



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

Information Note on the Court's case-law 69

November 2004

Öneryıldız v. Turkey [GC] - 48939/99

Judgment 30.11.2004 [GC]

Article 2

Article 2-1

Life

Responsibility of authorities in connection with deaths resulting from an accidental explosion at a rubbish tip close to a shanty town: *violation*

Article 2

Positive obligations

Infringements of the right to life as a result of dangerous activities; effectiveness of preventive measures and criminal sanctions: *violation*

Article 13

Effective remedy

Effective remedy in respect of dangerous industrial activities resulting in death and destruction of property: *violation*

Article 1 of Protocol No. 1

Article 1 para. 1 of Protocol No. 1

Possessions

Question whether a house built without permission and occupied without title constitutes a substantial patrimonial interest

Peaceful enjoyment of possessions

Explosion at public rubbish tip resulting in loss of property: *violation*

Facts: At the material time the applicant was living with twelve close relatives in a slum quarter in Ümraniye (Istanbul). The area was part of an expanse of rudimentary dwellings built without any authorisation on land surrounding a rubbish tip, which was used for the storage of waste from four districts, under the authority and responsibility of Istanbul City Council. An expert report drawn up at the request of Ümraniye District Council drew the authorities' attention to the fact that the tip, which did not conform to

the relevant technical requirements and the Environment Act, posed a number of dangers for the slum inhabitants and that no measures had been taken to prevent an explosion of the gases generated by the decomposing refuse. The relevant government body recommended that the authorities remedy the problems thus identified and Ümraniye District Council applied for a court order prohibiting the use of the site by the other local councils. Before the proceedings had been concluded, a methane explosion occurred at the rubbish tip on 28 April 1993 and the refuse erupting from the pile of waste engulfed several houses situated below it, including the one belonging to the applicant, who lost nine close relatives. The police and administrative authorities promptly opened investigations and expert reports were ordered. The official investigations were all completed within less than three months, and criminal proceedings were instituted against the mayors of Ümraniye and Istanbul. They were subsequently found guilty of “negligence in the performance of their duties” and were given suspended fines, the minimum penalty under the relevant legislation. The applicant subsequently brought an action for damages in the Administrative Court on account of the death of his relatives and the loss of his property. The court found a direct causal link between the accident and the authorities’ negligence. After proceedings lasting almost five years, the applicant and his surviving children were awarded compensation of TRL 100,000,000 for non-pecuniary damage (approximately 2,077 euros) and TRL 10,000,000 for pecuniary damage (approximately 208 euros), although those sums have not been paid. The court refused to take into account the destruction of the house on the ground that, following the accident, the applicant had been able to acquire subsidised housing on very favourable terms, and also refused to award compensation for the destruction of electrical appliances, which the applicant was not supposed to own as the house had had no water supply or electricity.

Law: Article 2 (positive obligations on the State in relation to dangerous activities): Both the operation of household-refuse tips and the rehabilitation of slum areas were governed by safety regulations in Turkey. In the present case, long before the explosion, there had been practical information available to the effect that the inhabitants were faced with a threat to their physical integrity on account of the tip’s technical shortcomings. A court-ordered expert report had established that the tip had been opened and had continued to operate in breach of the regulations in force, that the site posed certain dangers and that the existing facilities were unable to prevent the risk of an explosion through the decomposition of the waste. In short, long before the fatal accident, both the reality and the immediacy of the risk in question had been highlighted and, given the site’s continued operation in the same conditions, that risk could only have increased. Accordingly, since the authorities had been informed of the risks and the danger posed by the tip, they had known or ought to have known before the accident what the local inhabitants were facing. Under Article 2 they had therefore had an obligation to take such preventive operational measures as were necessary and sufficient to protect those individuals. However, the council responsible had failed to take the necessary urgent measures and had also opposed official steps to the same effect. Furthermore, no negligence or lack of foresight could be attributed to the victims of the accident since, although the relevant legislation had prohibited them from living in the area of the tip, the State had for many years consistently pursued a general policy of tolerance towards slum areas, and the applicant had benefited from that tolerance. The administrative authorities had treated him as the lawful owner of his house, even though they had been entitled by law to demolish it; they had therefore remained passive in the face of his unlawful conduct and had created uncertainty as to their application of the relevant regulations. Regard had to be had, admittedly, from the State’s point of view, to the level of investment required to take steps to deal with such problems, but the timely installation of a gas-extraction system at the tip could have been an effective means of alleviating the danger of an explosion of the gas given off from the decomposing waste, without placing an excessive burden on the State. Lastly, in the absence of more practical measures to avoid the risks to the lives of the slum inhabitants, even compliance by the State with its obligation to respect the public’s right to information

would not have been sufficient. In short, as the domestic investigating authorities had concluded, the State's responsibility had been engaged. The authorities' failure to do everything within their power to protect the slum inhabitants from immediate and known risks gave rise to a violation of Article 2 in its substantive aspect.

Conclusion: violation (unanimously).

