



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

SECOND SECTION

CASE OF TERZİOĞLU AND OTHERS v. TURKEY

*(Applications nos. 16858/05, 23953/05, 34841/05,
37166/05, 19638/06 and 17654/07)*

JUDGMENT

STRASBOURG

16 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Terzioğlu and Others 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in six applications (nos. 16858/05, 23953/05, 34841/05, 37166/05, 19638/06 and 17654/07) 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 eight Turkish nationals, Mr Necdet Terzioğlu, Ms Fatma Terzioğlu, Mr Şencan Kanan, Mr Sezai Kerci, Mr Ömer Tuncer, Mr Mehmet Karadağ, Mr İsmail Özcan and Mr Halil Özcan (“the applicants”), on 15 April, 6 June, 2 September, 30 September 2005, 29 April 2006 and 10 April 2007 respectively.

2. The applicants were represented by Mr H. Baydar, Mr İ. Uyar, Mr G.A. Yolyapan, Mr T.B. Ulutaş, Mr M.M. Sezgin and Ms M. Adalı, lawyers practising in Çanakkale, Tekirdağ, İzmir, Denizli and Bursa. The Turkish Government (“the Government”) were represented by their Agent.

3. On 5 November 2007 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1924, 1932, 1940, 1949, 1946, 1944, 1937 and 1934 respectively and live in different cities in Turkey.

5. On various dates, the applicants inherited or bought plots of land and properties near the coasts in different parts of Turkey, namely in Çanakkale, Şarköy, İzmir, Mudanya and Seferihisar. Some of the applicants constructed houses or operated commercial entities on their land.

6. On different dates, the Treasury requested from the competent courts of first instance to determine whether the applicants' properties were located within the coastal strip. A group of experts appointed by the courts inspected the plots of land and any existing buildings on them and concluded that they were located within the coastline area.

7. Following the conclusion of the expert reports, the Treasury brought actions before the relevant courts, requesting the annulment of the applicants' title deeds to the land and the properties, on the ground that they were located within the coastal area.

8. On various dates, the courts of first instance upheld the request of the Treasury and annulled in full the applicants' title deeds in application nos. 23953/05, 37166/05, 19638/06 and 17654/07, whereas the title deeds in the remaining two applications were partially annulled. In their decisions, the courts held that, pursuant to domestic law (the Coastal Law of 1990), the 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 plots of land.

9. Appeals by the applicants against these judgments were dismissed by the Court of Cassation. Some of the applicants' requests for rectification of the judgments were also rejected by that court.

10. In application no. 23953/05 the applicant brought an action for damages in the Şarköy Civil Court of First Instance on account of his loss of ownership and the demolition of four shops located on the land. On 28 October 2003 the Şarköy Civil Court of First Instance dismissed the applicant's action on the ground that, *inter alia*, the State was not liable for the damage resulting from the cancellation of the registration of the property in issue. The applicant appealed. In a judgment of 24 September 2004 the Court of Cassation upheld the judgment. A rectification request by the applicant was further dismissed by the Court of Cassation on 17 March 2005.

The details concerning the six applications are indicated in the table below:

Application no. and date of lodging	Name of the applicants	Name of court and date of decision	Date of final decision of Court of Cassation	Date of notification of final decision of Court of Cassation
16858/05 (15.4.2005)	Necdet Terzioğlu Selma Fatma Terzioğlu	26.12.2003 (Çanakkale Civil Court)	15.9.2004	20.10.2004
23953/05 (6.6.2005)	Şencan Kanan	28.10.2003 (Şarkoy Civil Court)	17.3.2005	19.4.2005
34841/05 (2.9.2005)	Sezai Kerçi	28.10.2004 (İzmir Civil Court)	16.6.2005	8.7.2005
37166/05 (30.9.2005)	Ömer Tuncer	4.7.2005 (Mudanya Civil Court)	13.6.2005	23.6.2005
19638/06 (29.4.2006)	Mehmet Karadağ	25.3.2004 (Mudanya Civil Court)	16.11.2005	31.1.2006
17654/07 (10.4.2007)	İsmail Özcan Halil Özcan	3.6.2003 (Seferihisar Civil Court)	26.12.2005	16.10.2006

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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

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

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

13. 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, in so far 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

1. *Observance of the six month rule*

14. The Government submitted that application nos. 16858/05, 23953/05 and 17654/07 should be dismissed for non-compliance with the six-month time-limit laid down in Article 35 § 1 of the Convention. In particular, the judgments of the Court of Cassation had been returned to the respondent registries on 7 October 2004, 27 May 2002 and 16 October 2006.

