



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

SECOND SECTION

CASE OF DEVECİOĞLU v. TURKEY

(Application no. 17203/03)

JUDGMENT
(Merits)

STRASBOURG

13 November 2008

FINAL

04/05/2009

This judgment may be subject to editorial revision.

In the case of Devecioğlu v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 14 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 17203/03) 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 Serhat Devecioğlu and Mrs Feriha Devecioğlu (“the applicants”), on 2 May 2003 respectively.

2. The applicants were represented by Mr M. V. Dülger, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged that the national authorities had deprived them of their property without paying compensation and that there were no effective remedies in domestic law to challenge the authorities’ act and to obtain compensation. They relied on Article 1 of Protocol No. 1 and Article 13 of the Convention.

4. On 14 August 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1967 and 1940 and live in Muğla and Istanbul respectively.

6. In 1926, the Turkish State (the Treasury) sold a plot of land known as the Yana Farm, located in Balıkesir, to an individual who later sold it to the applicants' predecessors ("the Yavaş family").

7. On 12 September 1986 the Forest Cadastral Commission ("the FCC"), a Government agency, conducted a boundary marking exercise (*tahdit çalışması*). The purpose of this exercise was to detect forest areas which had not been included on the cadastral map. Following this exercise the FCC established that a portion of the Yana Farm had been unlawfully designated as agricultural land. The FCC reclassified it as forest land. Accordingly, on 31 July 1987, the FCC initiated a revocation procedure for partial annulment of the title deed.

8. On 11 November 1987, the applicants' predecessors, the Yavaş family, brought an action in the Marmaris Cadastral Court since a portion of their registered land had been classified as forest land. They asked the court to annul the results of the boundary marking exercise and to reclassify their land as outside the forest area.

9. On 24 October 1988 the court conducted a survey of the land with the assistance of three experts on forest, agriculture and cadastral engineering. The forest engineer drew up a sketch map of the area and divided it into plots named (A), (B), (C), (D), (E), (F) and (G). Having examined the sketch map the court found that it was consistent with the general plans and the land.

10. On 9 August 1990 the Marmaris Cadastral Court ruled in favour of the applicants' predecessors, the Yavaş family, with respect to the plots shown as (A), (B), (C) and (F) on a sketch prepared by court-appointed experts. However, it dismissed the request as regards plots (D) and (G), finding that they were part of the State forest. The Forestry Directorate appealed.

11. On 16 March 1992 the Court of Cassation quashed the above ruling considering that the Cadastral Court had erred in its assessment of the nature of the land. It observed that, even if the natural flora had been destroyed, the land remained forest land. It further noted that the first-instance court had relied on the title deeds submitted by the litigants and that the measurement of that land had been enlarged from 8,000 sq. m to 8,640 sq. m by the judgment of the Erdek Civil Court dated 8 September 1960. However, given that the Forestry Directorate was not a party to those proceedings, the finding of the Erdek Civil Court did not have any binding effect for the purposes of the current proceedings. The Court of Cassation thus remitted the case to the Marmaris Cadastral Court for further examination.

12. On 15 June 1994 the applicants purchased the Yana Farm from the Yavaş family. The relevant page of the log kept at the land registry office does not contain any annotation concerning the proceedings in question.

13. On an unspecified date, following the purchase of the Yana farm by the applicants, the Marmaris Land Registry invited the applicants to

intervene in the proceedings. The court then joined the applicants' case to that initiated by the Forest Directorate, who alleged that a portion of plot no. 142/2 was within forest boundaries.

14. On 18 June 1994 the Marmaris Cadastral Court carried out a second survey of the disputed land with the assistance of new experts.

15. On 4 May 1995 the Marmaris Cadastral Court dismissed the applicants' case on the basis of the report prepared by the experts, who had concluded that the disputed land in question was part of forest land and that the previous group of experts had erred in their assessment. The court then ordered the registration of the portion of land, indicated as plot (A) in the sketch-map and measuring 1,106.91 sq. m, with the title of the Treasury as forest land. Plot (A) was thus separated from plot no. 2 owned by the applicants and joined to plot no. 3 owned by the Treasury as public forest.

16. On 12 December 1995, the Court of Cassation quashed this ruling on the grounds of insufficient factual examination. In addition, the court ruled that the right of appeal of the applicants (who had in the meantime inherited the farm) was time-barred with regard to plots (D) and (G). The parties accepted therefore that plots (D) and (G) were part of the public forest.

17. Thereafter, proceedings involving re-examinations by the Court of Cassation and the Marmara Cadastral Court continued and a new sketch of the disputed land was prepared. The new sketch map qualified certain portions of the land as (D1) and (F1).

18. Ultimately, on 24 November 1999, the Marmaris Cadastral Court found that plots (A), (B), (C), (D1), (F) and (F1) were part of forest land. It noted however that plots (C) and (E) were agricultural land. The court dismissed the applicants' case and ruled that plot (D1), measuring 1106.91 sq. m, should be registered with the title of the Treasury and that the remaining land, measuring 19,1768.09 sq. m, should be registered in the name of the applicants (half the land for each applicant). The applicants and the Forestry Directorate appealed.

