



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

SECOND SECTION

CASE OF BORA v. TURKEY

(Application no. 14719/03)

JUDGMENT
(Merits)

STRASBOURG

9 February 2010

FINAL

09/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bora 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 19 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 14719/03) 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 a Turkish national, Mr Sabri Bora (“the applicant”), on 8 March 2003.

2. The applicant was represented by Mr A Karapınar, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 27 June 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1933 and lives in İstanbul.

5. In 1970 the applicant bought a share in some land (plot no. 195) which was jointly owned by several other persons, in the Kadıköy district of İstanbul. According to the title-deed the applicant’s share corresponded to 275/21672 of the plot. The applicant submitted a copy of a map dated 17 June 1970 where he is mentioned as the owner of the part of the land

designated as no. 46 in plot no. 195 (hereinafter “land no. 46”), which was around 329,50 m2 in size.

6. By decision no. 92/5 dated 12 May 1992, the Kadıköy Municipality divided the property amongst its owners and created separate titles. The applicant was allocated the part of the land designated as no. 6 in plot no. 195. It appears that the Municipality allocated parcel no. 46 to a firm.

7. On an unspecified date the applicant filed an action with the İstanbul Administrative Court against the Kadıköy Municipality, requesting the annulment of decision no. 92/5.

8. On 5 October 1994, upon the applicant’s request to prevent the transfer of the allocated plot of land to third persons, the İstanbul Administrative Court stayed the execution of the Municipality’s decision no. 92/5. The court noted, in particular, that, in view of the circumstances of the case file, the application of the Municipality’s decision no. 92/5 would engender irremediable damage.

9. On 10 April 1995 the firm sold its land to another person, Mr T.M., who in turn sold it to Mr G.Y. on 22 August 1996.

10. On 29 May 1995 the İstanbul Administrative Court annulled the part of the Municipality’s decision affecting the applicant on the ground that it was unlawful. The court, after having examined the evidence in the case file and the experts’ report, held that the value of the land allocated to the applicant by the Municipality’s decision was inferior to the value of the applicant’s parcel, and that there was a building on it which belonged to third persons. Therefore the Municipality had attributed the impugned land to the applicant without sufficient investigation and examination.

11. In the meantime, on 8 December 1994 the applicant filed an action requesting the Kadıköy Civil Court of First Instance to annul the title deed of the firm to land no. 46 and to register it under his name in the land registry. Mr T.M., the owner of the land at that time, also joined the proceedings. It appears that on 29 May 1995 the court issued a temporary injunction to prevent to transfer of the land to third parties. On 21 December 1995 the court dismissed the case. This action ended with dismissal on the ground that the applicant did not have *locus standi* since the administrative proceedings concerning the annulment of decision no. 92/5 were still pending before the courts. This judgment became final on 20 June 1996 when the Court of Cassation rejected the applicant’s appeal and subsequent rectification request. On 14 August 1996 the first-instance court lifted the temporary injunction.

12. On 9 April 1996 the Supreme Administrative Court upheld the judgment of the first-instance court. On 25 February 1997 it dismissed the Municipality’s request for rectification of its decision.

13. The criminal proceedings instigated, upon the applicant’s complaint, against the mayor of Kadıköy, the director and co-director of construction

affairs of the Municipality and the vice chairman in charge of construction affairs were suspended, pursuant to Law no. 4616, on 24 April 2002.

14. In the meantime, the applicant applied, without success, to various authorities requesting their assistance in the enforcement of the judgment given in his favour and the re-inscription of the title deed of land no. 46 in his name. The latest such petition was dated 26 December 2001 and addressed to the Kadıköy District Governor's Office. In this petition, the applicant referred to the Kadıköy Municipality's response dated 2 November 2001 where he was informed that it was not possible to enforce the judgment of 29 May 1995 and that he could lodge an action against the firm and Mr T.M.

15. According to the land registry record dated 9 August 2007 the applicant remained the owner of land no. 6, which is around 232 m² in size.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. A description of the relevant domestic law at the material time can be found in *Çiçek and Öztemel and Others v. Turkey* (nos. 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, §§ 14-15, 3 May 2007).

THE LAW

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

17. The applicant complained that he had been deprived of his land in circumstances which were incompatible with the requirements of Article 1 of Protocol No. 1. In this connection, the applicant pointed out that the public authorities had failed to execute the judgment given in his favour, in breach of Article 1 of Protocol No. 1, which, insofar as relevant, reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law...”

