EUROPEAN COURT OF HUMAN RIGHTS

603
30.11.2004

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT IN THE CASE OF ÖNERYILDIZ v. TURKEY

The European Court of Human Rights has today delivered at a public hearing a Grand Chamber judgment[1] in the case of ***Öneryıldız v. Turkey*** (application no. 48939/99).

The Court held:

- unanimously, that there had been **a violation of Article 2** (right to life) of the European Convention on Human Rights on account of the lack of appropriate steps to prevent the accidental death of nine of the applicant's close relatives;
- by sixteen votes to one, that there had been **a violation of Article 2** on account of the lack of adequate protection by law safeguarding the right to life;
- by fifteen votes to two, that there had been **a violation of Article 1 of Protocol No. 1** (protection of property) to the Convention;
- by fifteen votes to two, that there had been **a violation of Article 13** (right to an effective remedy) as regards Article 2;
- by fifteen votes to two, that there had been **a violation of Article 13** as regards the complaint under Article 1 of Protocol No. 1;
- unanimously, that no separate issue arose under Article 6 § 1 (right to a fair hearing) or Article 8 (right to respect for private and family life).

Under Article 41 (just satisfaction), the Court decided unanimously to award the applicant 2,000 United States dollars (corresponding to the reimbursement of funeral expenses), 45,250 euros (EUR) for pecuniary and non-pecuniary damage and EUR 16,000 for costs and expenses (less the EUR 3,993.84 already received from the Council of Europe in legal aid). The Court also awarded EUR 33,750 to each of the applicant's adult sons for non-pecuniary damage.

(The judgment is available in English and French.)

1. Principal facts

The applicant, Maşallah Öneryıldız, is a Turkish national who was born in 1955. At the material time he was living with 12 close relatives in the slum quarter of Kazım Karabekir in Ümraniye (Istanbul).

The Kazım Karabekir area was part of an expanse of rudimentary dwellings built without any authorisation on land surrounding a rubbish tip which had been used jointly by four district councils since the 1970s, under the authority and responsibility of Istanbul City Council. An expert report drawn up on 7 May 1991 at the request of Üsküdar District Court, to which the

[1] Grand Chamber judgments are final (Article 44 of the Convention).

matter had been referred by Ümraniye District Council, drew the authorities' attention to, among other things, the fact that no measures had been taken at the tip in question to prevent an explosion of the methane generated by the decomposing refuse. The report gave rise to a series of disputes between the mayors concerned. However, before the proceedings instituted by either of them had been concluded, a methane explosion occurred at the tip on 28 April 1993 and the refuse erupting from the pile of waste engulfed more than ten houses situated below it, including the one belonging to the applicant, who lost nine close relatives.

After criminal and administrative investigations had been carried out into the case, the mayors of Ümraniye and Istanbul were brought before the courts, the former for failing to comply with his duty to order the destruction of the illegal huts surrounding the rubbish tip, and the latter for failing to renovate the tip or order its closure, in spite of the conclusions of the expert report of 7 May 1991. On 4 April 1996 the mayors in question were both convicted of "negligence in the performance of their duties" and were both fined 160,000 Turkish liras (TRL) and sentenced to the minimum three-month term of imprisonment provided for in Article 230 of the Criminal Code. Their sentences were subsequently commuted to fines, the enforcement of which was suspended.

The applicant subsequently brought an action for damages in his own name and on behalf of his three surviving children in the Istanbul Administrative Court, holding the authorities liable for the death of his relatives and the destruction of his property. In a judgment of 30 November 1995 the authorities were ordered to pay the applicant and his children TRL 100,000,000 for non-pecuniary damage and TRL 10,000,000 for pecuniary damage in respect of the destruction of household goods (equivalent at the material time to approximately EUR 2,077 and EUR 208 respectively). Those amounts have yet to be paid to the applicant, and he does not appear to have instituted enforcement proceedings.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 January 1999 and declared admissible on 22 May 2001.

In a Chamber judgment of 18 June 2002 the Court held by five votes to two that there had been a violation of Article 2 of the Convention on account of the death of the applicant's relatives and the ineffectiveness of the judicial machinery, and by four votes to three that there had been a violation of Article 1 of Protocol No. 1. By way of just satisfaction, the Court awarded the applicant EUR 154,000 for pecuniary and non-pecuniary damage and EUR 10,000 for costs and expenses.