15. The applicants contested the Government's assertions.

16. The Court observes that in the application no. 16858/05 an official note on the first-instance court's judgment signed by a judge and the registry indicates that the judgment was served on the applicants on 20 October 2004. The applicants lodged the application on 15 April 2005. Accordingly, the Court holds that this application was lodged within the six-month time-limit.

In application no. 23953/05 the Court observes that the judgment concerning the annulment of the title deed was returned to the registry on 27 May 2002. However, following the annulment of the title deed to his property, the applicant brought an action for damages on account of his loss of ownership and the demolition of his four shops. The relevant proceedings ended on 17 March 2005 when the Court of Cassation dismissed the applicant's rectification request. The Court recalls that the Government's similar objection was rejected by the Court in the *N.A. and Others v. Turkey* case ((dec.), no. 37451/97, 14 October 2004). The Court sees no reason to adopt a different stance in the instant case.

In application no. 17654/07 the Court observes that the judgment of the Court of Cassation had been returned to the first-instance court's registry on 19 January 2006. Nevertheless, it is indicated on the judgment submitted to the Court by the Government that the applicants' lawyer obtained a copy of it on 16 October 2006. He then submitted the application to the Court on 10 April 2007. In the absence of a notification form which indicates that the judgment was served on the applicants on a date other than the one indicated on the judgment, the Court finds that the application was lodged within the six-month time-limit (see *Kutluk and Others v. Turkey*, no. 1318/04, § 21, 3 June 2008).

17. In the light of the above the Court rejects the Government's preliminary objection with respect to the six-month rule.

2. *Exhaustion of domestic remedies*

18. 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.

19. The applicants contested the Government's arguments.

20. The Court reiterates that it has examined and rejected the Government's similar preliminary objection in previous cases (see, in particular, *Abacı v. Turkey*, no. 33431/02, §§ 11-18, 7 October 2008; *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; *Turgut and Others v. Turkey*, no. 1411/03, § 80, 8 July 2008). The Court sees no reason to depart from that conclusion in the present case. Accordingly, the Court rejects the Government's preliminary objection regarding non-exhaustion of domestic remedies.

21. The Court concludes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

22. The Government maintained that, according to the Constitution, the coastal area belongs to the State and cannot become private property. They argued that the title-deeds were registered under the name of the applicants in breach of domestic law and the illegal transaction had been corrected by the domestic courts.

23. The applicants maintained their allegations.

24. 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 later restored to State ownership without compensation being paid (see *Abacı*, cited above; *N.A. and Others v. Turkey*, no. 37451/97, ECHR 2005-X; *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 case.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 14 OF THE CONVENTION

25. The applicants also complained under Article 6 § 1 of the Convention that the domestic court decision was unfair, biased, insufficiently motivated and against the provisions of both domestic and international law. In application no. 37166/05 the applicant further alleged under Article 14 that title deeds to numerous other properties situated elsewhere on the coastline in Turkey had not been annulled.

26. The Government contested these arguments.

27. However, 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 rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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.”

29. The Court notes that in application no. 19638/06 part of the applicant's just satisfaction claims were submitted with a delay of ten days, whereas the applicant further requested an extension of the time-limit for a period of one month to submit additional documents. The President of the Chamber, pursuant to Rule 60 § 3 of the Rules of Court, decided to include these preliminary submissions in the case file for the consideration of the Court but to reject the applicant's request for an extension. Accordingly the documents submitted afterwards were not included in the case file.

