



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

1959 · 50 · 2009

SECOND SECTION

CASE OF FIRAT AND OTHERS v. TURKEY

(Application no. 17597/03)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of *Firat and Others 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 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 17597/03) 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 six Turkish nationals, Ms Zeynep Fırat, Mr Ahmet Fırat, Ms Hanım Fırat, Mr Ömer Fırat, Mr Osman Fırat and Ms Ayşe Özdemir (Fırat) (“the applicants”), on 28 April 2003.

2. The applicants were 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 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1926, 1959, 1951, 1962, 1963 and 1966 respectively and live in Gaziantep.

5. In 1999 the Ministry of Energy and Natural Resources expropriated five plots of land belonging to the applicants (plots nos. 501, 561, 562, 606 and 608) in the Aşağıçardak village in Nizip for the construction of the Birecik Dam.

6. Following the applicants' requests for increased compensation, the Nizip Civil Court of First Instance awarded them additional compensation plus interest at the statutory rate. The applicants appealed and the Court of Cassation upheld the judgments of the first instance court.

7. In November and December 2002 the administration made partial payments to the applicants in additional compensation. On 31 May 2007 the Ministry made further payments to discharge their outstanding debts. The details regarding the proceedings and payments are indicated in the table below:

PLOT No.	DATE OF JUDGMENT OF THE NİZİP CIVIL COURT OF FIRST INSTANCE	DATE OF FINAL DECISION BY THE COURT OF CASSATION	AMOUNT OF ADDITIONAL COMPENSATION (interests and legal costs not included) (in Turkish liras (TRL))	AMOUNT OF FIRST PAYMENT (made in November and December 2002) (in TRL)	AMOUNT OF SECOND PAYMENT (made on 31 May 2007) (in Turkish liras (TRY ¹))
501	30.12.1999	22.5.2000	1,490,114,475	4,459,615,014	2,483
561	30.12.1999	9.10.2000	2,123,437,500	6,443,401,220	3,269
562	12.4.2000	6.11.2000	4,114,327,200	12,420,060,000	6,533
606	30.12.1999	26.6.2000	6,185,875,000	11,681,545,946	6,105
608	30.12.1999	22.5.2000	1,230,027,343	3,643,790,000	1,094

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. The relevant domestic law and practice are set out in the cases of *Akkuş v. Turkey* (9 July 1997, *Reports of Judgments and Decisions* 1997-IV), *Aka v. Turkey* (23 September 1998, *Reports* 1998-VI); *Gaganuş and Others v. Turkey* (no. 39335/98, §§ 15-19, 5 June 2001), and *Ak v. Turkey* (no. 27150/02, §§ 11-13, 31 July 2007).

1. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1= TRL 1,000,000.

THE LAW

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

9. The applicants complained that they had been paid insufficient interest on additional compensation received following the expropriation of their lands, which had the effect of reducing the value of their compensation through the effect of inflation, and that the authorities had delayed in paying them the relevant amounts.

A. Admissibility

10. The Government submitted that the applicants had not suffered any material loss on account of the interest rates applied, as they alleged, since the payments effected on 31 May 2007 had been made with the highest interest rates in accordance with Article 46 of the Constitution of Turkey ("the Constitution"). The applicants, therefore, lacked victim status. The Government further contended that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. They argued in this regard that, had the applicants invoked Article 46 of the Constitution when claiming their monies from the authorities, the payments would have been effected with less delay as the administration gave priority to claims based on Article 46 of the Constitution.

11. The applicants maintained their allegations.

12. The Court considers in the first place that it is not necessary to examine the Government's first objection regarding the lack of victim status as the complaint concerning the insufficiency of interest rates is inadmissible in any event.

13. The Court notes in this regard that, according to the calculation method adopted in the case of *Akkuş* (cited above, §§ 35, 36 and 39), the applicants appear to have received more than 95% of the full compensation owed to them for all the relevant plots on the date of the second payment. In the light of the Court's findings in *Arabacı v. Turkey* ((dec.), no. 65714/01, 7 March 2002), the Court is of the opinion that the total amount of money paid to the applicants was satisfactory and that the applicants did not sustain separate loss in addition to the loss deriving from the expropriation of their lands on account of the low interest rates (see, among others, *Akkuş*, cited above, § 30, and *Gül and Others v. Turkey* (dec.), no. 44715/98, 18 March 2004).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

14. As regards the Government's second objection concerning non-exhaustion of domestic remedies in relation to the delay encountered in the payment of compensation, the Court recalls that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to additional remedies to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Arat and Others v. Turkey*, nos. 42894/04, 42904/04, 42905/04, 42906/04, 42907/04, 42908/04, 42909/04 and 42910/04, § 19, 13 January 2009). The Court consequently dismisses the Government's objection on this matter.

15. The Court notes that the complaint regarding delayed payment 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

16. The Court observes that the authorities effected the first payments two to two and a half years after the Court of Cassation's decisions and that the second payments were made almost seven years after the said decisions. 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 (see, for instance, *Burdov v. Russia*, no. 59498/00, §§ 34-42, ECHR 2002-III, and *M. Kaplan v. Turkey*, no. 29016/04, §§ 16-19, 9 December 2008). The Court considers that there is nothing to warrant a departure from its findings in the previous cases.

17. 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 on account of the delayed payment of additional expropriation compensation.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages, costs and expenses

18. The applicants claimed, jointly, 15,000 euros (EUR) in respect of pecuniary damage and EUR 35,000 in respect of non-pecuniary damage. They also claimed EUR 3,000 for costs and expenses. They did not submit any documents to substantiate their claims.

19. The Government submitted that no compensation should be awarded to the applicants as they had been sufficiently compensated by the payments made by the authorities.

20. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

However, ruling on an equitable basis, it awards each of the applicants EUR 1,000 in respect of non-pecuniary damage.

21. As for costs and expenses, the Court makes no award under this head as the applicants have failed to substantiate their claims.

B. Default interest

22. 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 concerning the delayed payment of additional expropriation compensation under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President