



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

THIRD SECTION

CASE OF İNCİ (NASIROĞLU) v. TURKEY

(Application no. 69911/01)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

12/11/2007

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 İnci (Nasıroğlu) v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŖ,

Mrs E. FURA-SANDSTRÖM,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 69911/01) 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, Ms Şükran İnci (Nasıroğlu) (“the applicant”), on 8 May 2001.

2. The applicant was represented by Mr H. Kaplan, 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. The applicant complained under Article 1 of Protocol No. 1 to the Convention that she was deprived of her land without being paid compensation for her loss.

4. On 5 September 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**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1955 and lives in Yalova.

6. In 1975 the Ministry of Defence decided to expropriate a plot of land (plot no. 976), measuring 808 m² in the Karaköprü area in Şanlıurfa which belonged to the applicant. On 29 September 1975 the amount of

compensation for the expropriation was blocked in the Diyarbakır Central Bank, but the applicant never received this sum.

7. On 10 May 1977 the applicant filed an action with the Şanlıurfa Civil Court of General Jurisdiction and requested increased compensation.

8. On 1 April 1979, while the case for increased compensation was pending, the Ministry of Defence informed the Şanlıurfa Land Registration Office that they renounced their decision to expropriate the land in question. The applicant did not pursue her case and in 1982 the first-instance court decided to discontinue the proceedings.

9. In 1988 the Ministry of Defence brought an action before the Şanlıurfa Civil Court of General Jurisdiction and requested the transfer of the title deed to plot no. 976 to the Treasury. On 28 December 1988 the court accepted the request. The applicant was not notified of the proceedings or of the judgment delivered by the first-instance court. On 15 February 1989 the court's decision was announced in a newspaper. Subsequently, on 4 May 1989 the plot was registered in the name of the Treasury.

10. On 28 December 1998, after having learned about the transfer of the title deed of plot no. 976 to the Ministry of Defence, the applicant brought an action before the Şanlıurfa Civil Court of General Jurisdiction and requested compensation for the unlawful seizure of her property. She submitted, *inter alia*, that she had not been notified of the case lodged by the Ministry of Defence in 1988 or of the judgment delivered by the first-instance court. She argued that the transfer of her title deed was therefore unlawful. In reply, the Ministry of Defence argued that as they had been in actual possession of the land since 1974, the applicant's action for compensation had to be rejected as being time-barred.

11. During the proceedings, the first-instance court ordered an expert report in order to determine the value of the land in question. On 15 September 1999 the first-instance court held an on-site inspection. It was observed that the Ministry of Defence had surrounded the plot in question with a fence. On 20 September 1999 a committee of experts submitted a report to the first-instance court. In their report, the experts determined that the value of plot no. 976 would be 34,934,046,448 Turkish liras (TRL) (approximately 73,000 euros (EUR)).

12. On 19 April 2000 the Şanlıurfa Civil Court of General Jurisdiction dismissed the applicant's case. It found that the Ministry of Defence had been in actual possession of plot no. 976 since 1974 and therefore held that the case was introduced out of the statutory time-limit as provided in Article 38 of the Expropriation Act (Law no. 2942).

13. On 26 September 2000 the Court of Cassation found the applicant's grounds for appeal unfounded and upheld the judgment of the first-instance court. The applicant's request for rectification was further rejected on 15 November 2000.

14. On 10 April 2003 the Constitutional Court annulled Article 38 of Law no. 2942.

II. THE RELEVANT DOMESTIC LAW

15. A full description of the domestic law may be found in *Börekçiogulları (Çökmez) and Others v. Turkey* (no. 58650/00, §§ 23-29, 19 October 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

16. The applicant complained that the deprivation of her land without being paid compensation amounted to a violation of 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.”

17. The Government contested that argument.

A. Admissibility

18. The Government submitted that the application contravened the six months time-limit pursuant to Article 35 of the Convention, as the applicant's title deed was annulled on 28 December 1988.

19. The Court reiterates that it has already examined a similar preliminary objection of the Government in the past and rejected it (see *Akilli v. Turkey*, no. 71868/01, §§ 17-19, 11 April 2006). It finds no particular circumstances to reach a different conclusion in the instant case.

20. The Court notes that the application 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. It must therefore be declared admissible.

B. Merits

21. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, 11 January 2007).

22. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 34, § 50).

23. In the present case, the applicant's title deed to the land in question was transferred to the Treasury and her compensation claim was rejected by the national courts pursuant to Article 38 of the Law No. 2942. Therefore the decision of the domestic courts had clearly the effect of depriving the applicant of her property within the meaning of the second sentence of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Brumărescu v. Romania* [GC], no. 28342/95, § 77, ECHR 1999-VII).

24. The Court notes that, according to Article 38 of Law no. 2942, applications for compensation for the deprivation of property had to be made within 20 years from the date the property was occupied. By applying this provision retrospectively, the national courts deprived the applicant of any possibility of obtaining compensation for the annulment of her title deed. The Court observes at this point that, since the application was lodged with the Court, Article 38 of Law no. 2942 has been annulled by the Constitutional Court as being unconstitutional. In its judgment dated 10 April 2003, the Constitutional Court held that limiting an individual's right to property, by maintaining that his right to bring an action against *de facto*

occupation of his property lapses and requiring that the property must be transferred to the authorities twenty years after the occupation, would be contrary to the Constitution. Moreover, referring to the case-law of the Court, it held that depriving individuals arbitrarily of their right of property and their right to compensation was contrary to the principle of the rule of law.

25. The Court takes into consideration the judgment of the Constitutional Court and acknowledges its reasoning. Nevertheless, it notes that the judgment of the Constitutional Court does not have a retroactive effect and therefore does not provide the applicant with a procedure capable of redressing the effects of a possible violation of the Convention. Consequently, it considers that the matter has not been resolved within the meaning of Article 37 § 1 (b) of the Convention (see *Börekçioğulları (Çökmez) and Others*, cited above, § 41).

26. The Court considers that the application of Article 38 of the Law no. 2942 to the applicant's case had the consequence of depriving her of the possibility to obtain damages for the annulment of her title. Although such an interference was founded on legislation that was valid at the material time, it could only be described as arbitrary, in so far as no compensation procedure capable of maintaining the fair balance which had to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights had been put in place (see *Akıllı*, cited above, § 33).

27. The Court consequently concludes that 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 EUR 200,000 in respect of pecuniary damage.

30. The Government contested this claim.

31 Taking into account the circumstances of the case and deciding on an equitable basis, the Court awards the applicant EUR 73,000 under this head.

B. Costs and expenses

32. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

33. The Government contested the applicant's claim.

34. According to the Court's case-law, an applicant is entitled to reimbursement of his 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

35. 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with 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 and free of any taxes or charges that may be payable:
 - (i) EUR 73,000 (seventy three thousand euros) in respect of pecuniary damage,
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
 - (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 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President