A. Damage

30. The applicants claimed different amounts in respect of their pecuniary and non-pecuniary damage.

31. The Government contested the claims, arguing that they were unsubstantiated and excessive.

32. 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 *N.A. and Others v. Turkey* (just satisfaction), no. 37451/97, § 14, 9 January 2007; *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 (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; *Doğrusöz and Aslan*, cited above, § 36).

33. The Court takes note of the various expert reports submitted to the Court by the applicants, assessing the value of the various plots of land in dispute. The Court dismisses the applicants' claims concerning loss of profits as being speculative (see *Aslan and Özsoy*, cited above, § 25). As to the remainder, deciding on an equitable basis, the Court awards the

applicants the amounts indicated in euros (EUR) in the table below for pecuniary damage:

Application no.	Name of the applicant	Loss	Amount
16858/05	Necdet Terzioğlu S.Fatma Terzioğlu	Land	EUR 4,000 jointly
23953/05	Şencan Kanan	Land + building (commercial entity)	EUR 70,000
34841/05	Sezai Kerçi	Land + building	EUR 65,000
37166/05	Ömer Tuncer	Land + building (commercial entity)	EUR 70,000
19638/06	Mehmet Karadağ	Land + building	EUR 65,000
17654/07	İsmail Özcan Halil Özcan	Land + building	EUR 65,000 jointly

34. As regards the applicants' claim for non-pecuniary damage, 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

35. The applicants also claimed different amounts in respect of their costs and expenses incurred before the domestic courts and for those incurred before the Court.

36. The Government contested these claims, arguing that no credible evidence has been submitted by the applicants to support the purported lawyers' fees, or costs and expenses. They also added that the amounts claimed were excessive.

37. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

38. The Court takes note of the various documents submitted by some of the applicants, indicating their costs and expenses. Accordingly, and in the light of equity, the Court awards the applicants the amounts in the table below for costs and expenses. However, the Court makes no award under this head where the applicants solely referred to the respondent Bar Association's scale of fees without submitting any documents in support of their claims (see *Balçık and Others v. Turkey*, no. 25/02, § 65, 29 November 2007).

Application no.	Name of the applicant	Amount
16858/05	Necdet Terzioğlu S.Fatma Terzioğlu	No award
23953/05	Şencan Kanan	EUR 2,260
34841/05	Sezai Kerçi	No award
37166/05	Ömer Tuncer	EUR 1,000
19638/06	Mehmet Karadağ	No award
17654/07	İsmail Özcan Halil Özcan	EUR 1,000 jointly

C. Default interest

39. 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 complaints inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in each case;
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, the following sums, plus any tax that may be chargeable, in respect of pecuniary damage:
 - i. application no. 16858/05, EUR 4,000 (four thousand euros), jointly, to Necdet Terzioğlu and Selma Fatma Terzioğlu;
 - ii. application no. 23953/05, EUR 70,000 (seventy thousand euros) to Şencan Kanan;
 - iii. application no. 34841/05, EUR 65,000 (sixty five thousand euros) to Sezai Kerçi;

- iv. application no. 37166/05, EUR 70,000 (seventy thousand euros) to Ömer Tuncer;
 - v. application no. 19638/06, EUR 65,000 (sixty five thousand euros) to Mehmet Karadağ;
 - vi. application no. 17654/07, EUR 65,000 (sixty five thousand euros), jointly, to İsmail Özcan and Halil Özcan;
- (b) within the same three months period, the respondent State is to pay the applicants, the following sums, plus any tax that may be chargeable to the applicants, in respect of costs and expenses:
- i. application no. 23953/05, EUR 2,260 (two thousand two hundred sixty euros) to Şencan Kanan;
 - ii. application no. 37166/05, EUR 1,000 (one thousand euros) to Ömer Tuncer;
 - iii. application no. 17654/07, EUR 1,000 (one thousand euros), jointly, to İsmail Özcan and Halil Özcan;
- (c) that these sums are to be converted into new Turkish liras at the rate applicable on the date of settlement;
- (d) 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' claims for just satisfaction.

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President