



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

SECOND SECTION

CASE OF DOĞRUSÖZ AND ASLAN v. TURKEY

(Application no. 1262/02)

JUDGMENT

STRASBOURG

30 May 2006

FINAL

23/10/2006

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 Doğrusöz and Aslan v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 1262/02) 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 two Turkish nationals, Mr Edip Doğrusöz and Mr Mehmet Aslan (“the applicants”), on 27 November 2001.

2. The applicants were represented by Mr Z. Kadayıfçı and Mr T. Gürsel, lawyers practising in Hatay and Istanbul, respectively. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 28 June 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the deprivation of property 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 applicants were born in 1931 and 1930 and live in Ankara and Hatay, respectively.

5. In 1965 the applicants bought a plot of land in Hatay from the Samandağ Municipality.

6. On 9 September 1976 the Ministry of Construction and Settlement conducted land consolidation proceedings and defined the coastline in the area where the applicants' land was located.

7. On 27 April 1995 the Samandağ Municipality, acting on behalf of the Treasury, requested the Samandağ Court of First Instance in Civil Matters to determine whether the applicants' plot of land was located within the coastline area. They claimed that, according to the Coastal Law, the land in question could not be owned by individuals and must only be used for public benefit purposes.

8. On 3 May 1995 a group of experts, composed of a geomorphologist, a cartography engineer and an agricultural engineer, appointed by the court, inspected the applicants' land and concluded that it was located within the coastline area.

9. On 3 July 1995 the Samandağ Municipality filed an action before the Samandağ Court of First Instance in Civil Matters, on behalf of the Treasury, requesting the annulment of the record in the title deed registry of the applicants' ownership. Furthermore, it requested the court to issue an injunction in order to prevent any transfer of that title until the end of the case.

10. On 19 September 1996 the applicants filed a petition with the court objecting to the expert report of 3 May 1995. They argued that, as the expert report failed to take into consideration the flora of their property as well as the features and age of the surrounding buildings, it could not be taken as a basis for the annulment of the record in the title deed register. Moreover, they maintained that the Municipality had not only disposed of the property as the original owner, but it had also encouraged the construction of buildings in the surrounding area, by implementing a development plan.

11. The court decided to obtain the opinion of another group of experts. On 28 October 1997, following a second inspection, the experts confirmed the first report. The summary of the report is as follows:

"The first cadastral survey was carried out in the area on 29 March 1948. Thus, the title deed of the plot of land was registered before the coastal law came into force. The plot of land in question is covered by the development plan, approved by the Ministry of Public Works and Settlement. However, at the present time there is no construction on this plot.

The inspection carried out in the surrounding area reveals that the land is situated on the beach which is considered as the prolongation of the sea. The soil has a sandy texture. There is no vegetation on the land, as the soil is not suitable for cultivation.

The land is located within the coastline. Thus the plot of land in question has to be under the authority of the State. It cannot be the subject of private property."

12. On 16 December 1999 the Samandağ First Instance Court upheld the request of the Treasury and decided to annul the record in the title deed

register. It also ordered the applicants to reimburse the legal expenses of the plaintiff.

The summary of the court's reasoning in its final decision is as follows:

“At the time when the coastline had been determined, Law no. 6785 on urbanism (9 July 1956) was in force. The definition of the coastline found in Article 105 of Law no. 6785 is similar to the description in the Coastal Law (Law no. 3621). Article 43 of the Constitution provides that the coasts are under the authority of the State. This assertion is also established by Article 641 of the Civil Code, Article 33 of the Land Registry Law and Article 16 of the Cadastral Law. Thus, coasts cannot be subject to private property rights. As it is stated by the Constitutional Court in its decisions dated 25 February 1986 and 18 September 1991, the construction of buildings on these lands and the use of these buildings in good faith cannot provide a derogation from this rule.

In the light of the above, the court decides to annul the record in the title deed registry, which was in the name of the applicants. Furthermore it decides to prolong the interim measure, until the court's decision becomes final.”

