



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

THIRD SECTION

CASE OF MÖREL v. TURKEY

(Application no. 33663/02)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Mörel 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. TÜRMESEN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE, *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. 33663/02) 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 Erkan Mörel (“the applicant”), on 12 August 2002.

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 of having been deprived of his property as the authorities expropriated his land without notifying him. He also complained of the unfairness of the proceedings.

4. On 23 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 1944 and lives in Istanbul.

6. He is the grandson of Ayşe Saide Ergun, who was one of the joint owners of a 255,951 m² plot of land in Çorlu. The applicant's share corresponds to 4,000 m² of the land in question. The applicant's right of

succession is established by four different court decisions dated 7 March 1973, 12 July 1974, 5 January 1982 and 12 February 1996. However, the title of the land in question was registered, among others, in the name of Ayse Saide Ergun.

7. On 6 April 1988 the Ministry of Defence informed the Çorlu Municipality that the land in question was going to be expropriated. It communicated to the Municipality the names of the owners who were mentioned on the title deed and requested the relevant tax declarations, in order to determine their addresses. However, only the original owners' first names and the first names of their fathers appeared on the title deed.

8. In its letter of 22 April 1988 the Municipality was only able to submit the tax declarations in respect of some of the owners. They informed the Ministry that since they had not been communicated sufficient information on the identity of some of the owners, they were unable to find their tax declarations.

9. The village headman, the title registry office, the birth registration office, the gendarmerie and the police department in Çorlu also informed the Ministry that they had been unable to ascertain the addresses of the owners, as their last names and their birth registrations were not communicated to them.

10. On 3 May 1988 it was announced in a local newspaper that the property in question had been expropriated. It was also noted that a committee of experts would be assessing its value on 5 May 2005. On the said date the committee of experts assessed the value of the land at 255,951,000 Turkish liras (TRL).

11. On 26 December 1988 and 10 January 1989 the Municipality announced the expropriation of the land over loudspeakers, throughout the town. On 28 December 1988 it was announced, in another local paper, that the compensation for expropriation was deposited in a bank account, in the name of the owners, including that of the applicant's grandmother. In January 1989, the same notification was published also in a national newspaper. In all these publications only the original owners' first names and the first names of their fathers were mentioned.

12. On 30 July 1991 the property in question was registered in the name of the Treasury.

13. On 10 November 1996 the applicant and some of the heirs, who were the joint owners of the land in question, became aware of the expropriation of their property.

14. On 23 November 1996 the applicant, together with four other heirs, filed an action for additional compensation before the Çorlu Civil Court of First Instance, against the Ministry of Defence.

15. The Ministry requested the court to dismiss the case for failure to comply with the statutory time-limit. The plaintiffs argued that the authorities failed to notify them of the expropriation of their property. They

contended that the notifications were deprived of any legal effect as they were made in the name of their deceased ancestors.

16. In November 1997 a group of experts, appointed by the court, inspected the land and concluded that the total amount of additional compensation that had to be paid to the plaintiffs was TRL 44,450,601,360. The applicant's share amounted to TRL 2,247,668,465.

17. On 18 February 1998 the court maintained that the Ministry breached the rules of notification as provided in Article 13 of the Law on Expropriation. It noted that the authorities merely notified the expropriation by publishing it in a newspaper, without making an extensive enquiry, as required in Article 7 of the Law on Expropriation. It also noted that the authorities could have also issued a notification through the notary. The Çorlu Civil Court of First Instance therefore dismissed the Ministry's preliminary objection and upheld the plaintiffs' request by increasing the expropriation fee together with an interest rate which would run from 5 July 1989, the supposed date on which several of the owners renounced their property right over the land in question. Relying on the expert report of November 1997, it awarded the applicant TRL¹ 2,247,668,465.

18. On 5 November 1998 the Court of Cassation upheld the decision of the first instance court by modifying the date from which the interest rate would run. It held that the interest should begin to run from 26 December 1996 the date on which the property was transferred to the Ministry.

19. Following the Ministry's request, on 22 February 1999, the Fifth Chamber of the Court of Cassation rectified the decision of 5 November 1998. It held that although the authorities had followed the procedure prescribed in Article 7 of the Law on Expropriation they were unable to ascertain the addresses of the owners. The court maintained that the fact that there were no tax declarations for these properties was also confirmed in the Çorlu Municipality's letter dated 22 April 1988. The Court of Cassation consequently rectified its decision of 5 November 1998 and quashed the decision of the first instance court.

20. On 15 June 1999 the Civil Court of First Instance followed the reasoning of the Court of Cassation. It held that the Ministry had to notify the owners through publication, since it had been unable to determine the addresses, even after carrying out all necessary inquiry. It therefore dismissed the applicant's case for failure to comply with the statutory time-limit.

21. On 7 October 1999 the Court of Cassation upheld the decision of 15 June 1999.

22. On 5 May 2000 the applicant and the other heirs requested the reopening of the proceedings.

1. Approximately equivalent to 9,923 USD on 18 February 1998.

23. On 15 February 2001 the Çorlu Civil Court of First Instance asked the Çorlu Municipality and the Çorlu Tax Department whether the owners and their heirs paid any tax for the land in question. All the names communicated in this letter were mentioned in full.

