



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

SECOND SECTION

**CASE OF TUNCAY v. TURKEY**

*(Application no. 1250/02)*

JUDGMENT

STRASBOURG

12 December 2006

**FINAL**

*23/05/2007*

*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 Tuncay v. Turkey,**

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

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

Mr A.B. BAKA,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 21 November 2006,

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

## PROCEDURE

1. The case originated in an application (no. 1250/02) 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 a Turkish national, Mr Mehmet Sait Tuncay (“the applicant”), on 5 November 2001.

2. The applicant was represented by Mr S. Kar, a lawyer practising in Istanbul. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court

3. On 21 April 2005 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 1948 and lives in Hatay.

5. On 14 May 1980 the applicant bought a plot of land in Hatay from a third party and registered it in his name in the title deed registry. According to the registry’s record, the land was first owned by the Samandağ Municipality in 1965. In 1968 it was sold to third persons by the Municipality, and thereafter it was purchased from a third party by the applicant.

6. In 1976 the Ministry of Construction and Settlement conducted land consolidation proceedings and defined the coastline in the area where the land was located.

7. After he bought the land, the applicant constructed a building on it in order to use it as a tourist facility, and in 1995 he opened up and managed a cafeteria, after having obtained the necessary permission from the Samandağ Municipality.

8. On 26 June 1995, the Samandağ Municipality, acting on behalf of the Treasury and relying on Law no. 3621 (the Coastal Law, 4 April 1990), requested the Samandağ Civil Court of First Instance to determine whether the applicant's plot of land was located within the coastline area.

9. On 29 June 1995 a group of experts, composed of a geomorphologist, a cartography engineer and an agricultural engineer, appointed by the court, inspected the land and concluded that it was located within the coastline area.

10. On 5 July 1995 the Samandağ Municipality filed an action before the Samandağ Civil Court of First Instance, on behalf of the Treasury, requesting the annulment of the applicant's ownership record in the title deed registry. Furthermore, it requested the court to issue an interim injunction in order to prevent any transfer of that title until the end of the case.

11. On 9 September 1996 the applicant filed a petition with the court objecting to the expert report of 29 June 1995. He argued that the expert report, which failed to take into consideration the buildings on the land, could not be taken as a basis for the annulment of the record in the title deed registry. Moreover, he maintained that the Municipality had encouraged the construction of buildings in the surrounding area, by implementing a development plan.

12. The court decided to obtain the opinion of another group of experts. On 14 September 1998, following a second inspection, the experts confirmed the first report.

13. On 16 December 1999 the Samandağ Civil Court of First Instance upheld the request of the Treasury and decided to annul the record in the title deed registry. It also ordered the applicant 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, 4 April 1990). 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 applicant. Furthermore it decides to prolong the interim measure, until the court's decision becomes final."

14. The applicant appealed against this decision, arguing that he had a vested interest in this property that had to be respected by the authorities. He maintained that he had bought the plot of land relying on the records in the land registry and that he had paid the real-estate tax to the Samandağ Municipality since the registration of his title deed. Furthermore, he had obtained the necessary permission from the Municipality in order to build and to manage a cafeteria on it. Additionally, he claimed that the experts had erred in their establishment of the coastline.

15. 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.

16. On 19 April 2001 the Court of Cassation dismissed the applicant's request for rectification as none of the conditions required by Article 440 of the Code of Civil Procedure were present in the case. The applicant was notified of this decision on 23 May 2001.

## II. THE RELEVANT DOMESTIC LAW

17. 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

18. The applicant complained that the authorities' had deprived him of his land without payment of compensation, in violation of Article 1 of 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**

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

20. The applicant contended that there were no effective remedies in domestic law concerning his property right.

21. The Court observes that the civil and administrative remedies indicated by the Government could have provided the applicant with compensation only if the record in the title deed registry, which was in his name, had been annulled unlawfully. However, the Samandağ First Instance Court annulled the applicant’s 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. This preliminary objection must therefore be dismissed.

22. Secondly, the Government asked the Court to dismiss the application for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. They alleged that the applicant should have applied to the Court within six months following the introduction of the case concerning the annulment of the land’s registration.

23. The Court notes that, by lodging his case with the Court on 5 November 2001, the applicant complied with the requirement set out in Article 35 § 1 of the Convention, as the final decision of the domestic courts was taken on 19 April 2001 and this decision was notified to the applicant on 23 May 2001.