On 12 September 2002 the Turkish Government requested that the case be referred to the Grand Chamber (Article 43 of the Convention and Rule 73 of the Rules of Court). The panel of the Grand Chamber accepted that request on 6 November 2002. A hearing took place in public in the Human Rights Building on 7 May 2003.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***President***,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Georg **Ress** (German),

Nicolas **Bratza** (British),
Elisabeth **Palm** (Swedish),
Loukis **Loucaides** (Cypriot)
Rıza **Türmen** (Turkish),
Françoise **Tulkens** (Belgian),
Karel **Jungwiert** (Czech),
Margarita **Tsatsa-Nikolovska** (citizen of "the former Yugoslav Republic of Macedonia"),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Mindia **Ugrekhelidze** (Georgian),
Anatoly **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese), ***judges***,

and also Paul **Mahoney**, ***Registrar***.

3. Summary of the judgment[1]

Complaints

The applicant alleged that the facts complained of had given rise to violations of Articles 2 (right to life), 13 (right to an effective remedy), 6 § 1 (right to a fair hearing within a reasonable time) and 8 (right to respect for private and family life) of the Convention, and of Article 1 of Protocol No. 1 (protection of property).

Decision of the Court

Article 2

Responsibility borne by the State for the deaths
The Court noted at the outset that there were safety regulations in force in Turkey in both of the fields of activity central to the present case – the operation of household-refuse tips and the rehabilitation of slum areas.

The expert report submitted on 7 May 1991 had specifically referred to the danger of an explosion due to methanogenesis, as the tip had had "no means of preventing an explosion of methane occurring as a result of the decomposition" of household waste. The Court considered that neither the reality nor the immediacy of the danger in question was in dispute, seeing that the risk of an explosion had clearly come into being long before it was highlighted in the report of 7 May 1991 and that, given the site's continued operation in the same conditions, that risk could only have increased over time.

It was impossible for the administrative and municipal departments responsible for supervising and managing the tip not to have known of the risks inherent in methanogenesis or of the necessary preventive measures, particularly as there were specific regulations on the matter. The Court likewise regarded it as established that various authorities had also been aware of those risks, at least by 27 May 1991, when they had been notified of the report of 7 May 1991.

[1] This summary by the Registry does not bind the Court.

Since the Turkish authorities had known or ought to have known that there was a real or immediate risk to persons living near the rubbish tip, they had had an obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals, especially as they themselves had set up the site and authorised its operation, which had given rise to the risk in question. However, Istanbul City Council had not only failed to take the necessary urgent measures but had also opposed the recommendation by the Prime Minister's Environment Office to bring the tip into line with the applicable standards. It had also opposed the attempt in August 1992 by the mayor of Ümraniye to obtain a court order for the temporary closure of the waste-collection site.

As to the Government's argument that the applicant had acted illegally in settling by the rubbish tip, the Court observed that in spite of the statutory prohibitions in the field of town planning, the Turkish State's consistent policy on slum areas had encouraged the integration of such areas into the urban environment and had thus acknowledged their existence and the way of life of the citizens who had gradually caused them to build up since 1960, whether of their own free will or simply as a result of that policy.

In the present case, from 1988 until the accident of 28 April 1993, the applicant and his close relatives had lived entirely undisturbed in their house, in the social and family environment they had created. It also appeared that the authorities had levied council tax on the applicant and other inhabitants of the Ümraniye slums and had provided them with public services, for which they were charged. Accordingly, the Government could not maintain that they were absolved of responsibility on account of the victims' negligence or lack of foresight.

As to the policy to adopt in dealing with the social, economic and urban problems in that part of Istanbul, the Court acknowledged that it was not its task to substitute its own views for those of the local authorities. However, the timely installation of a gas-extraction system at the Ümraniye tip before the situation became fatal could have been an effective measure which would have complied with Turkish legislation and general practice in such matters without placing an impossible or excessive burden on the authorities. Such a measure would also have been a better reflection of the humanitarian considerations which the Government had relied on before the Court to justify the fact that they had not taken any steps entailing the immediate and wholesale destruction of the slum areas.