24. The Çorlu Tax Department advised the Ministry to refer to the Municipality, as all property tax declarations as of 1986 were handed over to the municipalities. Whereas, tax declarations which dated before 1986 were submitted for paper recycling.

25. Later on the same day, the Çorlu Municipality informed the court that they were in possession of tax declarations in respect of the land in question, for the years of 1986, 1990, 1994 and 1998, which contained some of the addresses. It also attached to its letter copies of sixteen property tax declarations for the year 1986. According to these declarations, Sermet Ergun, who was the son of Ayşe Saide Ergun and the uncle of the applicant, together with his co-owners paid a total of TRL 2,175 in total, for their property of 11,682 m².

26. On 23 February 2001 the Çorlu Civil Court of First Instance dismissed the plaintiff's request for rectification.

27. On 24 January 2002 the Court of Cassation upheld the decision of the first instance court. It observed that the authorities tried to find the owners by relying on the information found in the title registry. It noted that it was evident that the original owners were deceased and that the heirs paid their tax duties concerning these lands. It concluded however, that the fact that the tax department did not inform the authorities about the names and addresses of the owners did not render the notification, which had been carried out by the Ministry of Defence in accordance with Article 7 of the Law of Expropriation, void of effect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Law no. 2525

28. On 21 June 1934, in accordance with the Law no. 2525, all Turkish citizens, who were, until then, referred to by their first name and the first name of their father, were requested to adopt a family name.

2. Law no. 2942

29. Article 7 of the Law on Expropriation (Law no. 2942) provides that the expropriating authority is required to establish ownership and ascertain the addresses by making an enquiry at the title registry, tax department, and birth registry. Moreover they are further expected to make everything that is necessary to contact the owners. Article 13 of the same Law provides that if

the addresses of the owners are not found, then the expropriation should be notified by publication.

Following the decision to expropriate a property, a committee of experts is requested to assess the value of the land. This amount is deposited in a bank account, in the name of the owners. Subsequently, all related documents are brought to the attention of the owners either by issuing a notification through a public notary or, when that is not possible, by way of publication (Article 10). If the owners do not request the annulment of the decision to expropriate, even if they file an action for additional compensation, all property rights over the land in question are transferred to the administration within 30 days from notification (Article 14).

THE LAW

30. The applicant complained under Article 1 of Protocol No. 1 that he was deprived of his right to peacefully enjoy his property as the authorities expropriated his land without notifying him.

31. He also complained under Article 6 of the Convention that he did not have a fair hearing as the Court of Cassation dismissed his case for failure to comply with the statutory time-limit.

Relevant Articles of the Convention provide as follows:

Article 6

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1

“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.”

32. 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.

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

33. The applicant complained that he has been unjustifiably deprived of his property. He argued that the authorities did not pay sufficient compensation for the expropriation of his land. Moreover, by failing to notify him of the expropriation of his land and by subsequently refusing his action for additional compensation for failure to comply with the statutory time-limit, they have impeded his only chance to compensate for his loss.

34. The Government contended that the expropriation was enforced by the Ministry of Defence, pursuant to the provisions of Law no. 2946, in the public interest. Furthermore they maintained that the authorities had showed due diligence in searching for the identity and addresses of the owners. However, since they were unable to determine the relevant information, the expropriation had to be notified by publication, by mentioning the names of the ancestors. Nevertheless, block and plot numbers of the expropriated property were included in each of these publications.

35. The Court reiterates that Article 1, which guarantees in substance the right to property, comprises three distinct rules (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 37). The first rule, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of the peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects this notion to certain conditions. The third rule, contained 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 second and third rules, which are concerned with particular instances of interference with the right to the peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule.

36. In the present case, it is not disputed that there was an interference with the right to peaceful enjoyment of a “possession” within the meaning of Article 1 of Protocol No. 1. It is also not disputed that this interference was “provided for by law”, and it pursued a legitimate aim, in other words there was a “public interest”, as required by Article 1 of Protocol No. 1.

37. On the other hand, the parties disagreed about the legitimacy of that interference. The Court must accordingly determine whether it complied with the principle of proportionality for the purposes of the second rule laid down in Article 1 of Protocol No. 1.

38. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1

of Protocol No. 1 as a whole, including therefore the second sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, § 38).

39. In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 35, § 71; *The Former King of Greece and Others v. Greece*, [GC], no. 25701/94, § 89, ECHR 2000-XII; and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-...).

40. The Court considers that it should first examine, in the present case, whether there had been an adequate notification of the expropriation in question.

41. It notes that, following the Ministry's decision to expropriate the land in question, the Municipality, the village headman, the title registry office, the birth registration office, the gendarmerie and the police department in Çorlu had been communicated the names of the owners which were noted on the title deed and had been requested to carry out an enquiry to find their addresses. As these authorities were unable to find the requested information in their registries, the expropriation was notified by way of publication. However, the information found in these publications was not complete, since only the first names of the actual owners' ancestors and the first names of their fathers were mentioned.

