CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44715/98
by Mustafa Necati GÜL and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 18 March 2004 as a Chamber composed of:

Mr I. CABRAL BARRETO, *President*,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 30 September 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Mustafa Necati Gül, Ms Zübeyde Özyurt (Gül), Ms Rukiye Gül, Ms Fatma Ablak (Gül) and Mr Mustafa Gül are Turkish nationals and live in Izmir, Turkey. They were represented before the Court by Mr M.N. Terzi, Mr M. Özsüer and Mr Y. Özsüer, lawyers practising in Izmir.

A. The circumstances of the case

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

In 1991 the General Directorate of National Roads and Highways (*Devlet Karayolları Genel Müdürlüğü*), a state body responsible, *inter alia*, for motorway construction, expropriated a plot of land belonging to the applicants in Izmir. A committee of experts assessed the value of this plot of land and the amount was paid to them when the expropriation took place.

On 29 December 1995, following the applicants' request for increased compensation; the Bornova Civil Court of First Instance awarded the applicants an additional compensation plus interest at the statutory rate of 30 % per annum from 7 November 1995. On 23 December 1997 the judgment became final. On 30 April 1998 and 5 August 1998 the due amount was paid to the applicants.

All the details as to the date on which the decision of the domestic court became final, the amount of additional compensation and the date and amount of payment are indicated in the table below.

DATE ON WHICH THE DECISION AS REGARDS ADDITIONAL COMPENSATION BECAME FINAL	**AMOUNT OF ADDITIONAL COMPENSATION (INTERESTS AND LEGAL COSTS ARE NOT INCLUDED) (In Turkish liras)**	**DATES OF PAYMENT**	**AMOUNT OF PAYMENT (INCLUDING STATUTORY INTEREST AT THE RATE OF 30 % PER ANNUM AND COSTS) (in Turkish liras)**
23.12.1997	6,920,400,000	30.04.1998 and 05.08.1998	12,636,990,000 and 89,193,000

B. Relevant domestic law

A description of the relevant domestic law may be found in the *Aka v. Turkey*, judgment of 23 September 1998, *Reports of Judgments and*

Decisions 1998-VI, §§ 17-25; *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV, §§ 13-16.

Under Law no. 3095 of 4 December 1984 the rate of interest on overdue State debts was set at 30% *per annum*. As of 1 January 1998 the statutory rate of interest was increased to 50%. The statutory rate of interest was set at the compound interest rate, namely 60% as of 1 January 2000.

COMPLAINT

The applicants complain under Article 1 of Protocol No. 1 that at a time when the annual rate of inflation in Turkey was very high, they were paid insufficient interest on additional compensation received following the expropriation of their land and the authorities delayed in paying them the relevant amounts.

THE LAW

The applicants allege under Article 1 of Protocol No. 1 that the interest rates which were applied in order to calculate the additional compensation paid to the applicants was much less than the average inflation rate of the period. They further complain under the same Article that the authorities delayed in paying them the relevant amounts.

Article 1 of Protocol No. 1 to the Convention provides:

> "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."

1. Exhaustion of Domestic Remedies

The Government plead failure to exhaust domestic remedies in that the applicants did not bring an action for reparation under Article 105 of the Code of Obligations.

The applicants submit that Article 105 of the Code of Obligations did not provide an effective and adequate remedy in order to obtain redress for their loss resulting from monetary depreciation.

The Court reiterates that the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, in particular, *Akdıvar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, § 66; *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, § 38).

The Court reiterates its previous considerations in the Aka v. Turkey case (see *Aka*, cited above, §§ 35-36), where it held that the creditors of the State cannot rely on the means of redress provided under Article 105 of the Code of Obligations to afford them a prospect of obtaining damages for loss resulting from monetary depreciation exceeding interest for delay awarded under Law no. 3095.

In the light of the above, the Court holds that, in the present case, the Article 105 of the Code of Obligations does not provide an adequate and effective remedy which the applicants had to exhaust. Consequently, the Court dismisses the Government's preliminary objection of non-exhaustion.

2. Merits

The Government contend that according to the case-law of the Court, Article 1 of Protocol No. 1 did not require payment of full compensation in all cases of expropriation. They accept that a fair balance had to be struck between the demands of the general interest of the community and the requirements of the protection of individual rights. They further submit that States had a wide margin of appreciation in seeking that “fair balance” and, in particular, in determining rates of interest for delay.

The applicants maintain their allegations.

Insofar as the applicants' complaint concerns their entitlement to the peaceful enjoyment of their possessions, 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 applicants' 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*, cited above, § 29).

The Court notes that, in the present case, the greater part of the additional compensation together with the interest at the rate of 30% *per annum* and from 1 January 1998 at the rate of 50% per *annum* was paid to the applicants on 30 April 1998, that is to say four months seven days after the judgment of the Bornova Civil Court of First Instance became final.

The Court observes that according to the calculation method adopted in the judgment of Akkuş v. Turkey case (see *Akkuş*, cited above, § 35) on the date of the finalisation of the first instance court's judgment or within a reasonable period thereafter, the applicants should have received 12,570,214,560 Turkish liras (TRL). On the date of the payment the amount of full compensation should have been TRL 13,242,211,134. The applicants received TRL 12,636,990,000, which is 95.43 % of the full compensation.

In the light of the Court's findings in the Arabacı v. Turkey case (see *Arabacı v. Turkey* (dec.), no. 65714/01, 7 March 2002), the Court considers that such a minor difference (less than 5%) between the above-mentioned amounts can be considered to have resulted from the methods of calculation used by the Court and the national authorities. In these circumstances, the Court is of the opinion that the total amount of money paid to the applicants was satisfactory even if it did not seem to constitute a full compensation.

Consequently, the applicants cannot be regarded as have endured a considerable loss due to the interest rates applied and the deferral of payment.

The Court concludes that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Mark VILLIGER
Deputy Registrar

Ireneu CABRAL BARRETO
President