CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 48983/99
by Mürvet FİDAN and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 26 October 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 1 June 1999,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mürvet Fidan, Murat Fidan, Hikmet Fidan, Zehra Fidan and Elif Özbilge, are Turkish nationals. They all live in Baskil. They are represented before the Court by Mr Refik Timuçin Bektaş, a lawyer practising in Ankara.

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

On 19 July 1993 the applicants brought actions before the Baskil Civil Court of First Instance against the National Water Board. They alleged that

their plots of land were illegally seized by the administration for dam construction without any payment being made and requested compensation in this respect.

On 18 November 1993 the Baskil Civil Court of First Instance held that the cases should be characterised as a compensation claim arising from expropriation rather than a compensation claim arising from the illegal seizure of the applicants' land since a committee of experts had assessed the value of the land and this amount had been paid by the authorities' to those who had figured in the Land Registry as the owners of the land. The court ordered the administration to pay the applicants an amount of increased compensation, as well as the statutory rate of interest starting from 1986 when the plots of lands were submerged in the waters of the dam.

On 6 October 1994 the Court of Cassation quashed the judgments of the first-instance court and held that the cases cannot be characterised as a compensation claim arising from expropriation. The applicants requested rectification of the judgments of the Court of Cassation.

On 10 March 1995 the Court of Cassation rectified its judgments and held that the cases could be characterised as a compensation claim arising from expropriation and quashed the judgment of the first-instance court only in respect of the date on which the statutory rate of interest began to run from.

On 21 December and 25 January 1986, respectively, the Baskil Civil Court of First Instance ordered the administration to pay the applicants an amount of compensation, as well as the statutory rate of interest starting from 1986 when the plots of lands were submerged in the waters of the dam.

On 20 November 1996 the Joint Civil Chambers of the Court of Cassation quashed the judgments of the first-instance court. The applicants' requests for rectification of the judgments were dismissed on 2 May 1997.

On 9 October 1997 the first-instance court abided by the ruling of the Court of Cassation. Accordingly it ordered the administration to pay the applicants respectively 315,650,000, 297,439,800, 265,571,250, 404,680,000 and 708,190,000 Turkish liras (TRL), as well as the statutory rate of interest starting from 19 August 1993, which was the date on which the property was transferred to the National Water Board. The National Water Board appealed to the judgments.

On 17 March 1998 the Court of Cassation upheld the judgments of the Baskil Civil Court of First Instance. The judgments of the Court of Cassation were served on the applicants on 2 April 1998.

On 9 December 1998 the administration paid the amount due to the applicants.

Details are indicated in the table below:

NAMES OF THE APPLICANTS	DATE FROM WHICH THE STATUTORY RATE OF INTEREST BEGAN TO RUN	DATE OF FINAL DECISION OF THE COURT OF CASSATION	AMOUNT OF ADDITIONAL COMPENSATION (INTERESTS AND LEGAL COSTS ARE NOT INCLUDED) (In Turkish liras)	DATE AND AMOUNT OF PAYMENT (INCLUDING STATUTORY INTEREST AT THE RATE OF 30 % & 50 % PER ANNUM AND COSTS) (in Turkish liras)
Mürvet Fidan	19.08.1993	17.03. 1998	315,650,000	09.12.1998 934,027,000
Murat Fidan	19.08.1993	17.03. 1998	297,439,800	09.12.1998 884,579,000
Hikmet Fidan	19.08.1993	17.03. 1998	265,571,250	09.12.1998 790,746,000
Zehra Fidan	19.08.1993	17.03.1998	404,680,000	09.12.1998 1,190,092,000
Elif Özbilge	19.08.1993	17.03.1998	708,190,000	09.12.1998 2,041,230,000

COMPLAINTS

The applicants complain under Article 1 of Protocol No. 1 that the authorities had delayed in paying them the additional compensation and that at a time when the annual rate of inflation in Turkey had been very high, they had been paid insufficient interest. They further complain of the date determined by the courts concerning the beginning of the statutory rate of interest.

The applicants' complain, without invoking any particular Article of the Convention, of the length of the civil proceedings.

The applicants complain under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 of the exceptional situation which was favourable to the State as a result of the difference between the rate of interest payable on debts owed to the State and the rate of interest on overdue State debts at the material time and that State debts are not subjected to enforcement procedures like ordinary debts.

THE LAW

1. The applicants complain under Article 1 of Protocol No. 1 that the authorities had delayed in paying them the additional compensation and that at a time when the annual rate of inflation in Turkey had been very high, they had been paid insufficient interest.

The applicants also complain under Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1, of the exceptional situation prevailing, which was favourable to the State as a result of the difference between the rate of interest payable on debts owed to the State and the rate of interest on overdue State debts at the material time, and of the fact that State debts are not subjected to enforcement procedures as ordinary debts are.

The applicants complain, without invoking any particular Article of the Convention, of the length of the civil proceedings. The Court considers that this part of the complaint should be examined under Article 6 § 1 of the Convention.

The Court considers that it cannot on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of them to the respondent Government.

2. The applicants complain of the date determined by the courts as the beginning of the running of the statutory rate of interest. They invoke Article 1 of Protocol No. 1.

The Court notes that in this respect, the "final decision" within the meaning of Article 35 § 1 of the Convention was the decision taken by the Court of Cassation on 17 March 1998 dismissing the National Water Board's appeal against the decision of the Baskil Civil Court of First Instance. This judgment was served on the applicants on 2 April 1998 whereas the application was introduced with the Court on 1 June 1999, i.e. more than six months later.

It follows that this part of the application has been introduced outside the six-month time-limit prescribed by Article 35 § 1 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints concerning insufficient interest applied to additional compensation, the delay of the authorities in payment of the additional compensation, the length of the proceedings and the difference applied in State debts and in the enforcement proceedings;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President