



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

SECOND SECTION

CASE OF GÖG & KOLSUZOĞLU and AGBAYIR v. TURKEY

(Applications nos. 10332/02 and 25805/02)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

24/04/2008

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 Göğ & Kolsuzoğlu and Agbayır v. Turkey,

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

Françoise Tulkens, *President*,

András Baka,

Ireneu Cabral Barreto,

Rıza Türmen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Danutė Jočienė, *judges*,

and Sally Dollé, *Section Registrar*.

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 10332/02 and 25805/02) 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 İlhami Göğ, Mrs Zerife Kolsuzoğlu and Mrs İslim Agbayır (“the applicants”), on 9 August 2001 and 23 December 2000 respectively.

2. The applicants were represented by Mr A. Elçi and Mr O. Kaysı, lawyers practising in Şanlıurfa. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 12 September 2006 the Court decided to give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1948, 1936 and 1939 respectively and live in Şanlıurfa.

5. The applicants were co-owners of a plot of land located in Karaköprü, Şanlıurfa, registered under parcel no. 740 in the land registry.

6. On 13 April 1989, the Governorship of Şanlıurfa decided to expropriate the applicants' land, together with other plots. The expropriation aimed at allocating the plots to the Ministry of Defence for military needs.

7. In 1991 the Ministry of Defence seized the land without compensating the applicants.

A. The compensation proceedings for *de facto* expropriation

8. On 24 September 1996 Mr Gög and Mrs Kolsuzoğlu, with co-claimants, filed a compensation claim against the Ministry for the *de facto* expropriation (case no. 1996/857). They submitted that the Ministry had been occupying their land since 1991 without a formal expropriation.

9. On the same day and complaining about the same situation, Mrs Agbayır also filed a claim together with other co-claimants (case no. 1996/855).

10. The applicants initiated both cases with partial claims, reserving their right to request additional compensation should the expert valuations exceed their partial claims.

11. In both cases the Ministry argued that it had been occupying the land since the mid-1970s and that the claims were time-barred. The Ministry relied on Article 38 of the Expropriation Act, Law no. 2942, pursuant to which all claims for *de facto* expropriations were subject to a 20-year prescription period running from the seizure of the land.

12. On 4 December 1996 the court conducted on-site examinations. The experts appointed by the court valued the land in which both Mr Gög and Mrs Kolsuzoğlu each held a 1/13 (one thirteenth) share at 52,517,752,560 Turkish liras (TRL), and that in which Mrs Agbayır held a 1/3 (one third) share at TRL 162,555,120,000.

13. Accordingly, on 27 December 1996, the Şanlıurfa Civil Court handed down two judgments awarding the applicants their respective partial claims in full, i.e., TRL 80,000,000,000 to Mrs Agbayır (case no. 1998/21) and TRL 26,000,000,000 to Mr Gög and Mrs Kolsuzoğlu (case no. 1998/23).

14. On appeal, the Court of Cassation quashed both judgments, directing the civil court to broaden the scope of its examination regarding the value of the land.

15. Complying with this ruling, the Şanlıurfa Civil Court restarted the proceedings. As its further examinations resulted in the same valuations, it gave two judgments on 27 October 1998, awarding the applicants the same amounts as before.

16. The court also ordered the plot in dispute to be registered in the name of the Treasury. In addition, it made a factual finding with respect to the year in which the seizure had taken place. Reasoning that the witness

statements brought by the applicants prevailed over the documents submitted by the Ministry, the court was convinced that the seizure had happened in 1991.

17. On 3 December 1998 the Court of Cassation upheld both judgments.

18. On 17 May 1999 the relevant amounts, together with their statutory interest, i.e. TRL 165,577,780 (case no. 1998/21) and TRL 53,812,780 (case no. 1998/23), were paid to the applicants.

B. The proceedings for additional compensation

19. As the applicants had reserved their right to additional compensation, they initiated subsequent claims to recover the difference between the amounts awarded and the values assessed by the experts and recognised by the court. In this respect, Mrs Agbayır applied, with a co-claimant, to the Şanlıurfa Civil Court on 20 July 1999, requesting the balance of TRL 27,518,373,000 (case no. 1999/568). A day later, Mr Gög and Mrs Kolsuzoğlu applied to the same court requesting TRL 4,252,180,480 for each of them (case no. 1999/576).

20. In case no. 1999/568, the court ruled on 5 October 1999 in favour of Mrs Agbayır and granted her claim in full. On 9 December 1999, however, the Court of Cassation favoured, for the first time in the relevant proceedings, the Ministry's thesis that the seizure had taken place in the mid-1970s, and most probably in 1977. Accordingly, it ruled that the additional claims had been filed outside of the 20-year prescription period of Article 38 of the Expropriation Act.

21. On 4 May 2000 the Şanlıurfa Civil Court complied with that ruling and dismissed case no. 1999/568. On 29 June 2000 the Court of Cassation upheld this ruling. This judgment became final on 10 July 2000.

22. The proceedings in case no. 1999/576 produced a similar outcome. The Şanlıurfa Civil Court dismissed the additional claims of Mr Gög and Mrs Kolsuzoğlu on 6 July 2000 for being out of time. The Court of Cassation upheld that ruling on 19 April 2001 and refused a rectification review. The judgment became final on 4 June 2001.

