



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

SECOND SECTION

CASE OF MUSTAFA KOÇER v. TURKEY

(Application no. 9738/06)

JUDGMENT

STRASBOURG

21 April 2009

FINAL

21/07/2009

This judgment may be subject to editorial revision.

In the case of Mustafa Koçer 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 Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 31 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 9738/06) 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 Mustafa Koçer (“the applicant”), on 21 February 2006. The applicant was represented by Mr C Torun, a lawyer practising in Bursa. The Turkish Government (“the Government”) were represented by their Agent. On 5 November 2007 the President of the Second Section decided to give notice of the application to the Government and to examine the merits of the application at the same time as its admissibility (Article 29 § 3). On 25 September 2008 the President of the Second Section refused to include in the case file the applicant’s just satisfaction claims which were filed outside the time-limit (Rule 38 § 1).

THE FACTS

2. The applicant owned two plots of land (plots nos. 3 and 4) near the coast in Mudanya and a house situated thereon. On 9 September 2003 the Mudanya Court of First Instance decided to annul the title to plot no. 4 which measured 46.60 square meters on the ground that it was situated on the coastline which could not be subject to private ownership. On 27 September 2004 the Court of Cassation upheld the decision. The applicant’s rectification request was rejected on 24 November 2005.

THE LAW

3. The applicant complained that the authorities had deprived him of his property without payment of compensation, in violation of Article 1 of Protocol No. 1. The Government contested that allegation.

4. The Court notes that it has already declared admissible similar cases (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 of Article 1 of Protocol No. 1 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 application is admissible, there being no grounds upon which to decide otherwise. As to the merits the Court finds no reason to depart from the conclusions of the cases cited above. Accordingly, it finds that there has been a violation of Article 1 of Protocol No. 1.

5. As to the just satisfaction award, the Court considers that no award should be made to the applicant who failed to submit the just satisfaction claim within the time allowed (see *Taner v. Turkey*, no. 38414/02, § 35, 15 February 2007).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President