



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

SECOND SECTION

CASE OF GÜMÜŞOĞLU AND OTHERS v. TURKEY

(Applications nos. 40/02, 41/02 and 42/02)

JUDGMENT

STRASBOURG

18 March 2008

FINAL

18/06/2008

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 Gümüsoğlu and Others v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Rıza Türmen,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in three applications (nos. 40/02, 41/02 and 42/02) 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 three Turkish nationals, Mr Tefik Gümüsoğlu, Mr Hasan Süslü and Mr Münip Uslu (“the applicants”), on 7 November 2001.

2. The applicants were represented by Mr Z. Işık, a lawyer practising in Hatay. The Turkish Government (“the Government”) were represented by their Agent.

3. On 17 November 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 1955, 1935 and 1950 respectively and live in Hatay.

5. On various dates, the applicants bought plots of land (nos. 1233, 1230 and 1162 respectively) near the coast in Hatay. They each built a house there¹.

6. In 1995 the Treasury filed an action before the Samandağ Court of First Instance, requesting the annulment of the applicants' title deeds to the land on the ground that they were located within the coastline.

7. On 16 December 1999 (nos. 40/02 and 41/02) and 9 December 1999 (42/02), the Samandağ Court of First Instance, relying, particularly, on expert reports, upheld the request of the Treasury and annulled 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* or on the fact that they had constructed buildings on the site.

8. On various dates the applicants appealed. In their petitions they submitted, *inter alia*, that the right to property - a human rights norm - was protected under the constitution and the domestic law, and that the domestic courts had deprived them of their property rights without proper examination and without a payment of compensation. On 3 October 2000 their appeals were dismissed by the Court of Cassation.

9. On various dates the applicants requested the Court of Cassation to rectify its decision. The Court of Cassation dismissed the applicants' requests on 2 May 2001 (nos. 40/02 and 42/02) and 19 April 2001 (no. 41/02). These decisions were served on the applicants on 6 June 2001 (nos. 40/02 and 42/02) and 23 May 2001 (no. 41/02).

II. RELEVANT DOMESTIC LAW AND PRACTICE

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 three applications, the Court finds it appropriate to join them.

¹ The applicants submitted photographs.

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, in violation of Article 1 of Protocol No. 1, which, insofar as relevant, 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...”

A. Admissibility

13. The Government submitted 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 further maintained that the applicants had failed to raise the substance of their complaints before the domestic courts.

14. The applicants contested the Government’s arguments.

15. The Court notes, firstly, that the applicants did raise the substance of their complaints before the domestic courts (see paragraph 8 above). Secondly, the Court notes that it has already examined and rejected, in previous cases, the Government’s remaining objections on non-exhaustion of domestic remedies (see, for example, *Doğrusöz and Aslan*, cited above, § 22, and *Asfuroğlu and Others v. Turkey*, nos. 36166/02, 36249/02, 36263/02, 36272/02, 36277/02, 36319/02, 36339/02 and 38616/02, § 15, 27 March 2007). The Court finds no particular circumstances in the instant cases which would require it to depart from its findings in the above mentioned applications. It therefore rejects the Government’s objections under this head.

16. The Court further notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

17. 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 use of property in a shore area owned by the State could not lead to ownership. Therefore, the entries in the applicants’ name in the land registry were contrary to the Constitution and the laws applying at the material time,

and the illegal transactions were corrected by the Samandağ Civil Court of First Instance.

18. The applicants maintained their allegations.

19. 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 *Aslan and Özsoy v. Turkey*, nos. 35973/02 and 5317/02, § 21, 30 January 2007). 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. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicants also complained that the domestic court decisions were unfair, biased, insufficiently motivated and against the provisions of both domestic and international law, in breach of Article 6 of the Convention.

21. The Government contested these arguments.

22. However, an examination by the Court of the material submitted to it does not disclose any appearance of a violation of this provision. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. 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

1. *Pecuniary damage*

24. The applicants claimed different amounts in respect of their pecuniary damage for the loss of their property. Mr Gümüsoğlu requested 50,619 US dollars [USD] (approximately 37,390 euros [EUR]). Mr Süslü requested USD 49,852 (approximately EUR 36,815) and Mr Uslu requested USD 58,111 (approximately EUR 42,915). Their claims were based on the amounts determined in expert reports, prepared upon the applicants' request

and filed with the Samandağ Civil Court of First Instance. The reports were drafted following an on-site inspection which took place on 2 October 2001 (nos. 40/02 and 42/02) and 20 June 2002 (no. 41/02). The applicants pointed out that the above-mentioned amounts were considerably less than the real amount of pecuniary damage they had sustained over the years.

25. The Government contested the amounts.

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 (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 which would correspond to an applicant's legitimate expectations for compensation (see, for example, *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. In the light of these elements and deciding on an equitable basis, the Court awards the first applicant, Mr Gümüşoğlu, EUR 29,000, the second applicant, Mr Süslü, EUR 28,000, and the third applicant, Mr Uslu, EUR 33,000 for their pecuniary damage.

2. Non-pecuniary damage

28. The applicants each requested USD 15,000 (approximately EUR 11,080) in non-pecuniary damage.

29. The Government contested the amount.

30. The Court finds that, in the circumstances of the present cases, the finding of a violation constitutes sufficient just satisfaction (see, for example, *Doğrusöz and Aslan*, cited above, § 38, and *Adil Özdemir v. Turkey*, no. 36531/02, § 42, 10 May 2007).

B. Costs and expenses

31. The applicants also claimed various amounts in respect of costs and expenses incurred both before the domestic courts and the Court. Mr Gümüşoğlu claimed, in total, 788,234 new Turkish liras [YTL] (approximately EUR 437), Mr Süslü requested, in total, YTL 795,754 (approximately EUR 441) and Mr Uslu claimed, in total, YTL 737,254 (approximately EUR 409). The applicants submitted documentation, such as receipts, in support of some of their claims.

32. The Government contested the amounts.

33. On the basis of the material in its possession and ruling on an equitable basis, the Court awards the applicants, jointly, EUR 1,200 to cover their costs under all heads.

C. Default interest

34. 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 complaint under Article 1 of Protocol No.1 admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No.1 to the Convention;
4. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered 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 29,000 (twenty-nine thousand euros) to Mr Gümüsoğlu,
 - EUR 28,000 (twenty-eight thousand euros) to Mr Süslü and
 - EUR 33,000 (thirty-three thousand euros) to Mr Uslu for pecuniary damage;
 - (ii) EUR 1,200 (one thousand two hundred 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 18 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President