



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

THIRD SECTION

CASE OF AKYÜZ v. TURKEY

(Application no. 35837/02)

JUDGMENT

STRASBOURG

29 November 2007

FINAL

31/03/2008

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 Akyüz 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 DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 8 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 35837/02) 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, Mrs Naciye Akyüz (“the applicant”), on 22 May 2002.

2. The applicant, who had been granted legal aid, was represented by Mrs Nuray Demir, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 20 December 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**

4. The applicant was born in 1926 and lives in Ankara.

5. On 23 January 1975 the applicant bought part of a plot of land (plot no. 98) in the Çankaya District of Ankara. In implementation of a reconstruction plan (*imar şuyulandırılması*), on 21 January 1981 a part of the applicant's plot (173.92 sq. m.) was joined to another plot which had

been used by the Ministry of Defence since 1962. This plot was given the number 5965/1 and registered in the applicant's name.

6. Since this land was occupied by the Ministry of Defence, the applicant filed various petitions requesting the Ministry to expropriate it. On 6 September 1989 the Ministry informed the applicant that her land would be expropriated in the coming years.

7. On 10 November 1999, relying on Article 38 of Law no. 2942, the Ministry of Defence lodged an application with the Ankara Civil Court of General Jurisdiction for the annulment of the title deed of the applicant to plot no. 5965/1 and its registration in the Treasury's name. In response, the applicant lodged an application with the same court for compensation for the *de facto* expropriation. On an unspecified date, the case files were joined.

8. Before the court, the Ministry of Defence submitted that it had occupied the disputed plot of land since 1962 and that, therefore, it should be registered under its name pursuant to Article 38 of Law no. 2942. In reply, the applicant stated that the date of *de facto* expropriation in respect of her plot of land was 21 January 1981 and that, therefore, Article 38 of Law no. 2942 was not applicable in her case.

9. On 19 December 2000 the Ankara Civil Court of General Jurisdiction annulled the title deed of the applicant and ordered that the land be registered in the name of the Treasury. The court dismissed the applicant's request for compensation on the ground that it was time-barred. It held that the Ministry of Defence had had *de facto* possession of the property in question since 1962, and that the applicant should have brought a case within twenty years from this date in accordance with Article 38 of Law no. 2942.

10. On 4 June 2001 the Court of Cassation upheld the judgment of the first-instance court. The applicant's request for the reversal of its decision was dismissed by the Court of Cassation on 12 October 2001. The applicant was notified of this decision on 22 November 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. A full description of the domestic law may be found in *Börekçioğulları (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

12. The applicant complained that the deprivation of her land without 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.”

13. The Government contested that argument.

A. Admissibility

14. The Government submitted several preliminary objections. Firstly, they alleged that the Court had no jurisdiction *ratione temporis* to examine the case, since the reconstruction project had taken place in 1981; that is, before 8 January 1987, the date of deposit of Turkey's declaration recognising the right of individual petition to the European Commission of Human Rights. Secondly, they argued that the applicant had not exhausted domestic remedies. In their view, she should have initiated compensation proceedings immediately in 1981, following implementation of the reconstruction plan. Finally, they stated that the application was not introduced within the six-month time-limit, as the Court of Cassation's decision upholding the judgment of the Ankara Civil Court of General Jurisdiction was delivered on 4 June 2001, whereas the application was introduced on 22 May 2002.

15. The Court notes that the Ministry of Defence lodged an application with the Ankara Civil Court of General Jurisdiction and requested the annulment of the title deed of the applicant to plot no. 5965/1 and its registration in the Treasury's name on 10 November 1999. These proceedings ended on 12 October 2001 with the decision of the Court of Cassation rejecting the applicant's request for a reversal. That decision was served on the applicant on 22 November 2001 and her application to the Court was lodged exactly six months later. Furthermore, as the land in dispute was registered in the applicant's name until the end of the domestic

proceedings, the Court concludes that the Government's contention that she should have initiated compensation proceedings in 1981 cannot be upheld.

16. In view of the above, the Court dismisses the Government's preliminary objections.

17. The Court further considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. 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 requirement 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).

