CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF AMATO v. TURKEY

(Application no. 58771/00)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

12/11/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Amato v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,
Mr R. TÜRMEN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 5 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 58771/00) 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 a Turkish national, Mr Selim Amato ("the applicant"), on 25 January 2000.

2. The applicant was represented by Ms Ayşen Erdoğan, a lawyer practising in İzmir. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. On 4 November 2004 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in İzmir. On 1 June 1994 he bought a house (no. 97, plot no. 632/26) in the Asansör neighbourhood attached to the Konak District in İzmir. According to the title deed records, he paid 30,000,000 Turkish liras (approximately 986 US dollars at the time).

A. Background to the case

5. Following a major rockslide, on 17 July 1962 the Council of Ministers declared the Asansör neighbourhood a natural disaster area. To identify those who had been affected by the natural disaster, a regulation was published in the Official Gazette on 28 August 1968. According to the terms of this regulation, the victims of the natural disaster were given an opportunity to apply to the authorities within a specified time-limit to claim re-housing. At that time, 46 of the 86 families that had been living in the disaster area applied to the administrative authorities and they were provided with new houses in the Esentepe neighbourhood. The houses of these families were subsequently demolished. The owner of house number 97, plot no. 632/26, which was subsequently bought by the applicant in 1994, did not apply to the authorities to claim re-housing.

6. On 28 April 1971 the owner of plot no. 632/26 at the time received an eviction order from the İzmir Governor's office.

7. On 26 March 1981, at the request of the Ministry of Public Works and Settlement, land registry records were amended to indicate that no construction was permitted in the Asansör neighbourhood.

8. Between 1982 and 1995 several on-site inspections were conducted and many experts' reports were prepared. All of these reports indicated that the neighbourhood was under an imminent danger of rockslide and prevention measures had to be taken by the owners of the houses and the municipality. It appears from the documents that no preventive measures were taken.

B. The demolition of the applicant's house

9. As stated above (paragraph 4), on 1 June 1994 the applicant bought the house (no. 97) situated on plot no. 632/26. The applicant never lived in this house, and it was vacant in January 1995. According to the documents submitted by the Government, the house was in ruins and it had no historical or architectural value.

10. On 7 January 1995 following a heavy rain, rocks fell on house no. 113. On 11 January 1995 the authorities conducted an on-site inspection and prepared a report. The report concluded that eleven houses located in the Asansör neighbourhood, including the one owned by the applicant, required demolition to prevent loss of life. As a result, at the request of the Directorate of Public Works and Settlement, the İzmir Governor's office ordered that the applicant's house be demolished pursuant to Article 13 of Law No. 7269 regarding Natural Disasters. On 12 January 1995 the house was demolished without prior notification to the applicant.

C. Compensation proceedings

11. On 26 April 1995 the applicant filed an action before the İzmir Administrative Court against the İzmir Governor's office. He requested compensation for the unlawful demolition of his house.

12. On 12 December 1996 the İzmir Administrative Court dismissed the applicant's case. The court explained its decision by pointing out that the applicant's house had been situated in a neighbourhood that had been declared a natural disaster area by the Council of Ministers on 17 July 1962 following a major rockslide. The court further took note of the fact that on 28 April 1971 the İzmir Governor's Office had sent an eviction order to the previous owner of the applicant's house. In the court's opinion, as the title-deed records of the building stated that no construction was permitted in the Asansör neighbourhood, the applicant should have been aware of this situation when he had bought the house. As a result, it concluded that by demolishing the vacant house, that had no historical or architectural value, and which posed an immediate threat to public safety, the administration had acted in accordance with the law. The court accordingly refused the applicant's request for compensation.

13. The applicant appealed. On 26 May 1998 the Supreme Administrative Court upheld the judgment of the İzmir Administrative Court, finding that the applicant's grounds of appeal were unfounded. The Supreme Administrative Court held that the Izmir Governor's Office had delivered the demolition order because there was an urgent need to take action to prevent loss of life in the neighbourhood.

14. On 16 June 1999 the Supreme Administrative Court dismissed the applicant's request for rectification. This decision was served on the applicant on 27 July 1999.

THE LAW

I. ADMISSIBILITY OF THE APPLICATION

15. The Government have not submitted any preliminary objections in the instant case. The Court notes that the application 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. The application must therefore be declared admissible.

II. MERITS OF THE APPLICATION

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

16. The applicant complained that the demolition of his house amounted to a violation of his right to the peaceful enjoyment of his possessions. He relied on Article 1 of Protocol No. 1 to the Convention, which provides:

> "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."

17. The applicant maintained that he had not received compensation for the loss he had sustained as a result of the demolition of his house. He also submitted that he had not been notified about the demolition order.

