



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

SECOND SECTION

CASE OF ASLAN AND ÖZSOY v. TURKEY

(Applications nos. 35973/02 and 5317/02)

JUDGMENT

STRASBOURG

30 January 2007

FINAL

30/04/2007

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 Aslan and Özsoy 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 I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLĖ, *Section Registrar*,

Having deliberated in private on 9 January 2007,

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

PROCEDURE

1. The case originated in two applications (nos. 35973/02 and 5317/02) 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 Refik Aslan and Mr Ali Fuat Özsoy (“the applicants”), on 6 August 2002 and 19 October 2001 respectively.

2. The applicants were represented by Mr L. Fırıncioğulları, a lawyer practising in Hatay. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. On 27 February 2006 and 4 March 2006 respectively, 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 1965 and 1936 respectively and live in Hatay.

5. On various dates, the applicants bought plots of land (nos. 1879 and 1878 respectively) near the coast in Hatay. The first applicant opened a wedding hall on the premises. The second applicant ran a cafeteria and a boarding house.

6. In 1995 the Samandağ Municipality, acting on behalf of the Treasury, requested the Samandağ Court of First Instance to determine whether the applicants' plots of land were located within the coastline. 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 they were located within the coastline.

7. Following the conclusions of the experts' report, the Treasury filed two separate actions before the Samandağ Court of First Instance, requesting the annulment of the applicants' title deeds to the lands on the ground that they were located within the coastline.

8. On 30 December 1999 and 24 December 1999 respectively, the Samandağ Court of First Instance, after having obtained additional experts' reports, upheld the request of the Treasury and decided to annul the title deeds of the applicants to the plots of land. In its decisions, the court held that, pursuant to domestic law, coasts could not be subject to private ownership and that, therefore, the applicants could not rely on the argument that they had acted *bona fides* and on the fact that they had constructed buildings on the site. The Court of Cassation dismissed the applicants' appeals on 10 July 2001 and 3 October 2000 respectively.

9. On various dates the applicants requested the Court of Cassation to rectify its decision submitting, *inter alia*, that the right to property was protected under international conventions, the constitution and the domestic law, and that the domestic courts had deprived them of their property rights without proper examination. The Court of Cassation dismissed the applicants' requests on 17 January 2002 and 19 April 2001 respectively. These decisions were served on the applicants on 18 February 2002 and 24 May 2001 respectively.

II. THE RELEVANT DOMESTIC LAW

10. The relevant domestic law and practice in force at the material time are outlined in the *Doğrusöz and Aslan v. Turkey* judgment (no. 1262/02, § 16, 30 May 2006).

THE LAW

11. 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

12. The applicants complained that the authorities' had deprived them of their property without payment of compensation.

13. The Court considers that this complaint falls within the scope 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

14. The Government maintained, firstly, 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. They suggested that the applicants had also failed to raise the substance of their complaints before the domestic courts. Secondly, the Government asked the Court to dismiss the first application for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. They alleged that the first applicant should have applied to the Court within six months following the introduction of the case concerning the annulment of the land's registration.

15. The applicants maintained their allegations.

16. As regards the first limb of the Government's objections, the Court notes firstly that the applicants did raise the substance of their complaints before the domestic court (see paragraph 9). Moreover, it reiterates that the Court has already examined and rejected the Government's similar objections in previous cases (see *Doğrusöz and Aslan*, cited above, § 22). The Court finds no particular circumstances in the instant cases which would require it to depart from its findings in the above-mentioned application. It therefore rejects the Government's objections under this head.

17. As to whether the first applicant has complied with the six-month rule, the Court notes that, by lodging his case with the Court on 6 August 2002, 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 17 January 2002 and this decision was notified to the applicant on 18 February 2002.

18. The Court therefore also rejects the Government's preliminary objection regarding the six-month rule. It further notes that the applications are not inadmissible on any other grounds and must, therefore, be declared admissible.

B. Merits

19. The Government maintained, in particular, that, according to the Constitution, coastlines belong to the State and can never become private property. They argued that the applicants 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 applicants' 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.

20. The applicants maintained their allegations.

21. 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, acquired in good faith, but restored to State ownership without compensation being paid (see *Doğrusöz and Aslan*, cited above, §§ 26-32; and *N.A. and Others v. Turkey*, no. 37451/97, §§ 36-43, ECHR 2005-...). 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

22. 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

23. The applicants claimed, in total, 124,404 euros (EUR) and EUR 167,765 respectively for the value of their property and loss of profit incurred from the annulment of their title deeds. Their claims as regards the value of their property were based on expert reports dated 29 August 2006 and 8 September 2006 respectively, prepared upon the applicants' request and filed with the Samandağ Civil Court of First Instance. According to these reports, the value of the first applicant's land together with the

buildings built on it was EUR 109,404. The second applicant's land together with the buildings was worth EUR 152,755. The applicants also each requested EUR 15,000 for non-pecuniary damages.

24. The Government contested the amounts.

25. The Court dismisses the applicants' claims concerning loss of profits as being speculative. In addition 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 (see *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 of obtaining compensation (see *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).

26. In view of the above, the Court awards the first applicant Mr Aslan EUR 60,000 and the second applicant Mr Özsoy EUR 90,000 for pecuniary damage.

27. 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 (see *Doğrusöz and Aslan*, cited above, § 38).

B. Costs and expenses

28. The applicants also claimed, in total, EUR 7,580 and EUR 5,085 respectively for the costs and expenses incurred both before the domestic courts and the Court. The applicants submitted documentation, such as fee notes, in support of their claims.

29. The Government contested the amounts.

30. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicants, jointly, EUR 5,000 covering costs under all heads.

C. Default interest

31. 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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the date of settlement:
 - (i) EUR 60,000 (sixty thousand euros) to Refik Aslan and EUR 90,000 (ninety thousand euros) to Ali Fuat Özsoy for pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), jointly, in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned 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 30 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President