CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 7673/02
by Atiye AKGÜL
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 8 December 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 20 January 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Atiye Akgül, is a Turkish national who was born in 1941 and lives in İskenderun. She is represented before the Court by Mr I. K. Yıldırım and Mr G. Nurtin, lawyers practising in Ankara.

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Expropriation of 15 June 1998 and subsequent proceedings

On 15 June 1998 the General Directorate of National Roads and Highways expropriated a part of a plot of land (plot no. 147) belonging to the applicant in Belen. A committee of experts assessed the value of the land and the amount was paid to the applicant when the expropriation took place.

On 21 December 1998 the applicant filed a case with the İskenderun Civil Court of First Instance and requested additional compensation.

On 26 October 1999 the İskenderun Civil Court of First Instance awarded the applicant additional compensation of 32,632,776,000 Turkish liras (TRL) (approximately 64,361 euros (EUR)) plus interest at the statutory rate, running from 19 November 1998.

On 9 May 2000 the Court of Cassation upheld the judgment of the first-instance court.

On 23 July 2001 the administration paid the applicant TRL 84,061,450,000 (approximately EUR 73,072) in additional compensation together with interest.

2. Expropriation of 14 September 1999 and subsequent proceedings

On 14 September 1999 the General Directorate of National Roads and Highways expropriated the remainder of plot no. 147 and an amount of compensation was paid to the applicant when the expropriation took place.

On 10 March 2000 the applicant filed a case with the İskenderun Civil Court of First Instance and requested additional compensation.

On 27 February 2001 the İskenderun Civil Court of First Instance awarded the applicant additional compensation of TRL 11,639,200,000 (approximately EUR 18,580) plus interest at the statutory rate, running from 1 March 2000.

On 8 October 2001 the Court of Cassation upheld the judgment of the first-instance court.

On 23 November 2001 the administration paid the applicant TRL 25,800,040,000 (approximately EUR 20,015) in additional compensation together with interest.

COMPLAINTS

The applicant complains under Article 1 of Protocol No. 1 that she was paid insufficient interest on additional compensation received following the expropriation of her property. She further alleges that the authorities delayed in paying her the relevant amounts.

The applicant further complains under Article 6 of the Convention that the expropriation proceedings in question were not concluded within a reasonable time.

THE LAW

The applicant complains that the national authorities delayed in paying additional compensation for expropriation which caused damage as a result of the low interest rate applied to State debts despite the high inflation in Turkey. She further alleges that the length of the civil proceedings was excessive. She invokes Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention, the relevant parts of which read as follows:

Article 1 of Protocol No. 1

> "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.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 6 § 1 of the Convention

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

1. Expropriation of 15 June 1998 and subsequent proceedings

As to the first expropriation and subsequent proceedings, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. Expropriation of 14 September 1999 and subsequent proceedings

a) As to the complaint under Article 1 of Protocol No. 1, the Court must examine whether a fair balance has been maintained between the demands of the general interest and the requirements of the protection of the individual's fundamental rights; in that regard, the terms and conditions on which the compensation is payable under domestic legislation and the manner in which they were applied to the applicant's case must be considered (see *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1996, Series A no. 102, p. 50, § 120)

The Court reiterates that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay (see, *mutatis mutandis*, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of

9 December 1994, Series A no. 301-B, p. 90, § 82). Abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated, putting her in a position of uncertainty especially when the monetary depreciation which occurs in certain States is taken into account (see *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 29).

The Court observes that according to the calculation method adopted in the judgment of *Aka v. Turkey* case (judgment of 23 September 1998, *Reports* 1998-VI, § 56) on the date of the payment the amount of full compensation should have been TRL 23,724,356,975 (approximately EUR 18,405). The applicant received TRL 25,800,040,000 (approximately EUR 20,015) which is 108.7 % of the full compensation.

Thus, the Court finds that the applicant appears to have suffered no damage in respect of the amount of compensation awarded to her by the İskenderun Civil Court of First Instance on 27 February 2001. The Court observes that the interest rate applied to the additional compensation was sufficient to compensate the applicant for any damage.

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

b) As to the complaint under Article 6 § 1 of the Convention, the Court observes that the applicant based this complaint on the same facts as those relied on in support of the complaint under Article 1 of Protocol No. 1. It therefore considers that it is not necessary to examine this part of the application (see, among others, *Eraslan v. Turkey* (dec.), no. 54532/00, 29 April 2004).

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 insofar as they concern the expropriation of 15 June 1998 and subsequent proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President