



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

SECOND SECTION

CASE OF SAİT IŞIK v. TURKEY

(Application no. 19255/02)

JUDGMENT

STRASBOURG

10 March 2009

FINAL

10/06/2009

This judgment may be subject to editorial revision.

In the case of Sait Işık 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,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 19255/02) 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 Sait Işık (“the applicant”), on 17 January 2002. The applicant was represented by Ms A. Aslan, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent. On 22 January 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

2. The applicant was born in 1917 and lives in Eğil.

3. On 3 April 1997 the Ministry of Energy and Natural Resources expropriated 6 plots of land (plots nos. 546, 529, 503, 507, 527 and 523) belonging to the applicant in the Kale district of Eğil in Diyarbakır. A committee of experts assessed the value of the land and the sum fixed thereby was paid to the applicant on 19 November 1997.

4. On 8 December 1997 the applicant lodged a case with the Eğil Civil Court, requesting additional compensation. The first-instance court decided

to deal separately with parcel no. 523 due to the different nature of that parcel.

1. Proceedings regarding parcel no. 523

5. On 6 December 1999 the Eği Civil Court awarded the applicant additional compensation of 501,377,750 Turkish liras (TRL) plus interest at a rate of 30% from 8 December 1997 to 1 January 1998, and a rate of 50% from 1 January 1998 onwards.

6. On 9 October 2000 the Court of Cassation upheld the decision of the court of first instance.

7. On 13 June 2001 the administration paid the applicant TRL 1,586,220,000 in additional compensation together with interest.

2. Proceedings regarding parcels nos. 546, 529, 503, 507 and 527

8. On 17 May 2000 the Eği Civil Court awarded the applicant additional compensation of TRL 11,267,083,000 plus interest at the statutory rate, running from 18 February 1998.

9. On 12 February 2001 the Court of Cassation upheld the judgment of the first-instance court.

10. On 27 November 2001 the administration paid the applicant TRL 35,240,270,000 in additional compensation together with interest.

THE LAW

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

11. The applicant complained that he had been paid insufficient interest on the additional compensation received following the expropriation of his land, and that the authorities had delayed in paying him the relevant amounts. He relied on Article 1 of Protocol No. 1.

12. The Government argued firstly that the applicant had failed to comply with the six-month rule since he had waited until after the payments had been made to apply to the Court instead of applying within six months from the domestic court's decisions. However, he had been aware of the interest rates at the time of delivery of the decisions. The Government also maintained that the applicant had not exhausted domestic remedies because he had failed to make proper use of the remedy available to him under Article 105 of the Code of Obligations.

13. As regards the Government's preliminary objection concerning non-compliance with the six-month rule, the Court considers that the six-month period runs from the date of the last payments, since the applicant's

complaint essentially concerns the period which elapsed between the final domestic court decision and that date. The Court notes that the payment of additional compensation in relation to parcel no. 523 was made on 13 June 2001. This aspect of the complaint was therefore lodged out of time by 17 January 2002, and must be rejected pursuant Article 35 §§ 1 and 4 of the Convention.

14. However, the payment in relation to parcels nos. 546, 529, 503, 507 and 527 was made on 27 November 2001. Consequently, the Court finds that the applicant has complied with Article 35 § 1 of the Convention with regard to these plots and, therefore, rejects the Government's objection in relation to this part of the complaint.

15. As to the Government's preliminary objection concerning non-exhaustion of domestic remedies, the Court observes that it dismissed a similar argument 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.

16. The application is, therefore, admissible as far as it concerns parcels nos. 546, 529, 503, 507 and 527.

17. As regards the merits of the case, the Court reiterates that it has already found a violation of Article 1 of Protocol No. 1 in a number of applications that raise similar issues to those arising here (see, for example, *Akkuş v. Turkey*, 9 July 1997, § 31, *Reports* 1997-IV; *Pamuk v. Turkey*, no. 131/02, §§ 16-18, 19 December 2006; *Halil Kendirci v. Turkey*, no. 23324/02, §§ 16-18, 25 April 2006). 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 those previous cases.

18. There has accordingly been a violation of Article 1 of Protocol No. 1 in relation to parcels nos. 546, 529, 503, 507 and 527.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 8,824 United States Dollars (USD) (approximately 6,100 euros (EUR)) in respect of pecuniary damage.

20. The Government contested this claim.

21. Using the same method of calculation as in the *Akkuş* judgment (cited above, §§ 55-56) and having regard to the relevant economic data, the Court awards the applicant EUR 3,000 in respect of pecuniary damage.

22. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court. He submitted a document, dated 3 January 2002, certifying that he had paid TRL 1,000,000 (approximately EUR 780) to his representative in relation to the application before the Court.

23. The Government contested this claim.

24. 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 documentation in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 780 for the proceedings before the Court.

25. 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 in relation to the property issue concerning parcels nos. 546, 529, 503, 507 and 527, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *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 amounts, to be converted into the national currency of the respondent Government at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 780 (seven hundred and eighty euros) plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (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 10 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President