19. On 30 October 2000 the Court of Cassation dismissed the applicants' appeal. However, it upheld the Forestry Directorate's appeal only in respect of plot (F1). The court considered that the first-instance court had failed to rule on plot (F1) although it had found that that plot formed part of forest land.

20. On 25 December 2000 the applicants applied to the Court of Cassation for rectification of the above decision with regard to plot (F1).

21. On 13 June 2002 the Marmaris Cadastral Court ordered the registration of plot (F1) in the name of the Treasury. It noted that the judgment concerning plots (A), (B), (C), (D) (D1), (E), (F) and (G) had already become final and that therefore there was no need to give a new ruling.

22. On 7 March 2002 the Court of Cassation dismissed the applicants' request for rectification of the decision dated 25 December 2000. This decision was served on the applicants on 11 November 2002.

23. The applicants have limited the current case before the Court to plot (F1).

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The Turkish Constitution reads in its relevant part:

Article 169

“A. Protection and Development of Forests

The ownership of State forests shall not be transferred to others. State forests shall be managed and exploited by the State in accordance with the law. Ownership of these forests cannot be acquired by way of prescription [...].”

25. The Turkish Civil Code provides the following relevant provisions concerning the registration of immovable property and limitation of rights upon it:

Article 997

“Land registry records are kept in order to indicate the rights upon immovable property...”

Article 1004

“Immovable property is registered in the land registry log books in the region where they are situated.”

Article 1007 § 1

“The State is responsible for the damage resulting from the keeping of land registry records...”

Cases involving the responsibility of the State are dealt with by the courts where the [property] was registered.”

Article 1008

“The rights mentioned below regarding immovable property are registered in the land registry log book:

1. Property;
2. Right of easement or immovable obligations; and

3. Liens”

Article 1010

“The following reasons limiting power of disposition can be annotated in the land registry log book:

1. Court decisions relating to the protection of rights in dispute;

...

The limitation of power of disposition, when registered, can be raised against those who later obtained rights over the property.”

Article 1023

“The rights of third persons who acquire a property or right *in rem*, relying on the records of the land registry log book and in good faith, shall be protected.”

THE LAW

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

26. The applicants complained that a portion of their land had been classified as public forest without any compensation being paid to them by the national authorities. They alleged a violation of Article 1 of Protocol No. 1 to the Convention, 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.”

27. The Government contested that argument.

A. Admissibility

28. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants' arguments

29. The applicants contended that the national authorities had unlawfully deprived them of a portion of their land (plot (F1)) without payment of any compensation. They noted that the disputed land had been sold by the State to an individual in 1926 and that since then it had changed hands as agricultural land in accordance with domestic law. The land registry office records did not contain any annotation indicating the land as public forest or preventing it from being sold. They had thus bought the land from its previous owner in good faith and trusted the official records kept by the land registry office. However, the FCC and national courts had described the land in question as public forest despite the land registry records proving their ownership and had unjustly dismissed their legal challenge. The applicants further claimed that the deprivation of their land had forced them to live in poverty because it had been the main source of income for their family.

(b) The Government's submissions

30. Referring to the Court's case-law on the subject (see *Lami Daim Namlı and Others v. Turkey* (dec.), no. 51963/99, 8 March 2005), the Government submitted that the applicants had never had an undisputed property right over the land in question within the meaning of Article 1 of Protocol No. 1. In this connection, they noted that the applicants had purchased the land at a time when the property right of the vendor was in dispute because the proceedings concerning the ownership of the land had been pending since 1987. The Government claimed therefore that the applicants had not been deprived of their property in breach of Article 1 of Protocol No. 1.

2. The Court's assessment

31. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the

Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004, and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

32. The Court further reiterates that in determining whether there has been a deprivation of possessions within the second “rule”, it is necessary not only to consider whether there has been a formal taking or expropriation of property but 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 *Brumărescu v. Romania* [GC], no. 28342/95, § 76, ECHR 1999-VII; *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 24-28, §§ 63 and 69-74; *Vasilescu v. Romania*, judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, pp. 1075-76, §§ 39-41).

33. The Court must first determine whether the applicants had possessions within the meaning of Article 1 of Protocol No.1 in view of the Government’s challenge to their ownership of the land in dispute. In this connection, it notes that the applicants purchased the land in question in 1994 from its previous owner relying on the records kept at the land registry office, which is the sole authority for the registration and transfer of immovable property (see paragraph 25 above). According to domestic law and practice, any limitation concerning such property must be entered into the land registry log book. The rights of those who acquire property relying on the records kept by the land registry office are protected and any damage resulting from the keeping of those records involves the responsibility of the State (*ibid.*).

