



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

SECOND SECTION

CASE OF MOĞUL v. TURKEY

(Applications nos. 40217/02 and 40218/02)

JUDGMENT

STRASBOURG

9 January 2007

FINAL

09/04/2007

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 Moğul 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. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*.

Having deliberated in private on 5 December 2006,

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

PROCEDURE

1. The case originated in two applications (nos. 40217/02 and 40218/02) 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 Turkish nationals, Mr Mustafa Moğul and Mr Ahmet Moğul (“the applicants”), on 6 September 2002.

2. The applicants were represented by Mr M.K. Turan, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purpose of the proceedings before the Court.

3. On 26 January 2006 the Court decided to give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1945 and 1949, respectively, and live in Seferihisar, İzmir.

5. The applicants’ father, Ali Moğul, sold his two houses which were situated in the Seferihisar district to his sons in 1972 and 1973, respectively, by a notary deed. He transferred the possession of the land on which the houses were located to the applicants; however, this land was not registered in the title deeds at that time. The applicants requested that the land be

divided into two parts by the Seferihisar Municipality. Subsequently, the Municipality acceded to their request on 25 April 1979.

6. On 12 October 1981 the applicants were issued with title deeds for the plots of land numbered 3 and 4 in Seferihisar, following a cadastral survey conducted in the region.

7. In 1999, a general survey of coastal districts carried out by the National Property Supervisor defined the applicants' plots of land and houses as falling within the coastline area.

8. On 18 May 2000 the Treasury brought an action against the applicants before the Seferihisar Civil Court of First Instance for the annulment of their title deeds on the ground that their land was located within the coastline area. They claimed that, according to the Coastal Law of 1990, the land in question could not be owned by an individual, but could only be used in the public interest.

9. On 29 June 2001 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.

10. On 19 July 2001 the first-instance court upheld the request of the Treasury and annulled the applicants' ownership in the title deed registry.

11. The applicants' requests for an appeal and rectification of this judgment were rejected by the Court of Cassation on 20 February, 22 May and 5 June 2002.

12. On unspecified dates, the Treasury brought further actions against the applicants, for injunctions to prevent any intervention (*müdahelenin men-i ve kal davası*) by the applicants on the disputed land and the destruction of the adjoining houses. On 15 June 2004 the Seferihisar Civil Court of First Instance accepted this request in relation to the first applicant. This decision has not yet been finalised. The action against the second applicant is still pending before the same court.

II. THE RELEVANT DOMESTIC LAW

13. The relevant domestic law is set out in the Court's judgments in the similar cases of *N.A. and Others v Turkey* (no. 37451/97, § 30, 11 October 2005), and *Doğrusöz and Aslan v. Turkey* (no. 1262/02, § 16, 30 May 2006).

THE LAW

14. In view of the similarity of the two applications, the Court finds it appropriate to join them.

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

15. The applicants complained that the authorities had 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

16. The Government submitted, firstly, that the applicants had not exhausted domestic remedies, as required by Article 35 § 1 of the Convention. In this connection, they maintained that the injunction proceedings against the applicants had not yet been terminated. They further alleged that the applicants had failed to make proper use of the administrative and civil law remedies available to them in domestic law.

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

18. The Court observes that the civil and administrative remedies indicated by the Government could have provided the applicants with compensation only if the records in the title deed registry, which were in their name, had been annulled unlawfully. However, the Seferihisar First Instance Court annulled the applicants’ titles in accordance with the Coastal Law, holding that the land in question had to remain under the authority of the State as it was located within the coastline area.

19. The Court therefore rejects the Government’s preliminary objection. It further notes that the applications are not inadmissible on any other grounds and must, therefore, be declared admissible.

B. Merits

1. Arguments before the Court

20. 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 applicants’ titles, the Seferihisar Court of First Instance had actually corrected an unlawful situation. Moreover, they

alleged that, since it was not possible to expropriate properties which already belonged to the State, the applicants cannot be awarded compensation for the annulment of their title deeds. However, the applicants had the right to lodge a “full remedy suit” or other claim for pecuniary damage under the Code of Obligations. Yet they failed to make use of this right.

21. The applicants submitted that, during the cadastral survey in 1981, the plots of land had been registered in their names in the title deed registry. This date was well before the adoption of the Constitution in 1982, which provided that the coastal areas were at the exclusive disposal of the State, and before 1990 when the new Law No. 3621 on the coastline came into force. They maintained that they thus had a vested interest in the properties which should have been respected by the authorities. However, they were deprived of their right to property without payment of any compensation.

2. The Court’s assessment

22. The Court has examined similar cases on previous occasions and has found violations of Article 1 of Protocol No. 1 in respect of the annulment of title deeds or the destruction of houses, purchased in good faith, but restored to State ownership without compensation being paid (see the aforementioned judgments in *N.A. and others*, §§ 36-43, and *Doğrusöz and Aslan*, §§ 26-32). The Court finds no reason to depart from that conclusion in the present cases.

Accordingly, it finds that there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicants each claimed 100,000 new Turkish liras (YTL), the equivalent of 53,954 euros (EUR), for the value of the plots of lands and YTL 50,000 (EUR 6,958) for the buildings situated on them, in respect of pecuniary damage. They further claimed YTL 17,500 (EUR 9,448) each in respect of non-pecuniary damage.

25. The Government contested these claims, arguing that they were unsubstantiated and excessive. Moreover, they alleged that land of this

nature cannot have a market value and that the unilateral assessment of the buildings has no binding effect.

26. The Court reiterates that when the basis of the violation found is the lack of compensation, rather than any inherent illegality in the taking of the property, the compensation need not necessarily reflect the property's full value (*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 an applicant's legitimate expectations to obtain 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*, cited above, § 36).

27. The Court notes that an expert report dated 20 May 2003 assessed the value of the plots of land at TRL 10,300,000,000. The Court considers that today, updated, this amount corresponds to approximately 16,500 new Turkish liras or EUR 9,000. Accordingly, the Court awards the applicants EUR 9,000, each, in respect of pecuniary damages.

28. As regards the applicants' claim for non-pecuniary damages, the Court finds that, in the circumstances of the present cases, the finding of a violation constitutes sufficient just satisfaction (cf. the aforementioned *Doğrusöz and Aslan* judgment, § 38).

B. Costs and expenses

29. The applicants also claimed YTL 7,500 EUR (EUR 4,032) in respect of the costs and expenses incurred before the domestic courts and YTL 25,000 (EUR 13,444) for those incurred before the Court. They referred to the agreement signed between them and their representative in this respect.

30. The Government contested the claims, arguing that they were excessive and insufficiently documented.

31. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicants EUR 2,500, jointly, in respect of costs and expenses.

C. Default interest

32. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No.1;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), each, in respect of pecuniary damage, and EUR 2,500 (two thousand and five hundred euros), jointly, in respect of costs and expenses, plus any tax that may be chargeable, to be converted into new Turkish liras at the rate applicable of the date of settlement;
 - (b) that from the expiry of the abovementioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President