



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

1959 · 50 · 2009

SECOND SECTION

CASE OF ÜÇPINAR v. TURKEY

(Application no. 41479/05)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Üçpınar 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 41479/05) 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 İsmet Üçpınar (“the applicant”), on 10 November 2005.

2. The applicant was represented by Ms H. Müslümoğlu and Mr K. Yaz, lawyers practising in Konya. The Turkish Government (“the Government”) were represented by their Agent.

3. On 1 July 2008 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the damage allegedly sustained by the applicant as a result of the various insufficient interest rates compared to the high inflation rate. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Aksaray.

5. In 1995 the Municipality of Konya decided to expropriate the applicant’s property. The title was transferred to the Municipality of Konya on 26 August 1996.

6. On 1 May 2003 the applicant brought an action before the Konya Court of First Instance for increased compensation. On 21 June 2004 the Konya Court of First Instance partly accepted the applicant's claim and awarded him additional compensation of 1,861,980,000¹ Turkish liras (TRL), which bore statutory interest running from 26 August 1996. On 29 December 2004 the Court of Cassation upheld the judgment.

7. The applicant requested rectification. On 18 April 2005 the Court of Cassation dismissed the request for rectification and notified the applicant on 10 May 2005.

8. On 22 June 2005 the authorities paid the applicant 13,783 Turkish liras (TRY)².

THE LAW

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

9. The applicant complained that the various rates of default interest applied to the additional compensation awarded for the expropriation of his property had not been sufficient in view of the rate of inflation.

10. The Government contested this argument and maintained that the applicant had not raised this issue before the domestic authorities.

11. The Court notes that the legal interest rates applied to State debts are prescribed by law. Thus, it is obvious that even if the applicant had raised his complaint concerning the legal interest rates before the domestic authorities he would not have been compensated (see *Reçber v. Turkey*, no. 52895/99, § 18, 2 February 2006).

12. The Court notes that this complaint 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.

13. As regards the merits of the case, the Court has found a violation of Article 1 of Protocol No. 1 in a number of cases that raise similar issues to those arising here (see *Aka v. Turkey*, 23 September 1998, §§ 50-51, *Reports of Judgments and Decisions* 1998-VI). Having examined the facts and arguments presented by the Government, the Court considers that there is nothing to warrant a departure from this conclusion reached in the

1. Approximately 1,031 euros (EUR).

2. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000. The sum above was therefore equivalent to TRL 13,783,000,000 and approximately EUR 8,375 at the material time.

previous cases. It finds that the difference between the values of the amounts due to the applicant when his property was expropriated and when they were actually paid caused him to sustain a loss which upset the fair balance that should have been maintained between the protection of the right to property and the demands of the general interest.

14. Consequently, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed TRY 133,000¹ in respect of pecuniary damage. The Government contested this claim and asserted that it was excessive and speculative.

16. Using the same method of calculation as in the Aka judgment (cited above, §§ 53-57) and having regard to the relevant economic data, the Court awards the applicant EUR 21,700 in respect of pecuniary damage.

17. The applicant did not submit a claim for non-pecuniary damage or costs and expenses. Accordingly, the Court concludes that there is no call to award him any sum on these accounts.

18. 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 complaint admissible;
2. *Holds* that there has been a violation of Article 1 of protocol No.1;
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, EUR 21,700 (twenty-one thousand seven hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into Turkish liras 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

1. Approximately EUR 63,300.

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Sally Dollé
Registrar

Françoise Tulkens
President