23. On 10 April 2003 the Constitutional Court annulled Article 38 of the Expropriation Act.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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

25. In view of the similarity of the two applications, the Court finds it appropriate to join them.

I. THE GOVERNMENT'S OBJECTIONS TO ADMISSIBILITY

26. The Government raised an objection to the admissibility of the applications on three grounds. They argued, firstly, that the applicants lacked any victim status since they had already obtained full compensation for the expropriation. Secondly, the applicants had failed to comply with the six-month rule given that the final decisions concerning the ownership of the property had been given by the Şanlıurfa first instance court on 3 December 1998, in respect of İlhami Gög and Zerife Kolsuzoğlu, and on 23 December 1998 in respect of İslim Agbayır, whereas the applicants had lodged their applications on 9 August 2001 and 23 December 2000 respectively. Thirdly, the Government contended that the applicants had also failed to exhaust domestic remedies because they could have brought a new action for additional compensation subsequent to the Constitutional Court's judgment of 10 April 2003, whereby Article 38 of Law no. 2942 had been declared null and void.

27. The applicants claimed that they had complied with the admissibility criteria laid down in Article 35 § 1 of the Convention.

28. The Court notes at the outset that the present case is similar to *Gök and Others v. Turkey* (applications nos. 71867/01, 71869/01, 73319/01 and 74858/01, 17 July 2006) since the complaints arise out of largely identical facts, i.e. the applicants in the instant case are some of the remaining co-owners of the same plot of land (no. 740), located in Karaköprü (Şanlıurfa). Against this background, the Court notes that it has already examined a similar objection of the Government as regards the applicants' victim status in the former judgment and rejected it (see *Gök and Others* §§ 40-44). It finds no reason to reach a different conclusion in the instant case.

29. As regards the alleged non-compliance with the six-month rule, the Court notes that the applicants' complaints do *not* concern their inability to obtain compensation for expropriation but the refusal of the domestic courts to award them additional compensation, which was the subject matter of the proceedings which ended on 10 July 2000 and 4 June 2001 (see paragraphs 21 and 22 above). Bearing in mind that Mr Gög and Mrs Kolsuzoğlu lodged their application on 9 August 2001 and Mrs Agbayır introduced her application on 23 December 2000, the Court considers that the applications were submitted within the six-month time-limit.

30. Finally, as to the Government's contention that the applicants had failed to exhaust domestic remedies, the Court notes that, under

Article 153 § 6 of the Turkish Constitution, the effects of the Constitutional Court's judgment on nullity (*iptal davası*) were not retrospective. Accordingly, contrary to the Government's assertion, the Court finds that the applicants could not have brought an action after the Constitutional Court's judgment which declared Article 38 of Law no. 2942 null and void.

31. In view of the above, the Court dismisses the Government's objections to the admissibility of the applications.

32. The Court further notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

33. The applicants complained that the domestic courts' failure to award them additional compensation, despite having already established the time of actual seizure as 1991 in the previous proceedings, had violated their right to a fair hearing under Article 6 § 1 of the Convention, which reads, as relevant:

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

34. The Government contested that argument.

35. The Court recalls its earlier finding in the above-mentioned *Gök and Others* judgment that the plot of land in question had been occupied by the Ministry of Defence in 1991 (see also paragraph 7 above) and that, by the judgments of the domestic courts awarding compensation for expropriation, the applicants had gained *res judicata* as regards the determination of the date from which the prescription period would start running, within the meaning of Article 38 of Law no. 2942 (see *Gök and Others*, cited above, §§ 57 and 58).

36. However, following the Court of Cassation's decision that the date of occupation of the land must be taken to have occurred in 1977, the Şanlıurfa first instance court disregarded its earlier findings in its judgments dated 27 December 1996 and dismissed the applicants' requests for additional compensation for being out of time, in application of Article 38 of Law no. 2942 (see paragraphs 20-22 above). The court's departure from its earlier finding did not overturn its earlier judgments which were “irreversible” and thus *res judicata* and which had, moreover, been executed (see *a contrario*, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII, cited in *Gök and Others*, § 61). This reassessment of the facts, which led to findings that were radically different from those adopted by the same court and which flew in the face of the applicants' legitimate expectation that, in the same litigation, the same tribunal would give a

ruling which was consistent with its previous two final judgments, must be regarded as incompatible with the principle of legal certainty (see *Gök and Others*, cited above, § 61).

37. In view of the foregoing considerations, the Court concludes that by re-examining a matter which had already been decided in final decisions and in the absence of a valid reason, the domestic courts infringed the principle of legal certainty (*ibid.*, § 62).

There has therefore been a violation of the applicants' right to a fair hearing within the meaning of Article 6 § 1 of the Convention.

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

38. Relying on the same facts, the applicants complained of a violation of Article 1 of Protocol No. 1.

39. Having regard to the finding relating to Article 6 (see paragraph 37 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of the Protocol (*ibid.*, § 64).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants İlhami Gög and Zerife Kolsuzoğlu each claimed EUR 82,942 in respect of pecuniary damage and EUR 5,000 for non-pecuniary damage. The applicant İslim Agbayir claimed EUR 247,000 and EUR 20,000 in respect of pecuniary and non-pecuniary damage respectively.

42. The Government submitted that no awards should be made.

43. Having regard to the documents in its possession and ruling on an equitable basis, the Court awards EUR 10,000 to each of the applicants İlhami Gög and Zerife Kolsuzoğlu, and EUR 15,000 to İslim Agbayir, which sums comprise all types of damages sustained by the applicants (see *Gök and Others*, cited above, § 68).

B. Costs and expenses

44. The applicants also claimed EUR 7,000 for the costs and expenses incurred before the Court.

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

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

C. Default interest

47. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants the following sums in damages, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) to İlhami Göğ;
 - (ii) EUR 10,000 (ten thousand euros) to Zerife Kolsuzoğlu; and
 - (iii) EUR 15,000 (fifteen thousand euros) to İslim Agbayır;
 - (iv) plus any taxes which may be chargeable;
 - (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President