The Court further noted that the Government had not shown that any measures had been taken to provide the slum inhabitants with information about the risks they were running. In any event, even if the Turkish authorities had respected the right to information, they would not have been absolved of responsibility in the absence of more practical measures to avoid the risks to the slum inhabitants' lives.

In conclusion, the Court noted that the regulatory framework applicable in the present case had proved defective in that the tip had been allowed to open and operate and there had been no coherent supervisory system. That situation had been exacerbated by a general policy which had proved powerless in dealing with general town-planning issues and had undoubtedly played a part in the sequence of events leading to the accident. The Court accordingly held that there had been a violation of Article 2.

Responsibility borne by the State as regards the nature of the investigation
The Court considered that the administrative remedy used by the applicant to claim compensation could not satisfy the requirement to conduct an effective investigation into the deaths of the applicant's close relatives guaranteed by Article 2.

As to the criminal-law remedies used, the Court considered that the investigating authorities could be regarded as having acted with exemplary promptness and as having shown diligence in seeking to establish the circumstances that had led both to the accident of 28 April 1993 and to the ensuing deaths. Those responsible for the events in question had been identified and prosecuted, eventually being sentenced to the minimum penalty applicable under the Criminal Code.

However, the sole purpose of the criminal proceedings in the present case had been to establish whether the authorities could be held liable for "negligence in the performance of their duties" under Article 230 of the Criminal Code, which provision did not in any way relate to life-endangering acts or to the protection of the right to life within the meaning of Article 2. The judgment of 4 April 1996 had left in abeyance any question of the authorities' possible responsibility for the death of the applicant's close relatives.

Accordingly, it could not be said that the Turkish criminal-justice system had secured the full accountability of State officials or authorities for their role in the tragedy, or the effective implementation of provisions of domestic law guaranteeing respect for the right to life, in particular the deterrent function of criminal law. The Court therefore held that there had also been a violation of Article 2 concerning the inadequate investigation into the deaths of the applicant's close relatives.

Article 1 of Protocol No. 1 to the Convention

The Court rejected the Government's argument that the Turkish authorities had refrained on humanitarian grounds from destroying the applicant's house. The positive obligation on the authorities under Article 1 of Protocol No. 1 had required them to take the practical steps which the Court had already indicated to avoid the destruction of the dwelling.

Admittedly, the applicant had been able to acquire subsidised housing on favourable terms, but any advantages thus obtained could not have caused him to lose his status as a "victim", particularly as there was nothing in the deed of sale to indicate any acknowledgment by the authorities of a violation of his right to the peaceful enjoyment of his possessions.

The Court further noted that the compensation which the Turkish courts awarded the applicant for pecuniary damage had still not been paid even though a final judgment had been delivered.

The Court accordingly held that there had been a violation of Article 1 of Protocol No. 1.

Article 13

As regards the complaint under Article 2
The administrative-law remedy used by the applicant appeared to have 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 found of Article 2. However,

the Court regarded that remedy as ineffective in several respects and considered it decisive that the damages awarded to the applicant – solely in respect of the non-pecuniary damage resulting from the loss of his close relatives – had never in fact been paid to him.

The Court reiterated that the timely payment of a final award of compensation for anguish suffered should be considered an essential element of a remedy under Article 13 for a bereaved spouse and parent. It further noted that the Administrative Court had taken four years, eleven months and ten days to reach its decision, a period that indicated a lack of diligence on its part, especially in view of the applicant's distressing situation. Those reasons led the Court to conclude that the administrative proceedings had not provided the applicant with an effective remedy in respect of the State's failure to protect the lives of his close relatives. It accordingly held that there had been a violation of Article 13.

As regards the complaint under Article 1 of Protocol No. 1
As had already been noted, the decision on compensation had been long in coming and the amount awarded in respect of the destruction of household goods had never been paid. Consequently, the applicant had been denied an effective remedy in respect of the alleged breach of his right under Article 1 of Protocol No. 1. The Court therefore held that there had also been a violation of Article 13 as regards that complaint.

Article 6 § 1 and Article 8

Having regard to the findings it had already reached, the Court did not consider it necessary to examine the allegations of a violation of Article 6 § 1 and Article 8.

Judges Türmen and Mularoni expressed partly dissenting opinions, which are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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