19. 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 Law no. 2942. Therefore the decision of the domestic courts clearly had the effect of depriving the applicant of her property within the meaning of the second sentence of Article 1 of Protocol No. 1 (see, *İnci (Nasıroğlu) v. Turkey*, no. 69911/01, § 23, 14 June 2007).

20. The Court notes that, according to Article 38 of Law no. 2942, applications for compensation for a deprivation of property had to be made within twenty 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 the right to bring an action against the *de facto* occupation of the disputed property lapses, and requiring that the property must be transferred to the authorities twenty years after that occupation, was contrary to the Constitution. Moreover, referring to the case-law of the Court, it held that depriving individuals arbitrarily of their

right to property and their right to compensation was contrary to the principle of the rule of law.

21. 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 did not have a retroactive effect and therefore did 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).

22. The Court considers that the application of Article 38 of 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 requirement of the protection of the individual's fundamental rights had been put in place (see *Akıllı v. Turkey*, no. 71868/01, § 33, 11 April 2006).

23. Accordingly, the Court concludes that there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicant submitted under Article 6 § 1 of the Convention that her right to a fair trial had been breached, as the domestic courts had not taken into account the evidence submitted by her or heard evidence from witnesses.

25. The Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of this provision. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 750,000 New Turkish liras (YTL) - approximately 421,000 euros (EUR) - in respect of pecuniary damage, and YTL 100,000 - approximately EUR 56,000 - in respect of non-pecuniary damage.

28. The Government contested these claims.

29. The Court notes that the parties have submitted six sample expert reports concerning the value of the land in question. These reports, which concerned neighbouring land, plot no. 5965/1, had been submitted to the Ankara Civil Court of General Jurisdiction in the course of domestic proceedings which are not relevant to the instant case. The first report, dated 22 November 2004, stated that the value of 1 sq. m. of plot no. 5965/1 was 600,000,000 Turkish Liras (TRL) [approximately 181,951 euros / EUR]. The second report, dated 25 November 2004, determined the value of 1 sq. m. of that land at TRL 1,090,000,000 [approximately EUR 111,794]. The third report, drafted on 3 June 2005, indicated that the value of 1 sq. m. was YTL 1,505 [approximately EUR 144,573] in January 2005. According to the fourth report, dated 20 June 2005, 1 sq. m. equalled TRL 550,000,000 [approximately EUR 172,296] in January 2000. As for the fifth report, dated 10 August 2005, it stated that the value of 1 sq. m. was TRL 1,500,000,000 [approximately EUR 156,714] on 28 January 2004. Finally, the last report, dated 15 November 2005, indicated that 1 sq. m. of that land was worth TRL 900,000,000 [approximately EUR 94,028] on 28 January 2004.

30. The applicant further submitted a letter from a real estate agent, *Ankara Bizim Emlak Müsavirliği*, which estimated the value of 1 sq. m. of her land at a minimum of TRL 2,650,000,000 and a maximum of TRL 3,100,000,000.

31. The Court reiterates that when the basis of the violation found is the lack of any compensation, rather than the inherent illegality of the deprivation of property, the compensation need not necessarily reflect the full value of the land (*I.R.S and Others v. Turkey* (just satisfaction), no. 26338/95, §§ 23-24, 31 May 2005). It therefore deems it appropriate to fix a lump sum that would correspond to the applicant's legitimate expectations of obtaining compensation. Having regard to the documents submitted by the parties, and deciding on an equitable basis, the Court awards the applicant EUR 145,000 in respect of pecuniary damage.

32. As regards the applicant's claim for non-pecuniary compensation, the Court finds that, in the circumstances of the present case, the finding of a violation constitutes sufficient just satisfaction (*ibid.* § 28).

B. Costs and expenses

33. The applicant also claimed YTL 1,000 - approximately EUR 560 - for the costs and expenses incurred before the domestic courts. The applicant stated that she had a contingency fee agreement with her lawyer.

34. The Government contested this claim.

35. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has not substantiated that she has actually incurred the costs claimed. Accordingly, it makes no award 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 applicant's right to the peaceful enjoyment of her possessions admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the finding of a violation in itself constitutes sufficient just satisfaction for the 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 in accordance with Article 44 § 2 of the Convention, EUR 145,000 (one hundred and forty-five thousand euros) in respect of pecuniary damage, 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;
 - (b) that from the expiry of the above-mentioned 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;

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

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President