



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

FOURTH SECTION

CASE OF ERDEM AND OTHERS v. TURKEY

(Application no. 82/02)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

08/04/2008

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 Erdem and Others v. Turkey,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Rıza Türmen,

Stanislav Pavlovschi,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 82/02) 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 three Turkish nationals, Mr Ali Erdem, Mr İbrahim Erdem and Mr İsmail Şenyılmaz (“the applicants”), on 28 June 2001.

2. The applicants were represented by Mr C. Şanlı, Mr M. Karabıyık and Mr A. Gündüz, lawyers practising in Istanbul. 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 applicants were born in 1940, 1944 and 1933 respectively and live in Istanbul.

5. In 1995 Kocaeli Provincial Private Administration Office (*Kocaeli İl Özel İdare Müdürlüğü*) expropriated a plot of land belonging to the applicants in order to expand the Kocaeli organised industrial zone.

A committee of experts assessed the value of the plot of land and the relevant amount was paid to the applicants following the expropriation.

6. On 23 October 1996 the applicants brought an action in the Gebze Civil Court of First Instance requesting additional compensation. The applicants argued that the plot of land in question should have been considered as urbanised land (*arsa*) instead of rural land. Three on-site inspections were conducted and three separate expert reports were received by the court. The applicants requested the court to dismiss two experts who took part in the preparation of a report, alleging that these experts were not impartial since they were civil servants. During the hearing on 22 December 1997, the applicants stated that they agreed to base the additional compensation on the lowest amount submitted in the expert reports. On 29 December 1997 the First Instance Court decided that the plot of land in question should be classified as urbanised land and awarded the applicants a certain amount of additional compensation. When deciding on the amount of additional compensation, the court relied on the outcome of another action which qualified the same plot of land as urbanised land.

7. On 16 June 1998 the Court of Cassation quashed the judgment on the ground that the expert reports were not sufficient basis for a judgment.

8. On 4 November 1998 the Gebze Civil Court of First Instance challenged the decision of the Court of Cassation (*direnme kararı*). The case file was transferred to the Grand Chamber of the Court of Cassation for Civil Law Matters (*Hukuk Genel Kurulu*).

9. On 23 December 1998 the Grand Chamber of the Court of Cassation quashed the judgment of 4 November 1998.

10. On 9 May 2000 the Gebze Civil Court of First Instance decided that the plot of land was of rural nature. In reaching this decision, the court conducted four more on-site inspections and relied on four additional expert reports, where the experts observed that the plot was not reserved for habitation under any urban plan (*imar planı*) of the Municipality or the Ministry of Public Works and Settlement; it was not situated within residential areas; and there was no annotation in the land registry that this plot was to be used for tourism purposes. Instead, the plot was classified as “field” in the Land Registry. Following the on-site inspections, the experts decided that the plot should be classified as rural land. Against this background, the court awarded the applicants an additional compensation of 22,568,437,760 Turkish liras (TRL) (approximately 13,080 euros (EUR)) plus interest at the statutory rate, running from 15 October 1996 for Mr Ali Erdem and from 22 October 1996 for the other applicants.

11. On 19 September 2000 the Court of Cassation upheld the judgment.

12. On 26 January 2001 the Court of Cassation dismissed the request for rectification.

13. On 20 February 2001 the Kocaeli Provincial Private Administration Office paid the applicants the total sum of TRL 72,198,960,506 (approximately EUR 41,850) interest included.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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

15. 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 maintained that the initial amount of compensation determined by the authorities was too low since the plot of land was not considered as urbanised land. The applicants contended also that, although their property was expropriated on 14 December 1995, the interest started to run from 15 and 22 October 1996. 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. Complaint concerning the authorities' delay in paying the applicants the additional compensation

1. Admissibility

16. The Government maintained that the applicants had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, since 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.

17. 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.

18. The Court finds that, in the light of the principles established in its case-law (see, among other authorities, see *Aka*, cited above) and of all the evidence before it, this complaint requires examination on the merits and there are no grounds for declaring it inadmissible. It must therefore be declared admissible.

2. Merits

19. 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).

20. 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 for the additional compensation awarded by the domestic courts was attributable to the expropriating authority, and caused the owners a loss in addition 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 which 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.