24. The Court therefore rejects the Government’s preliminary objection regarding the six-month rule. 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

25. The Government maintained that, according to the Constitution, coastlines belong to the State and can never become private property. They maintained that, by cancelling the applicant's title, the Samandağ Court of First Instance had actually corrected an unlawful situation. Moreover, they alleged that since it would not be possible to expropriate property which already belonged to the State, the applicant could not be awarded compensation concerning the annulment of his title deed.

They further maintained that the land was defined as being within the coastal line in 1976, before the applicant purchased the property, and was registered as a beach in the land registry since it was in a shore area. The applicant should have been aware that the utilisation of a property which was in a shore area owned by the State could not become private property. Therefore, the entry in the applicant's name in the land registry was contrary to the Constitution and the laws applying at the material time, and the illegal transaction was corrected by the Samandağ Civil Court of First Instance.

They alleged that in this case the good faith of the applicant seemed to be in doubt since there was a determined sea shore line at the time the applicant bought the plot of land and it was impossible to consider that the applicant was not aware of all the above-mentioned facts regarding the situation of the land.

26. The applicant submitted that in 1980, when he purchased the property, the land was registered in the name of a third person and there was no restriction suggesting a prohibition on individual ownership. He had relied on this State record when he bought the land in question. He added that he had also paid the real-estate taxes for the land at the time of purchase and regularly since then to the revenue office and to the Samandağ Municipality. He contended that it was the State's responsibility to compensate him for his loss of land which it had unlawfully registered in the third party's name.

### 2. The Court's assessment

27. 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).

28. In this connection, the Court recalls that not only must a measure depriving a person of his or her property pursue 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).

29. 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 the 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, § 120).

30. In the present case, the Court observes that the applicant purchased the land in dispute from the Samandağ Municipality in 1980, and it was registered in his name, without interruption, until 2001. At the time of purchase, there was no warning in the records prohibiting individuals from such ownership and in fact it had first been sold by the Municipality to a third person and so forth. The title deed was transferred to the Treasury by the Samandağ Civil Court’s decision of 16 December 1999, which was upheld by the Court of Cassation on 19 April 2001. Therefore the decisions of the domestic courts clearly had the effect of depriving the applicant of his 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).

31. The Court notes that the 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 applicant did not receive any compensation in exchange for the transfer of his title to the Treasury and the Government did not invoke any convincing elements which might justify that policy.

32. The Court considers that, in the absence of adequate compensation in exchange for his 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-...).

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

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. The applicant further complained of violations of Articles 5, 6, 7, 14, 17 and 18 of the Convention.

In this connection, he alleged that he did not feel protected by law during the proceedings and that the domestic court's decision lacked detailed reasoning, which was far from convincing. He further contended that the domestic court based its decision on a law which did not exist at the time he bought the property, and moreover the State itself had developed establishments near the coast.

35. The Government contested these arguments.

36. An examination by the Court of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 375,393 US Dollars (USD) in respect of his pecuniary damage. He based his claim for pecuniary damages on an experts' report, dated 17 June 2005, prepared upon the applicant's request and filed with the Samandağ Civil Court of First Instance. According to this report the value of the land in dispute was 504,318<sup>1</sup> new Turkish liras. He further requested USD 100,000 for his non-pecuniary damages.

39. The Government disputed 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

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1. The equivalent of 303,806 euros, on 17 June 2005.

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

40. 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 of the property, 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 applicant's legitimate expectations of obtaining compensation (*Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 254-259, ECHR 2006-..., *Stornaiuolo v. Italy*, no. 52980/99, §§ 82-91, 8 August 2006, and *Doğrusöz and Aslan v. Turkey*, no. 1262/02, § 36, 30 May 2006).

41. In view of the above, the Court awards the applicant, EUR 200,000 for pecuniary damage.

42. As regards the applicant's 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 (see *Doğrusöz and Aslan*, cited above, § 38).

### **B. Costs and expenses**

43. The applicant also claimed USD 10,000 plus 17% of the amount which obtained as compensation for his representative's fees. He referred to the agreement signed between him and his representative in this respect.

44. The Government contested the claim, arguing that neither the complexity of the case nor the economic and social realities of the country could justify such an excessive amount of lawyers' fees.

45. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicant EUR 4,000 in respect of costs and expenses.

### **C. Default interest**

46. 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 complaint under Article 1 of Protocol No. 1 concerning the right to the peaceful enjoyment of possessions admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No.1;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 200,000 (two hundred thousand euros) in respect of pecuniary damage, and EUR 4,000 (four thousand euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable on the date of settlement;
  - (b) that from the expiry of the abovementioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President