18. The Government contested those arguments. They maintained in the first place that the previous owners of the house had not applied to the authorities to benefit from re-housing pursuant to the regulation dated 28 August 1968. They further argued that when the applicant bought the house in 1995, he was aware that the building was situated on a site which had been declared a natural disaster area. The title deed of the house clearly indicated that no construction was permitted on the site. Furthermore, the demolition order was delivered in accordance with the provisions of the Law no. 7269 regarding natural disasters. The Government submitted that an eviction order had been sent to the previous owners of the house in 1971. The vacant building, which was in ruins and had no architectural or historical value, was posing an immediate threat to public safety. As a result, the Government concluded that the applicant was not entitled to compensation because the administrative authorities had acted in accordance with the law.

19. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains 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, amongst other things, 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 *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, 11 January 2007).

20 An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 34, § 50).

21. The Court notes that in the present case, the applicant is not deprived of his title. However, it considers that by demolishing his house, the administrative authorities indisputably interfered with the applicant's right to the peaceful enjoyment of his possessions.

22. The Court also notes that the applicant's house was demolished to prevent loss of life (see paragraphs 10 and 12 above). Having regard to the urgent need to protect public safety, the Court does not find that in delivering the demolition order, the İzmir Governor acted arbitrarily. Furthermore, it is clear from the reasoning of the İzmir Administrative Court's decision that the demolition order was delivered in accordance with the domestic law and that the applicant was deprived of his property "in the public interest". The Court finds therefore that the deprivation of property was lawful and pursued a legitimate aim.

23. It remains to be determined whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The Court recalls that compensation terms under the domestic legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, 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 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-...; and *Nastou v. Greece (no. 2)*, no. 16163/02, § 33, 15 July 2005).

24. In the instant case, the applicant did not receive any compensation for the demolition of his house, despite having brought an action for

damages in the Turkish courts. The Government explained this fact by referring to the title deed records which state that no construction was permitted on the site and by relying on the fact that the previous owners of the building, who had been sent an eviction order in 1971, had not applied for re-housing pursuant to the regulation dated 28 August 1968.

25. The Court takes note of the fact that when the applicant bought the house in 1994, he was aware that the Asansör neighbourhood had been declared a disaster area following a major rockslide. However, it should be underlined that the purchase of the buildings situated in the disaster area was never banned nor was there an indication in the title deed records that prohibited habitation of these buildings. As regards the regulation dated 28 August 1968, the Court notes that the terms of this regulation are not relevant to the applicant's request for compensation since he does not request re-housing but seeks compensation for the loss he has sustained because of the demolition of his house. Finally, in the Court's opinion, an eviction order which was sent to the previous owners of the building in 1971 has no bearing on the applicant's situation and does not explain the lack of any compensation for him.

26. In the light of the foregoing, the Court finds that the submissions of the Government do not justify the total lack of compensation and considers that the failure to award any compensation to the applicant upset, to his detriment, the fair balance that has to be struck between the protection of property and the requirements of the general interest.

There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

B. Alleged violation of Article 6 of the Convention

27. The applicant submitted under Article 6 § 1 of the Convention that his right to a fair trial was breached on three counts: firstly, the national courts failed in the interpretation of domestic law and evaluation of facts; secondly, the length of the proceedings exceeded the reasonable time requirement; and thirdly, he was deprived of his right of access to a court as he was not notified about the demolition order.

28. In the light of its findings with regard to Article 1 of Protocol No. 1 above (paragraphs 24-26), the Court considers that no separate examination of the case under Articles 6 § 1 is necessary (see *Dolgun v. Turkey*, no. 67255/01, § 24, 13 June 2006 and *Mutlu v. Turkey*, no. 8006/02, § 23, 10 October 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. The Court reiterates that when the basis of the violation found is the lack of any compensation, 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). It therefore deems it appropriate to fix a lump sum that would correspond to the applicant's legitimate expectations to obtain compensation. Therefore, taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant a total sum of EUR 1,500 under this head.

33. As regards the applicant's claim for compensation for his non-pecuniary damages, the Court finds that, in the circumstances of the present case, finding a violation constitutes a sufficient satisfaction (see *Börekçioğulları (Çökmez) and Others v. Turkey*, no. 58650/00, § 49, 19 October 2006).

B. Costs and expenses

34. The applicant also claimed a total of EUR 13,577 covering legal fees and the costs and expenses incurred before the domestic courts as well as those incurred before the Court.

35. The Government contested these claims.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C. Default interest

37. 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. *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 complaints under Article 6 § 1 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage sustained by the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, 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 New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable:
      (i) EUR 1,500 (one thousand five hundred euros) in respect of pecuniary damage;
      (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
   (b) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President