13. The applicants appealed against this decision, arguing that they had a vested interest on this property that had to be respected by the authorities. Furthermore, they maintained that, according to the cadastral survey which was carried out in 1938, the plot of land was designated as an unrestricted, public area. Since the cadastral planning of a location can only be carried out once, there cannot be any dispute concerning their property rights over the plot of land in question. Additionally, they claimed that the experts had erred in their establishment of the coastline.

14. On 3 October 2000, in view of the expert reports as well as the established case-law on this matter, the Court of Cassation upheld the decision of the Samandağ Court of First Instance.

15. On 30 April 2001 the Court of Cassation dismissed the applicants' request for rectification of the decision as none of the conditions required by Article 440 of the Code on Civil Procedure were present in the case. The applicants were notified of the decision on 5 June 2001.

II. THE RELEVANT DOMESTIC LAW

16. Article 43 of the Constitution provides:

“The coasts are under the control and at the disposal of the State.

Public interest has priority with regard to the exploitation of the sea coasts, lake shores or river banks and the coastal strip along the sea and lakes.

Taking into consideration the purpose of their use, the width of coasts and coastal strips and the conditions in which individuals can make use of these locations shall be determined by law.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

17. The applicants complained that the authorities' deprived them of their land without payment of compensation, in violation of Article 1 of the Protocol No. 1, which 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.

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.”

A. Admissibility

18. The Government asked the Court, firstly, to dismiss the application for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. They alleged that, for the purposes of that provision, time had started to run on 30 April 2001, when the final decision of the domestic authorities was given, or on 5 June 2001, the date on which the final decision was notified to the applicants. However, the applicants lodged their application with Court on 21 November 2001.

19. The Court notes that, by lodging their application with the Court on 21 November 2001, the applicants complied with the requirement set out in Article 35 § 1 of the Convention, as the final decision of the domestic authorities was notified on them on 5 June 2001. This preliminary objection must therefore be dismissed.

20. Secondly, the Government maintained that the applicants had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention, as they had failed to make proper use of the administrative and civil law remedies available to them in domestic law.

21. The applicants contended that there were no effective remedies in domestic law concerning their property right.

22. The Court observes that the civil and administrative remedies indicated by the Government could have provided the applicants with compensation only if the record in the title deed registry, which was in their name, was annulled illegally. However, the Samandağ First Instance Court annulled the applicants' title in accordance with the Coastal Law, holding

that the land in question had to be under the authority of the State as it was located within the coastline area.

23. The Court therefore rejects the Government's preliminary objection regarding the exhaustion of domestic remedies. It further notes that the application is not inadmissible on any other grounds and must, therefore, be declared admissible.

B. Merits

1. Arguments before the Court

24. The Government maintained that, according to the Constitution, coasts belong to the State and can never be the subject of private property. They maintained that, by cancelling the applicants' title, the Samandağ Court of First Instance has actually corrected an illegal situation. Moreover, they alleged that since it would not be possible to expropriate property which already belonged to the State, the applicants cannot be awarded compensation concerning the annulment of their title deed. They have submitted in this regard a decision of the Grand Chamber of the Court of Cassation for Civil Law Matters, dated 27 February 1980, where it was held that the title deeds of the coastal areas do not have legal value and therefore their transaction is considered to be null and void.

The Government also maintained that Law on Civil Procedure provides that the costs and expenses incurred in litigation shall be born by the losing party. They claimed that this complaint does not concern a right guaranteed by the Convention.

25. The applicants alleged that in 1965, when they purchased the property, there was no indication in the title registration that it was within the coastline area. Until 1995, when the Samandağ Municipality filed an action before the Samandağ Court of First Instance in Civil Matters, they were unaware of this situation. They contended that the State authority responsible for unlawfully registering the title of land allegedly located within the coastline area, in their names, had to compensate for their losses. The applicants further complained that, in addition to their loss, the domestic courts ordered them to pay all the legal expenses at the end of the proceedings.

2. The Court's assessment

26. In determining whether there has been a deprivation of possessions within the meaning of Article 1 of Protocol No. 1, it is necessary not only to consider whether there has been a formal taking or expropriation of property but also to look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee

rights that are “practical and effective”, it has to be ascertained whether the situation amounted to a *de facto* expropriation (see the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, pp. 24-25, § 63).