The State had been required to ensure an "adequate" judicial response through criminal law to the deaths caused by the dangerous activity in question. The criminal-law procedures in place in Turkey were part of a system which, in theory, appeared sufficient to protect the right to life in the context of dangerous activities. In practice, the authorities had carried out prompt administrative and criminal investigations, had rapidly established the causes of the accident and the deaths and had identified those responsible. The question was therefore whether the judicial authorities had been determined to sanction those responsible. However, the criminal proceedings in issue had had the sole purpose of establishing whether the authorities could be held liable for negligence in the performance of their duties and had thus left in abeyance any question of their possible responsibility for the deaths. The judgment referred to the deaths as a factual element but there had not been an acknowledgment of any responsibility for failing to protect the right to life. There was no indication that the trial court had had sufficient regard to the extremely serious consequences of the accident; the persons held liable had ultimately been sentenced to the minimum penalty applicable, which had, moreover, been suspended. In short, the judicial response to the tragedy had failed to secure the full accountability of State officials or authorities for their role in the fatal accident and the effective implementation of provisions of domestic law guaranteeing respect for the right to life, in particular the deterrent function of the criminal law. The lack, in connection with a fatal accident caused by a dangerous activity, of adequate protection "by law" safeguarding the right to life and deterring similar life-endangering conduct in future amounted to a violation of Article 2 in its procedural aspect.

Conclusion: violation (sixteen votes to one).

Article 1 of Protocol No. 1: (a) *Applicability:* The applicant's dwelling had been erected illegally on land belonging to the Treasury and had not conformed to the relevant technical standards. It was impossible to establish whether the applicant had been entitled to benefit from the regulations by which the situation could be regularised and title to the land obtained, but in any event, he had never taken any steps to that end. Accordingly, the hope he expressed before the Court of having the land transferred to him one day did not constitute a kind of "claim sufficiently established" to be enforceable in the courts, and hence a "possession". With regard to the applicant's unauthorised dwelling, the authorities had deliberately not demolished it, although they had been entitled to; such tolerance indicated a *de facto* acknowledgment on their part that the applicant and his relatives had a proprietary interest in their dwelling and movable goods. Furthermore, the uncertainty created by the authorities' attitude as to the application of laws to curb illegal settlements would not have caused the applicant to imagine that his situation was liable to change overnight. In short, the applicant's proprietary interest in his dwelling was of a sufficient nature and sufficiently recognised to constitute a substantive interest and hence a "possession".

(b) *Peaceful enjoyment of possessions:* There was a causal link between the gross negligence attributable to the State and the engulfment of the applicant's house, amounting to a breach of the State's positive obligation under this provision to do everything within its power to protect the applicant's proprietary interests. This positive obligation had required the national authorities to take the same practical steps as indicated under Article 2 to avoid the destruction of the applicant's house. However, no such steps had been taken. The advantages conferred on the applicant in terms of subsidised housing could not be regarded as proper compensation for the pecuniary

damage he had sustained and there had been no acknowledgment by the authorities of a violation of his right to the peaceful enjoyment of his possessions. The applicant had therefore not lost his status as a "victim". The compensation awarded for pecuniary damage in a final judgment had still not been paid, and this amounted to interference with the right to enforcement of a claim that had been upheld.

Conclusion: violation (fifteen votes to two).

Article 13 – Effectiveness of the remedy in respect of the violation of Article 2: The criminal proceedings instituted after the fatal accident in the present case had been found inadequate to protect the right to life (see Article 2 in its procedural aspect), although the official investigations had established the facts and identified those responsible. Accordingly, the applicant had been in a position to use the remedies available to him under Turkish law in order to obtain redress. The administrative-law remedy used by the applicant had, on its face, been sufficient for him to enforce the substance of his complaint regarding the death of his relatives and had been capable of affording him adequate redress for the violation of Article 2 found above. Nevertheless, that remedy had not been effective in practice. In particular, the damages awarded to the applicant for the loss of his close relatives had never been paid to him and the proceedings had not been conducted with due diligence. Although the possibility in Turkish law of applying to join criminal proceedings as an intervening party should in principle be taken into consideration for the purposes of Article 13, in the present case the applicant could not be criticised for omitting to pursue that option since, as noted above, the administrative-law remedy he had chosen to use appeared to have been effective and capable of directly redressing the situation of which he complained, and the criminal-law remedy could not be used simultaneously.

Conclusion: violation (fifteen votes to two).

The applicant had been denied an effective remedy for the alleged breach of his right under Article 1 of Protocol No. 1 in view of the lack of diligence in delivering the decision on compensation and the failure to pay the sum awarded for the loss of his possessions. Although the applicant had secured advantages in the form of alternative accommodation, the Court considered that to be a matter for examination under Article 41. Moreover, as such advantages had not removed his status as the victim of an alleged violation of Article 1 of Protocol No. 1 (see above), they could not have deprived him of his right to an effective remedy in respect of that Article.

Conclusion: violation (fifteen votes to two).

No separate issue was raised under Article 6 § 1 and Article 8.

Article 41 – Violations of the right to peaceful enjoyment of possessions: As to the destruction of his property, the applicant did not appear to have sustained a loss greater than the profit he seemed to have made from the transactions relating to the replacement accommodation acquired at a reduced price, so that the finding of a violation constituted in itself sufficient just satisfaction under that head. As to the loss of movable property in the accident, the compensation awarded at domestic level (208 euros) had not taken electrical appliances into account and had never been paid to the applicant. The outcome of the compensation proceedings should not therefore be taken into consideration for the purposes of Article 41, and the Court made an award of 1,500 euros.

Violation of the right to life: the compensation awarded at domestic level (2,077 euros) had not been paid and, in the very particular circumstances of the case, the applicant's decision not to initiate enforcement proceedings in order to obtain that sum could not be

regarded as a waiver of his entitlement to it; the Court made an aggregate award of 135,000 euros.

The Court made an award in respect of the costs and expenses incurred before the Convention institutions, although the applicant had not substantiated his claim.

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