 (EUR 384) to the applicant.

15. Referring to the General Directorate of Highways' letter dated 27 July 2005, the Government claimed that they had paid the total amount due and that the Bailiff's office had struck out the case concerning the enforcement proceedings.

16. However, in a letter dated 14 October 2005, the Bailiff's office stated that the General Directorate of Highways still owed 652 New Turkish liras to the applicant.

THE LAW

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

17. The applicant complained that the additional compensation determined by the national court was too low. He also maintained that the authorities had delayed in paying him the compensation for expropriation and that, at a time when the annual rate of inflation in Turkey had been very

high, he had been paid insufficient interest. The applicant further alleged that he still had not been paid the totality of the sum owed by the national authorities. He invoked Article 1 of Protocol No. 1 to the Convention, 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

18. The Government asked the Court to dismiss these complaints for failure to comply with the six months' rule under Article 35 § 1 of the Convention. They submitted that the applicant should have lodged his application within six months from the date of the payment of full additional compensation, which was 6 January 1998, whereas the application was lodged on 2 June 2000. They further claimed that the applicant had received the full amount of compensation which covered the additional compensation and the interest awarded by the domestic courts.

19. The applicant asked the Court to dismiss the Government's objection as the national authorities had still not paid the total amount of compensation.

20. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 is twofold. Firstly, he complains that the amount of additional compensation awarded by the domestic courts was too low.

21. The Court notes that the proceedings relating to the additional compensation were rendered final by the Court of Cassation's decision of 10 October 1994, whereas the applicant introduced this complaint on 2 June 2000, i.e. more than six months later.

22. It follows that the applicant's complaint pertaining to insufficient additional compensation has been introduced outside the six-month time-limit prescribed by Article 35 § 1 and must be rejected pursuant to Article 35 § 4 of the Convention.

23. The second limb of the complaint concerns the authorities' failure to pay the total amount of compensation and the damage sustained by the applicant as a result of late payment. It appears from the Bailiff's letter of 14 October 2005 that the national authorities have not paid the total amount of compensation and that they still owe 652 New Turkish liras to the applicant (see paragraph 17 above). In view of the national authorities' continuing failure to pay the full amount of compensation to the applicant, the Court considers that the six months' rule is not applicable. Accordingly, this part of the Government's objection must be dismissed.

24. Having regard to the foregoing, the Court finds that, in the light of the principles it has established in its case-law (see, among other authorities,

Akkuş, cited above) and of all the evidence before it, this complaint requires an examination on the merits and there are no grounds for declaring it inadmissible.

B. Merits

25. The Court has found a violation of Article 1 of Protocol No. 1 in a number of cases that raise similar issues to those in the present application (see *Akkuş*, cited above, p. 1317, § 31).

26. 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 national authorities' continuing failure to pay the total amount of 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 the protection of the right to the peaceful enjoyment of possessions.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 4,000,000 United States dollars (USD), (approximately EUR 3,026,000) in respect of pecuniary damage and USD 100,000 (approximately EUR 75,673) for non-pecuniary damage.

30. The Government contested these claims.

31. Using the same method of calculation as in the *Akkuş* judgment (cited above, p. 1311, §§ 35-36 and 39) and having regard to the relevant economic data, the Court awards the applicant EUR 4,330 for pecuniary damage.

32. 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 applicant.

B. Costs and expenses

33. The applicant asked the Court to make an award for the costs and expenses incurred before the Court. However, he did not specify an amount and left it to the discretion of the Court

34. The Government submitted that no award should be made under this heading.

35. Making its own estimate based on the information available, the Court considers it reasonable to award the applicant the sum of EUR 1,000 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 complaint concerning the authorities' continuing failure to pay the total amount of compensation and the damage sustained by the applicant as a result of late payment 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 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 4,330 (four thousand three hundred and thirty 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;

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

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President