42. The Court observes that a number of elements in the case raise doubts as to whether the Turkish authorities, contrary to the Government's observations, had showed diligence in their duty to determine the names and addresses of the owners and to notify them of the expropriation of their land.

43. Firstly, the Court notes that the Municipality was unable to find the relevant tax declarations when they were first asked by the Çorlu Civil Court of First Instance, in 1988. However thirteen years later, in 2001, when the court again made the same request, the Municipality informed them that they were in possession of the tax declarations of the land in question, for the years 1986, 1990, 1994 and 1998. They subsequently submitted copies of sixteen property tax declarations, for 1986, made by the applicant's ancestor Sermet Ergun and his joint owners.

44. Secondly, according to the court decisions confirming the applicant's right of succession, Ms Ayse Saide Ergun, mentioned by her first name only in the publications, was born in 1885. Therefore, she was most probably

deceased at the time of the events giving rise to this application. Nonetheless, the authorities issued several notifications, trying to reach her.

45. Thirdly, the Court considers that it is the state authorities' duty to update the information and to organise the archives of the public registries. Considering that the owners in question had a family name since the coming into force, in 1934, of Law no. 2525, the authorities' failure to ascertain their full names is not acceptable.

46. The Court therefore concludes that the authorities did not show due diligence in notifying the applicant of the expropriation of the land.

47. In view of this finding, it remains to be determined whether, in the context of a lawful deprivation of property, the applicant had to bear a disproportionate and excessive burden.

48. The Court observes that, on 18 February 1998 the Çorlu Civil Court of First Instance dismissed the Ministry's preliminary objection concerning compliance with the statutory time-limit. Furthermore, it held that the compensation which was paid to the applicant for the expropriation of his land was insufficient and ordered the Ministry of Defence to pay an additional sum. This decision was upheld by the Court of Cassation's decision of 5 November 1998. However, upon the Ministry's request, the Court of Cassation rectified its decision. It held that the notification in question was carried out in accordance with the law. Subsequently the Çorlu Civil Court of First Instance dismissed the applicant's claim for additional compensation by holding that his case had been lodged out of the statutory time-limit (paragraphs 18-21 above).

49. The Court observes that the domestic courts' dismissal of the applicant's claim caused him to sustain a loss, additional to that of the expropriated land. It therefore finds that in the absence of adequate compensation in exchange for his property, the interference in question, although prescribed by law, has not struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

50. As a result, the Court considers that the applicant has been deprived of his property without adequate compensation, in breach of Article 1 of Protocol No. 1.

51. There has therefore been a violation of this Article.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

52. The applicant complained under Article 6 § 1 of the Convention that he did not have a fair hearing as the Court of Cassation arbitrarily dismissed his case for failure to comply with the statutory time-limit. He contended that he was prevented from having his civil claim determined by the domestic court as a consequence of the inadequate notification.

53. The Government contested this argument.

54. In the light of its findings with regard to Article 1 of Protocol No. 1 (paragraph 50 above), the Court does not consider that a separate examination of the merits of the case under Article 6 § 1 is necessary.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant sought pecuniary compensation in the sum of 96,587 euros (EUR), which included the value of his property and the loss of income, calculated on the basis of the experts' report, which was used by the domestic court in its judgment of 18 February 1998 (paragraph 17 above), and together with the interest running from 1997. Furthermore, they claimed EUR 10,000 in respect of non-pecuniary damage.

57. The Government argued that the applicant's claim for pecuniary damage was exaggerated and unsubstantiated. They alleged that the expert report on which the applicant based his claim was not binding. They claimed that this report merely assessed the value of the land and did not establish the applicant's ownership over the property in question. Moreover, they submitted that, if the Court were to find a violation of the Convention in the present case, this would in itself constitute sufficient compensation for any non-pecuniary damage allegedly suffered by the applicant.

58. Relying on the domestic courts' decisions of 18 February 1989 and 5 November 1989, using the same method of calculation as in the *Aka v. Turkey* judgment (23 September 1998, *Reports of Judgments and Decisions* 1998-VI, pp. 2683-84, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicants EUR 30,400 for pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of settlement

59. The Court observes that the applicant sustained actual non-pecuniary damage. Ruling on an equitable basis, the Court finds that in the circumstances of the present case finding a violation constitutes sufficient satisfaction.

B. Costs and expenses

60. The applicant also claimed EUR 7,000 in respect of the costs and expenses incurred before the domestic courts and the Court. Furthermore he requested EUR 5,000 in respect of his lawyer's fee. He referred to the agreement signed between him and his representative in this respect. However, he did not submit any receipt or invoice regarding these expenses.

61. The Government disputed these claims.

62. 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, ruling on an equitable basis, the Court awards the applicant EUR 4,000, in respect of costs and expenses

C. Default interest

63. 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 there is no need to examine the complaint under Article 6 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *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 sums, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 30,400 (thirty thousand and four hundred euros) for pecuniary damage,
 - (ii) EUR 4,000 (four thousand euros) for costs and expenses,

- (iii) plus any tax that may be chargeable;
- (b) that from the expiry of the abovementioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *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