



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

SECOND SECTION

CASE OF M. ALİ DURMAZ v. TURKEY

(Application no. 22261/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of M. Ali Durmaz v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 22261/03) 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 M. Ali Durmaz (“the applicant”), on 7 May 2003.

2. The applicant was represented by Mr M. Birlik, a lawyer practising in Şanlıurfa. The Turkish Government (“the Government”) were represented by their Agent.

3. On 14 September 2007 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 1927 and lives in Gaziantep.

5. In 2000 the Ministry of Energy and Natural Resources (“the Ministry”) expropriated two plots of land belonging to the applicant (plot no. 247 in block no. 103 and plot no. 14 in block no. 130) in Erenköy village, Nizip, for the construction of the Birecik dam.

6. On 23 May 2000 the applicant brought two separate actions before the Nizip Civil Court for additional compensation.

7. On 22 and 25 December 2000 respectively the Nizip Civil Court awarded the applicant additional compensation plus interest at the statutory rate, running from 9 June 2000 (judgments nos. 2000/5137 and 2000/4790).

8. On 9 July 2001 the Court of Cassation upheld the judgments of the first-instance court.

9. On 30 April 2003 the Ministry made a partial payment to the applicant, namely 23,449,000,000 Turkish liras (TRL)¹ for plot no. 247 and TRL 13,494,000,000² for plot no. 14.

10. On 2 May 2003 the Birecik Execution Office issued a payment order to the Ministry where it informed the latter that it had an outstanding debt of TRL 3,073,350,480³ for plot no. 247 and TRL 1,804,328,414⁴ for plot no. 14.

11. On 28 June 2007 the applicant's representative sent a letter to the Ministry whereby he agreed to accept the calculations made by the administration for the discharge of its outstanding debt.

12. On 8 July 2008 the Government informed the Court that they had not yet made any further payments to the applicant to discharge their outstanding debt.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice are set out in the *Çiçek and Öztemel and Others v. Turkey* judgment of 3 May 2007 (nos. 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, §§ 14-15).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

14. The applicant complained that the excessive delay in the payment of the additional compensation he was awarded following the expropriation of his properties, coupled with the low interest rates, had caused him to suffer a financial loss. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

¹ Equivalent of approximately 13,470 euros (EUR) at the material time.

² Equivalent of approximately EUR 7,752 at the material time.

³ Equivalent of approximately EUR 1,772 at the material time.

⁴ Equivalent of approximately EUR 1,040 at the material time.

A. Admissibility

15. The Government submitted that on 28 June 2007, subsequent to the lodging of the application with the Court, the applicant's representative had signed an agreement with the administration where he agreed to accept the amount to be paid by the latter in relation to the outstanding debt. The Government stated that this was an explicit manifestation of the applicant's will to put an end to litigious proceedings commenced against the administration and asked the Court to declare the application inadmissible due to the applicant's loss of victim status.

16. The Government also maintained that the applicant had not exhausted domestic remedies as required by Article 35 of the Convention, as he had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations. Under that provision, he would have been eligible for compensation for the losses allegedly sustained as a result of the delays in payment of the additional compensation if he had established that the losses exceeded the amount of default interest.

17. With regard to the Government's first preliminary objection, the Court observes that the document signed by the applicant's representative on 28 June 2007 does not indicate any intention to waive the outstanding compensation claims or any other rights and claims the applicant may have against the administration. Nor does it entail an agreement to withdraw the applicant's complaints raised before the Court. Accordingly, the Court finds that the applicant can still claim to be the victim of the alleged violations of Article 6 § 1 of the Convention as well as Article 1 of Protocol No. 1.

18. As regards the Government's "non-exhaustion" objection, the Court observes that it dismissed a similar preliminary objection in the case of *Aka v. Turkey* (23 September 1998, §§ 34-37, *Reports of Judgments and decisions* 1998-VI). It sees no reason to do otherwise in the present case and therefore rejects the Government's objection.

19. 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

20. The Government maintained that the applicant was paid the principal amount of the additional compensation awarded by the domestic courts and that Article 1 of Protocol No. 1 did not guarantee a right to full compensation of the market value of a property in all circumstances.

21. The applicant maintained his allegations and contested the Government's arguments.

22. The Court observes from the documents in the case file that the applicant has still not been paid the totality of the amounts due by the authorities, which is also acknowledged by the respondent Government in its letter of 8 July 2008. The Nizip Civil Court's judgments of 22 and 25 December 2000, therefore, remain unenforced in part.

23. In these circumstances, the Court is of the view that although the applicant does not specifically mention it in his complaints, the underlying issue in the present application and the reason for the applicant's alleged financial loss is the non-execution of the domestic court judgments, which engages the responsibility of the State under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

24. The Court notes that it has already examined similar cases on previous occasions and has found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of non-enforced court decisions (see, for instance, *Burdov v. Russia*, no. 59498/00, §§ 34-42, ECHR 2002-III; *Çoban and Others v. Turkey*, no. 2620/05, §§ 16-21, 24 January 2008; *Akıncı v. Turkey*, no. 12146/02, § 16-18, 8 April 2008; *Kaçar and Others v. Turkey*, nos. 38323/04, 38379/04, 38389/04, 38403/04, 38423/04, 38510/04, 38513/04, and 38522/04, §§ 22-25, 22 July 2008).

25. The Court notes in particular that the right secured under Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby v. Greece*, judgment of 19 March 1997, § 40, *Reports* 1997-II). The Court also notes that by failing to comply with the judgments of the domestic courts, the national authorities prevented the applicant from receiving the money he was entitled to in its entirety. The Government have not advanced any justification for this interference.

26. In the light of the foregoing, the Court concludes that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed EUR 5,000 in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

29. The Government contested the applicant's claims.

30. The Court notes that it has found violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 by reason of the non-execution of final judicial decisions. The Court considers in the light of its case law that the payment by the Government of the outstanding judgment debt would satisfy the applicant's claim for pecuniary damage (see, among others, *Basoukou v. Greece*, no. 3028/03, § 26, 21 April 2005; *Ahmet Kılıç v. Turkey*, no. 38473/02, § 39, 25 July 2006; *Akıncı*, cited above, § 21; *Kaçar and Others*, cited above, § 30). The Court therefore considers that the respondent Government should ensure that the Nizip Civil Court's judgments of 22 and 25 December 2000 are duly executed by the administration.

31. The Court further considers that the applicant must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Consequently, taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 800 as non-pecuniary damage.

B. Costs and expenses

32. The applicant did not claim any costs and expenses. Accordingly, no award is made under this head.

C. Default interest

33. 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 6 § 1 of the Convention and Article 1 of Protocol No. 1 in respect of the non-enforcement of the judgment;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, the amount of the debt arising from the domestic judgments still owed to him, as well as EUR 800 (eight hundred euros) for non-pecuniary damage, plus any taxes that may be chargeable, to be converted into the national currency of the respondent Government 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 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 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President