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

B. Complaint concerning the initial amount of compensation determined by the authorities, the classification of the plot as rural land and the date taken for running of the interest

22. The Court considers that these complaints should be examined under Article 6 § 1 of the Convention.

23. The Government disputed the applicants' allegations and invited the Court to declare this part of the application inadmissible.

24. The Court reiterates that the establishment of the facts and the assessment of the evidence are primarily matters for the domestic courts, and that the Court's supervisory jurisdiction is limited to ensuring that the applicants' Convention rights have not been breached (see, among many others, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

25. The Court considers that it is not required to decide on what basis the domestic courts should have assessed the amount of compensation

payable. As it has reiterated on a number of occasions, it cannot take the place of the domestic courts in determining what method of calculation should have been taken into consideration for the estimation of the value of the expropriated land and for the assessment of the sums due in consequence (see, *mutatis mutandis*, *Malama v. Greece*, no. 43622/98, § 51, 1 March 2001). This being so, the Court observes that the Gebze Civil Court of First Instance examined four different expert reports in determining the nature of the land in question and relied on the findings of the experts who assessed the nature of the plot by examining many different elements, such as the land registry records, the location of the plots and the local zoning plans (see paragraph 10 above). Having regard to the facts and documents submitted by the parties, the Court concludes that the applicants were fully able to state their case and that there is nothing to indicate that the assessment of the evidence was arbitrary or the proceedings otherwise unfair under Article 6 of the Convention.

26. In the light of the above considerations, the Court concludes that the complaints under Article 6 § 1 are to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicants also complained that the length of the civil proceedings had contravened the “reasonable time” requirement under Article 6 § 1 of the Convention. They further alleged that they had been denied a fair trial since the experts, who played an important role in the process of determining the value of the plot of land, were civil servants and, thus, were not impartial.

Article 6 § 1 of the Convention provides, insofar as relevant as follows:

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

28. The Government contested that argument.

A. Length of the proceedings

1. Admissibility

29. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

2. Merits

30. In the light of its findings with regard to Article 1 of Protocol No. 1 (paragraph 21 above), the Court does not consider that a separate examination of the merits of the case under Article 6 § 1 is necessary.

B. Expert evidence

31. As regards the alleged bias of the experts, the Court recalls that the guarantees of independence and impartiality under Article 6 of the Convention concern solely the courts (see, *Rezzonico v. Italy* (dec.), no. 43490/98, 15 November 2001). This being so, the Court does not find any evidence on which to call into question the independence and impartiality of the members of the Gebze Civil Court of First Instance for the purposes of Article 6 of the Convention. It considers therefore that the applicants have failed to lay the basis of an arguable claim that any of the procedural guarantees contained in Article 6 were breached in their case. Nor is there any evidence or basis on which to conclude that the domestic courts, in evaluating the facts or interpreting the domestic law, acted in an arbitrary or unreasonable manner.

32. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

1. *Pecuniary damage*

34. The applicants sought compensation for pecuniary damage in the following sums, depending on the nature of the finding of a violation by the Court:

- 521,847, United States dollars (USD) should the Court decide that the initial amount of compensation determined by the authorities was too low;
- USD 383,148 if the Court holds that the applicants' loss should be calculated as from December 1995;
- USD 190,290 should the Court conclude that the applicants' loss should be calculated as from October 1996.

35. The Government contested this claim.

36. 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, jointly, EUR 208,500 for pecuniary damage.

2. Non-pecuniary damage

37. The applicants each claimed USD 10,000 in respect of non-pecuniary damage.

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

39. 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 applicants.

B. Costs and expenses

40. The applicants also claimed USD 27,318 for the costs and expenses incurred both before the domestic courts and the European Court.

41. The Government contended that the applicants' claim was unsubstantiated.

42. 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 above criteria and the applicants' failure to substantiate their claim, the Court makes no award under this heading.

C. Default interest

43. 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' delay in paying the applicants the additional compensation and the length of proceedings 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 there is no need to examine the complaint under Article 6 of the Convention concerning the length of proceedings;

4. *Holds* 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 applicants
5. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 208,500 (two hundred and eight thousand five hundred euros) in respect of pecuniary damage, plus any taxes that may be chargeable, to be converted into New Turkish liras at the rate applicable at the date of settlement;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President