27. In this connection, the Court recalls that not only must a measure depriving a person of his or her property pursue, on the facts as well as in principle, a legitimate aim “in the public interest”, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (*ibidem*, § 69). The requisite balance will not be found if the person concerned has had to bear “an individual and excessive burden” (*ibidem*, § 73).

28. It reiterates that under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances not relevant for present purposes. The protection of the right to property afforded by Article 1 of Protocol No. 1 would be largely illusory and ineffective in the absence of any equivalent principle (*Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, § 128).

29. In the present case, the Court observes that the applicants purchased the land in dispute from the Samandağ Municipality in 1965, and it had been registered in their names, without interruption, until 2001. At the time of purchase, there was neither any warning in the records prohibiting individuals from such ownership, nor an assertion that the land was located within the coastline area. The title deed was transferred to the Treasury by the Samandağ Civil Court’s decision of 19 December 1999, which was upheld by the Court of Cassation on 30 April 2001. Therefore the decision of the domestic courts had clearly the effect of depriving the applicants of their property within the meaning of the second sentence of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Brumărescu v. Romania* [GC], no. 28342/95, § 77, ECHR 1999-VII).

30. The Court notes that Samandağ Civil Court’s decision to register the land in the name of the Treasury was prescribed by law, as it was based on the provisions of the Coastal Law, Article 43 of the Constitution, Article 33 of the Land Registry Law and Article 16 of the Cadastral Law, as well as being in line with the jurisprudence of the Constitutional Court. It further notes that the parties did not dispute the fact that the deprivation of property was in the public interest. This fact is also noted in the decision of the domestic courts. However, the applicants did not receive any compensation in exchange for the transfer of their title to the Treasury and the Government did not invoke any convincing elements which might justify that policy.

31. The Court considers that, in the absence of adequate compensation in exchange for their property, the interference in question, although prescribed by law, has not struck a fair balance between the demands of the

general interest of the community and the requirements of the protection of the individual's fundamental rights (see, *mutatis mutandis*, *N.A. and Others v. Turkey*, no. 37451/97, §§ 41-42, ECHR 2005-...).

32. Consequently, it concludes that there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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.”

A. Damage

34. The applicants claimed 50,000 US dollars in respect of their pecuniary and non-pecuniary damages. They based their claim for pecuniary damages on an experts' report, dated 16 December 2005, prepared upon the applicants' request and filed with the Samandağ Civil Court of First Instance. According to this report the value of the land in dispute was 46,800¹ Turkish Liras.

35. The Government refuted the findings of the experts' report dated 16 December 2005. They contended that the land should have been evaluated by a geologist and a geomorphologist, instead of a construction engineer. Moreover, they alleged that land of this nature cannot have a market value. They have submitted another experts' report, dated 21 February 2006, in support of their allegations. According to this report, drafted by two associate professors, a geologist and an economist, the land in dispute cannot be the subject of any transaction. It therefore has no market value.

They further contended that the applicants' claim for non-pecuniary damages was excessive.

36. The Court reiterates that when the basis of the violation found is the lack of any compensation, rather than the inherent illegality of the taking, the compensation need not necessarily reflect the full value of the property (*I.R.S and Others v. Turkey* (just satisfaction), no. 26338/95, §§ 23-24, 31 May 2005). It therefore deems it appropriate to fix a lump sum that would correspond to the applicants' legitimate expectations to obtain compensation.

37. In view of the above, the Court awards the applicants, jointly, EUR 26,000 for pecuniary damage.

¹ The equivalent of 29,000 euros, on 16 December 2005.

38. As regards the applicants' claim for compensation for non-pecuniary damages, the Court finds that, in the circumstances of the present case, the finding of a violation constitutes sufficient just satisfaction (*ibidem*, § 28).

B. Costs and expenses

39. The applicants did not make any claim for the reimbursement of their costs and expenses. The Court, therefore, makes no award under this head.

C. Default interest

40. 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 application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 26,000 (twenty six thousand euros) in respect of pecuniary damage, plus any tax that may be chargeable, which total sum is to be converted into new Turkish liras at the rate applicable on 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 30 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President