



Å–neryildiz v. Turkey

Application No. 48939/99; (2005) 41 EHRR 20; [2004] ECHR 657; 18 BHRC 145, (2005); [2004] Inquest LR 108

Country: Turkey

Region: Europe

Year: 2004

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Disasters and emergencies, Environmental health, Health information, Poverty, Water, sanitation and hygiene

Human Rights: Right of access to information, Right to due process/fair trial, Right to family life, Right to housing, Right to life

Facts

A household-rubbish tip, or dump, was created in the Åœmraniye district of Istanbul. Illegal dwellings were constructed around the rubbish tip. A report found that the rubbish tip posed health risks and the possibility of explosion. In April 1993 there was a methane explosion which triggered a landslide. Nine of the applicants' family members were killed in the accident. Primary liability for the accident was assigned to the Istanbul City Council (for failing to deal with safety concerns), the Åœmraniye District Council (for allowing the area to become inhabited), the Ministry of the Environment (for failing to effectively monitor the rubbish tip), and the government (for declaring an amnesty with respect to illegal dwellings).

The applicant sued the authorities for negligence at the Istanbul Administrative Court. The Court found a direct causal link between the accident and the 'negligence in the performance of their duties' of the authorities, and awarded damages. However, the authorities were never charged with a criminal offense and damages were never paid.

The applicant subsequently filed a complaint against the Republic of Turkey with the European Court of Human Rights. He argued that the death of his relatives and the legal proceedings that followed violated Article 2 (right to life) of the Convention, Article 1 of Protocol No. 1 (legal right to enjoyment of possessions), and Article 13 (effective remedy to a rights violation).

Decision and Reasoning

The Court held that the failure to adequately protect the applicant's relatives and to ensure an adequate judicial response to the applicant's relatives' death violated Article 2 of the Convention (right to life). It determined that the State authorities knew or ought to have known that there was a serious risk to those living near the rubbish tip, and that they failed to discharge their positive obligation to take preventative measures to protect the inhabitants and inform them of the risks they faced (rather State actions encouraged the integration of the slums located in the dangerous area into the urban environment). It was also found that the response of the State authorities violated Article 2 since State actors who were not charged with a criminal offense were not held fully accountable for their role in the accident.

The Court also held that the applicant's Article 1 of Protocol No. 1 right had been violated because State authorities had failed to discharge its positive obligation to protect the applicant's proprietary interests. Moreover, the Court rejected the State's claim that it had redressed any potential violation by awarding the applicant substantial compensation (which had yet to be paid) and providing him with subsidized housing on favorable terms. The same negligent conduct that violated Article 2 was the basis for the holding that there was a violation of Article 1 of Protocol No. 1.

The Court held the administrative proceedings failed to provide the applicant with an adequate remedy for his rights violations. Although the applicant was awarded damages for his Article 2 violation, the failure of the State to pay the damages in a timely manner is a violation of Article 13 as regards the complaint under Article 2. Similarly, the Court held that since he had yet to be compensated for his Article 1 of Protocol No. 1. claim, there had been a violation of Article 13 as regards Article 1 of Protocol No.1.

The Court also looked into whether there had been any violations of Articles 6 (guaranteeing the right to a fair

trial) and 8 (guaranteeing the right to private and family life) of the Convention and determined that it was not necessary to examine these complaints separately from the claims already decided. Ultimately, the Court awarded the applicant pecuniary and non-pecuniary damages.

Two judges partially dissented with the judgment, arguing that there had not been a violation (a) of Article 2 in its procedural aspect as it was improper for the Court to find such violation on the basis of, inter alia, the ineffective application of domestic law, particularly when ignoring the applicant's own contributory negligence; and (b) of Article 1 of Protocol No. 1 and Article 13 as the applicant did not have property rights over the land in question and the applicant had never requested the authorities to pay the compensation owed to him.

Decision Excerpts

It follows that the Turkish authorities at several levels knew or ought to have known that there was a real and immediate risk to a number of persons living near the Aemraniye municipal rubbish tip. They consequently had a positive 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 gave rise to the risk in question. • Para 101.

Accordingly, it cannot be said that the manner in which the Turkish criminal justice system operated in response to the tragedy secured the full accountability of State officials or authorities for their role in it 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. • Para 117.

In the present case there is no doubt that the causal link established between the gross negligence attributable to the State and the loss of human lives also applies to the engulfment of the applicant's house. In the Court's view, the resulting infringement amounts not to interference but to the breach of a positive obligation, since the State officials and authorities did not do everything within their power to protect the applicant's proprietary interests. • Para 135.