



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

1959 · 50 · 2009

SECOND SECTION

CASE OF DEVECİOĞLU v. TURKEY

(Application no. 17203/03)

JUDGMENT
(Just satisfaction)

*This version was rectified on 17 May 2010
under Rule 81 of the Rules of the Court*

STRASBOURG

24 November 2009

FINAL

24/02/2010

This judgment is final but 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,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 3 November 2009,

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 Osman Serhat Devecioğlu¹ and Mrs Feriha Devecioğlu (“the applicants”), on 2 May 2003 respectively.

2. In a judgment delivered on 13 November 2008 (“the principal judgment”), the Court held that the failure to award any compensation to the applicants for the deprivation of a portion of their land had amounted to a violation of Article 1 of Protocol No. 1 to the Convention (*Devecioğlu v. Turkey*, no. 17203/03, § 41, 13 November 2008).

3. Under Article 41 of the Convention the applicants sought just satisfaction for the damage they had sustained as a result of the deprivation of their land.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 51, and point 4 of the operative provisions).

5. In a letter dated 2 February 2009 the applicants reiterated their claims on just satisfaction. The Government did not reply to this letter.

6. In a letter of 10 February 2009 the Government requested the referral of the case to the Grand Chamber. This request was rejected by the panel of five judges of the Grand Chamber on 4 May 2009.

1. Rectified on 17 May 2010: “Osman” has been added to the first name.

THE LAW

7. 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. The parties' submissions

(a) The applicants

8. 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 square metres and that the market value of this land was approximately TRY 90 (EUR 51.42) per square metre.

9. In this connection, the applicants relied on an assessment report dated 27 October 2007, prepared by a real estate agent, a map and a cadastral expert's report on the value of land on Marmara island, which is the largest island in the Sea of Marmara and the centre of Marmara district in Balıkesir province. According to the latter report, land prices on the island had increased as a result of tourist development. In the area where the land at issue was situated, land prices per square metre ranged from TRY 80 to TRY 150. The applicants' land could, in their view, be sold at an average price of TRY 90 per square metre.

10. 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 was a housewife who receives part of a pension from her deceased husband and had 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.

(b) The Government

11. The Government submitted that the amounts claimed by the applicants were speculative and unsubstantiated as they were based solely on the oral information gathered by their representative. No substantiating documents had been submitted with regard to these figures. Furthermore, a realistic valuation regarding the land in question was not possible given that

the land was located within the forest area and thus could not be subjected to any market analysis. They further contended that the applicants' claim for non-pecuniary damages was excessive.

2. *The Court's assessment*

12. The Court recalls that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore, as far as possible, the situation existing before the breach (*Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I).

13. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under Article 1 of the Convention to secure the rights and freedoms guaranteed. If the nature of the breach allows *restitutio in integrum*, it is for the respondent State to implement it. If however national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

14. In the principal judgment the Court found that 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. Thus, in the circumstances of the present case, an award of compensation for the pecuniary loss in question seems to be the most appropriate just satisfaction for the applicants.

15. In this context, 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, the compensation need not necessarily reflect the full value of the property (*I.R.S. and Others v. Turkey* (just satisfaction), no. 26338/95, §§ 23-24, 31 May 2005, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 254-259, ECHR 2006-V, and *Stornaiuolo v. Italy*, no. 52980/99, §§ 82-91, 8 August 2006). It therefore deems it appropriate to fix a lump sum that would correspond to the applicants' legitimate expectations to obtain compensation.

16. In view of the above, the Court awards the applicants, jointly, EUR 100,000 for pecuniary damage.

17. 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 *I.R.S. and others*, cited above, § 28).

B. Costs and expenses

18. As regards costs and expenses, the applicants contended that, although they and their predecessors had incurred substantial costs during the 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. This sum included fees and administrative costs incurred (including 196 hours' legal work and expenses such as telephone calls, postage, photocopying and stationery).

19. The Government submitted that the amounts claimed were baseless and excessive.

20. 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 were reasonable as to quantum. In the present case, although the applicants submitted a time schedule indicating the time spent for the preparation and submission of their application, the Court considers excessive the total number of hours of legal work and the amounts claimed per hour (250 US dollars). Furthermore, the applicants failed to submit any supporting documents in respect of their administrative costs.

21. In view of the foregoing, and having regard to the details of the claims submitted by the applicants, the Court finds it reasonable to award EUR 5,000 to them, jointly, under this head.

C. Default interest

22. 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. Holds

(a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

- (i) EUR 100,000 (one hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
- (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicants, for costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President