A. Admissibility

18. The Government maintained that the applicant had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, since he had failed to make proper use of the administrative and civil law remedies

available to him, pursuant to Article 41 of Law no. 818 and Article 28 of Law no. 2577. They further maintained that the applicant had failed to raise his complaints before the domestic courts. Finally, the Government claimed, without any further explanation, that the applicant had failed to comply with the six-month rule also specified in Article 35 § 1.

19. The applicant disputed the Government's arguments.

20. The Court reiterates that it has already examined and rejected the similar arguments by the Government in previous cases (see, for example, *Lemke v. Turkey*, no. 17381/02, §§ 37-38, 5 June 2007, and *Yerlikaya v. Turkey*, nos. 10985/02 and 10993/02, § 22, 8 April 2008). The Court finds no particular circumstances in the present application which would require it to depart from that conclusion. Consequently, the Court rejects the Government's preliminary objection.

21. Moreover, the Court finds that the applicant's 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.

B. Merits

1. The parties' observations

22. The Government maintained that the applicant was not deprived of his property since he was allocated a plot of land after the administrative arrangement in 1992. They further submitted that the judgment of the domestic courts could not be executed because the land in question had been transferred *bona fide* to a third person. The Government considered that the only issue was the difference in value between the land allocated and the land due to the applicant, and that he could have settled this dispute by lodging a compensation claim. Finally, they maintained that the Municipality was ready to cover the applicant's damage on account of the difference in value between the two parcels.

23. The applicant maintained his complaint.

2. The Court's assessment

24. In the instant case, it is not disputed that the applicant owned a share in a plot of land (no. 195) and that this share corresponded to a part of the land designated as no. 46. It is further not disputed that the Kadıköy Municipality's decision of 12 May 1992, whereby the applicant was given another plot of land instead of land no. 46, was annulled by the İstanbul Administrative Court on 29 May 1995 and that this judgment became final after appeal proceedings. However, the national authorities have failed to take any decision to give effect to the İstanbul Administrative Court's

judgment on the ground that land no. 46 had been transferred to *bona fide* third persons. Having regard to the circumstances of the case, particularly the manner in which the land in question had changed hands while the proceedings before the administrative courts were still pending, and despite the apparent stay of execution of the Municipality's decision, the Court considers that the reason given by the authorities, while relevant, cannot justify such an omission in the present case in view of the fact that the situation in question was brought about by their lack of due diligence. Moreover, the Court, reiterating that the obligation to enforce a court decision is not limited to its operative part, as its merits must simultaneously be respected and applied (see *Zazanis and Others v. Greece*, no. 68138/01, § 36, 18 November 2004), finds that, in view of the impossibility of transferring land no. 46 to the applicant, the authorities could have sought other means of respecting the ruling of the İstanbul Administrative Court, notably by way of allocating other land to the applicant in plot no. 195 which would have had the same value as that of no. 46. Finally, no cogent information has been forthcoming from the Government to demonstrate that, in view of the impossibility of enforcing the domestic court's ruling, the authorities made concrete and reasonable proposals to the applicant in compensation for the financial damage he had sustained. In this connection, the Court recalls that the applicant has been prevented from benefiting from the success of the litigation and remains to this day the owner of land which the domestic courts have established as not only being of lesser value than land no. 46 but also of having a building on it belonging to third persons.

25. In view of the foregoing, the Court finds that the national authorities have failed to fulfil their positive obligation under Article 1 of Protocol No. 1 to enforce the judgment of 12 May 1992 (see *Burdov v. Russia*, no. 59498/00, §§ 40-42, ECHR 2002-III, and, *mutatis mutandis*, *Hornsby v. Greece*, 19 March 1997, § 45, *Reports of Judgments and Decisions* 1997-II). There has, accordingly, been a violation of the said provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

27. The applicant claimed 800,000 euros (EUR) in respect of pecuniary damage. This sum corresponded to the value of land no. 46. He further claimed EUR 200,000 in respect of non-pecuniary damage. Finally, the applicant, without specifying an amount, requested the reimbursement for the costs and expenses incurred before the Court.

28. The Government contested these claims.

29. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision and must be reserved, due regard being had to the possibility of an agreement between the respondent State and the applicant.

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. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement which they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 9 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President