



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

SECOND SECTION

CASE OF KARAKUŞ v. TURKEY

(Application no. 19467/07)

JUDGMENT

STRASBOURG

14 April 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Karakuş 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,

András Sajó,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 19467/07) 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 Kazım Karakuş (“the applicant”), on 25 April 2007. The applicant was represented by Mr Z. Kadayıfçı, a lawyer practising in Hatay. The Turkish Government (“the Government”) were represented by their Agent. On 30 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

2. The applicant owned two adjacent plots of land (157 square meters of plot no. 1640 and 132 square meters of plot no. 1641) situated near the coast-line in Tekirdağ on which he built two semi-detached houses. On 20 May 2005 the Tekirdağ Court of First Instance delivered two separate judgments and annulled 83,36 square meters and 71,02 square meters of the respective plots on the ground that they were situated on the coastline which could not be subject to private ownership. The court further ordered the demolition of any constructions thereon. The Court of Cassation upheld the judgments on 5 May 2006 and 24 May 2006 respectively. The applicant’s requests for rectification were rejected on 13 November 2006.

THE LAW

3. The applicant complained that the authorities had deprived him of his property without payment of compensation and that the Court of Cassation had failed to deliver reasoned judgments, in breach of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention respectively. The Government contested these allegations.

4. The Court notes that it has already declared admissible similar complaints under Article 1 of Protocol No. 1 (see, in particular, *Abacı v. Turkey*, no. 33431/02, §§ 11-18, 7 October 2008, and *Turgut and Others v. Turkey*, no. 1411/03, § 80, 8 July 2008) and has found violations in respect of the annulment of title acquired in good faith but later restored to State ownership without compensation being paid (see *N.A. and Others v. Turkey*, no. 37451/97, §§ 36-43, ECHR 2005-X). It further notes the absence of sample domestic judgments where compensation has been awarded in similar situations. Accordingly the Court holds that the complaint under Article 1 of Protocol No. 1 is admissible, there being no grounds upon which to decide otherwise. The Court further finds no reason to depart from the conclusions on the merits of the cases cited above. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1.

5. Regarding the applicant's complaints under Article 6 § 1 of the Convention, the Court observes that the judgments of the Tekirdağ Court of First Instance were fully reasoned. In the Court's opinion, the succinct reasoning given by the Court of Cassation was sufficient in the circumstances to comply with the requirements of Article 6 § 1 of the Convention (*Helle v. Finland*, 19 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

6. As to the award under Article 41 of the Convention, the applicant claimed 427,328 Turkish liras (TRY) (approximately 210,506 euros (EUR)) in respect of pecuniary damage and 60,000 US dollars (USD) in respect of non-pecuniary damage. He also claimed TRY 5,306 (approximately EUR 2,613) in respect of the costs and expenses incurred before the domestic courts as well as the lawyer's fee for the procedure before the Court. In this respect he referred to an expert report, a number of receipts issued by domestic courts and a lawyer's contract. The Government contested these claims.

7. The Court reiterates that when the basis of the violation found is the lack of compensation, rather than any inherent illegality in the taking of the property, the compensation need not necessarily reflect the property's full value (see *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

(see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 254-259, ECHR 2006-..., *Stornaiuolo v. Italy*, no. 52980/99, §§ 82-91, 8 August 2006, and *Doğrusöz and Aslan v. Turkey*, no. 1262/02, § 38, 30 May 2006, § 36). Deciding on an equitable basis, it awards the applicant EUR 120,000 for pecuniary damage. As regards the applicant's claim for non-pecuniary damages, the Court finds that, in the circumstances of the present case, the finding of a violation constitutes sufficient just satisfaction (see *Doğrusöz and Aslan*, cited above, and *Adil Özdemir v. Turkey*, no. 36531/02, § 42, 10 May 2007). Additionally, on the basis of the documents in its possession, the Court awards the applicant EUR 2,000 in respect of costs and expenses. The Court further 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 under Article 1 of Protocol No. 1 admissible 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* that the finding of a violation constitutes in itself 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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 120,000 (one hundred and twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President