34. This being so, the Court notes that it does not appear that the applicants knew or ought to have known that a portion of the land in question was public forest since the relevant page of the land registry log book does not contain any annotation limiting the transfer of the land (see paragraph 12 above). Having thus purchased the land in good faith and obtained a title deed, the applicants could legitimately claim to be the owner of the land and pursue the legal proceedings before the domestic courts. In other words, as holders of a title deed attesting their ownership of the land, the applicants can be considered to have had “possessions”, within the meaning of Article 1 of Protocol No. 1, without any restriction until they were deprived of their possession by a final court judgment.

35. As regards the Government's reliance on its decision in the case of *Lami Daim Namlı and Others* (cited above), the Court notes that the present case can be distinguished from it. In the former, it found that the applicants had never had any lawful title to the land in dispute and that, therefore, they were never safe in their belief that they were the undisputed owners of the land in question. In the instant case, however, following the purchase, the applicants had been given a title deed attesting their ownership of the land by the land registry office and they were therefore safe in their belief that they had become the undisputed owners of the land in question.

36. Having established that the applicants were the undisputed owners of this land, the Court considers that there was an interference with their right to the peaceful enjoyment of their possessions, amounting to a "deprivation" of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

37. As noted earlier, it was not disputed that the applicants had acquired plot (F1) in good faith and that they had been given a valid title deed. However, the applicants were deprived of that land by the national courts, who classified it as public forest, relying on cadastral maps, expert reports and domestic law (see paragraphs 15-22 above).

38. Be that as it may, the Court notes that although there is no provision in the Convention affording general protection for the environment, it has recognised that in today's society such protection is an increasingly important consideration (see *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192, p. 16, § 48). Furthermore, in a number of cases the Court has dealt with similar questions and stressed the importance of the protection of the environment (see, among many others, *Taşkın and Others v. Turkey*, no. 46117/99, ECHR 2004-X, *Moreno Gómez v. Spain*, no. 4143/02, ECHR 2004-X; *Fadeyeva v. Russia*, no. 55723/00, ECHR 2005-IV). In view of the foregoing, and having regard to the reasons given by the national courts, the Court considers that it is beyond dispute that the applicants were deprived of their property "in the public interest" namely for the protection of nature and forests (see *Lazaridi v. Greece*, no. 31282/04, § 34, 13 July 2006). It follows that this deprivation of property pursued a legitimate aim.

39. It now needs to be ascertained whether the interference in question struck a fair balance between the interests of the applicants and those of society as a whole. Compensation terms under the domestic legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this regard, the Court has previously held that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and that a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *N.A. and Others*

v. Turkey, no. 37451/97, § 41, ECHR 2005-X; *Nastou v. Greece* (no. 2), no. 16163/02, § 33, 15 July 2005; *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 111, ECHR 2005-VI).

40. In the instant case, the applicants did not receive any compensation for the transfer of their property to the Treasury, despite having brought an action for damages in the Turkish courts. The lack of any domestic remedy to afford redress for the deprivation of the applicants' land thus impaired the full enjoyment of their right of property. In this connection, the Court notes that the Government did not cite any exceptional circumstances to justify the total lack of compensation for that deprivation, the land being the main source of income to sustain the applicants' family.

41. In view of the above, the Court considers that the failure to award any compensation to the applicants upset, to their detriment, the fair balance which has to be struck between the protection of property and the requirements of the general interest (see *N.A. and Others*, cited above, § 42). There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicants further complained that there were no effective domestic remedies available to them to obtain compensation for the deprivation of their property. They relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

43. The Government contested that argument.

44. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

45. However, having regard to the finding relating to Article 1 of Protocol No. 1 (see paragraphs 40 and 41 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 13 of the Convention (see, among other authorities, *Kadriye Yıldız and Others v. Turkey*, no. 73016/01, § 33, 10 October 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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.”

47. The applicants claimed 760,927.5 New Turkish Liras (TRY) (434,743.24 euros (EUR)) in respect of pecuniary damage. They explained that the total surface of the land which had been taken by the authorities was 8,454.75 sq. m and that the market value of this land was approximately TRY 90 (EUR 51.42) per square metre.

48. The applicants also claimed TRY 50,000 (28,571.42) for non-pecuniary damage. They noted in this connection that they had been living in poverty since their land had been seized by the authorities. The first applicant is a housewife who receives part of a pension from her deceased husband and has no other income. The second applicant was compelled to leave the country as a result of his poor financial situation and has moved to the United States where he is struggling to make a living in difficult conditions.

49. As regards the costs and expenses, the applicants contended that although they and their predecessors had incurred substantial costs during sixteen year legal struggle, between 1986 and 2002, before the domestic courts and Strasbourg Court, a symbolic amount of EUR 30,000 would be an appropriate amount to be awarded by the Court.

50. The Government submitted that the amounts claimed by the applicants were speculative and unsubstantiated.

51. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision and must be reserved, due regard being had to the possibility of an agreement between the respondent State and the applicants.

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* that there is no need to examine separately the complaint under Article 13 of the Convention;
4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision;
accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the

matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President