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

CASE OF ÖNERYILDIZ v. TURKEY

(Application no. 48939/99)

JUDGMENT

STRASBOURG

30 November 2004

[…]

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. The applicant was born in 1955 and is now living in the district of Şirvan (province of Siirt), the area where he was born. At the material time he was living with twelve close relatives in the slum quarter (*gecekondu mahallesi*) of Kazım Karabekir in Ümraniye, a district of Istanbul, where he had moved after resigning from his post as a village guard in south-eastern Turkey.

A. The Ümraniye household-refuse tip and the area in which the applicant lived

2. Since the early 1970s a household-refuse tip had been in operation in Hekimbaşı, a slum area adjoining Kazım Karabekir. On 22 January 1960 Istanbul City Council ("the city council") had been granted use of the land, which belonged to the Forestry Commission (and therefore to the Treasury), for a term of ninety-nine years. Situated on a slope overlooking a valley, the site spread out over a surface area of approximately 35 hectares and from 1972 onwards was used as a rubbish tip by the districts of Beykoz, Üsküdar, Kadıköy and Ümraniye under the authority and responsibility of the city council and, ultimately, the ministerial authorities.

When the rubbish tip started being used, the area was uninhabited and the closest built-up area was approximately 3.5 km away. However, as the years passed, rudimentary dwellings were built without any authorisation in the area surrounding the rubbish tip, which eventually developed into the slums of Ümraniye.

According to an official map covering the areas of Hekimbaşı and Kazım Karabekir, produced by Ümraniye District Council's Technical Services Department, the applicant's house was built on the corner of Dereboyu Street and Gerze Street. That part of the settlement was adjacent to the municipal rubbish tip and since 1978 had been under the authority of a local mayor answerable to the district council.

The Ümraniye tip no longer exists. The local council had it covered with earth and installed air ducts. Furthermore, land-use plans are currently being prepared for the areas of Hekimbaşı and Kazım Karabekir. The city council has planted trees on a large area of the former site of the tip and has had sports grounds laid.

B. Steps taken by Ümraniye District Council

1. In 1989

3. Following the local elections of 26 March 1989, Ümraniye District Council sought to amend the urban development plan on a scale of 1:1,000. However, the decision-making authorities refused to adopt the plan as it covered an area that ran very close to the municipal rubbish tip.

From 4 December of that year Ümraniye District Council began dumping heaps of earth and refuse on to the land surrounding the Ümraniye slums in order to redevelop the site of the rubbish tip.

However, on 15 December 1989 M.C. and A.C., two inhabitants of the Hekimbaşı area, brought proceedings against the district council in the Fourth Division of the Üsküdar District Court to establish title to land. They complained of damage to their plantations and sought to have the work halted. In support of their application, M.C. and A.C. produced documents showing that they had been liable for council tax and property tax since 1977 under tax no. 168900. In 1983 the authorities had asked them to fill in a standard form for the declaration of illegal buildings so that their title to the properties and land could be regularised (see paragraph 54 below). On 21 August 1989, at their request, the city council's water and mains authority had ordered a water meter to be installed in their house. Furthermore, copies of electricity bills show that M.C. and A.C., as consumers, made regular payments for the power they had used on the basis of readings taken from a meter installed for that purpose.

4. In the District Court, the district council based its defence on the fact that the land claimed by M.C. and A.C. was situated on the waste-collection site; that residence there was contrary to health regulations; and that their application for regularisation of their title conferred no rights on them.

In a judgment delivered on 2 May 1991 (case no. 1989/1088), the District Court found for M.C. and A.C., holding that there had been interference with the exercise of their rights over the land in question.

However, the Court of Cassation set the judgment aside on 2 March 1992. On 22 October 1992 the District Court followed the Court of Cassation's judgment and dismissed M.C.'s and A.C.'s claims.

2. In 1991

5. On 9 April 1991 Ümraniye District Council applied to the Third Division of the Üsküdar District Court for experts to be appointed to determine whether the rubbish tip complied with the relevant regulations, in particular the Regulations on Solid-Waste Control of 14 March 1991. The district council also applied for an assessment of the damage it had sustained, as evidence in support of an action for damages it was preparing to bring against the city council and the councils of the three other districts that used the tip.

The application for an expert opinion was registered as case no. 1991/76, and on 24 April 1991 a committee of experts was set up for that purpose, comprising a professor of environmental engineering, a land registry official and a forensic medical expert.

According to the experts' report, drawn up on 7 May 1991, the rubbish tip in question did not conform to the technical requirements set forth, *inter alia*, in regulations 24 to 27, 30 and 38 of the Regulations of 14 March 1991 and, accordingly, presented a number of dangers liable to give rise to a major health risk for the inhabitants of the valley, particularly those living in the slum areas: no walls or fencing separated the tip from the dwellings fifty metres away from the mountain of refuse, the tip was not equipped with collection, composting, recycling or combustion systems, and no drainage or drainage-water purification systems had been installed. The experts concluded that the Ümraniye tip "exposed humans, animals and the environment to all kinds of risks". In that connection the report, drawing attention first to the fact that some twenty contagious diseases might spread, underlined the following:

> "... In any waste-collection site gases such as methane, carbon dioxide and hydrogen sulphide form. These substances must be collected and ... burnt under supervision. However, the tip in question is not equipped with such a system. If methane is mixed with air in a particular proportion, it can explode. This installation contains no means of preventing an explosion of the methane produced as a result of the decomposition [of the waste]. May God preserve us, as the damage could be very substantial given the neighbouring dwellings. ..."

On 27 May 1991 the report was brought to the attention of the four councils in question, and on 7 June 1991 the governor was informed of it and asked to brief the Ministry of Health and the Prime Minister's Environment Office ("the Environment Office").

6. Kadıköy and Üsküdar District Councils and the city council applied on 3, 5 and 9 June 1991 respectively to have the expert report set aside. In their notice of application the councils' lawyers simply stated that the report, which had been ordered and drawn up without their knowledge, contravened the Code of Civil Procedure. The three lawyers reserved the right to file supplementary pleadings in support of their objections once they

had obtained all the necessary information and documents from their authorities.

As none of the parties filed supplementary pleadings to that end, the proceedings were discontinued.

7. However, the Environment Office, which had been advised of the report on 18 June 1991, made a recommendation (no. 09513) urging the Istanbul Governor's Office, the city council and Ümraniye District Council to remedy the problems identified in the present case:

> "... The report prepared by the committee of experts indicates that the waste-collection site in question breaches the Environment Act and the Regulations on Solid-Waste Control and consequently poses a health hazard to humans and animals. The measures provided for in regulations 24, 25, 26, 27, 30 and 38 of the Regulations on Solid-Waste Control must be implemented at the site of the tip ... I therefore ask for the necessary measures to be implemented ... and for our office to be informed of the outcome."

8. On 27 August 1992 Şinasi Öktem, the mayor of Ümraniye, applied to the First Division of the Üsküdar District Court for the implementation of temporary measures to prevent the city council and the neighbouring district councils from using the waste-collection site. He requested, in particular, that no further waste be dumped, that the tip be closed and that redress be provided in respect of the damage sustained by his district.

On 3 November 1992 Istanbul City Council's representative opposed that request. Emphasising the city council's efforts to maintain the roads leading to the rubbish tip and to combat the spread of diseases, stray dogs and the emission of odours, the representative submitted, in particular, that a plan to redevelop the site of the tip had been put out to tender. As regards the request for the temporary closure of the tip, the representative asserted that Ümraniye District Council was acting in bad faith in that, since it had been set up in 1987, it had done nothing to decontaminate the site.

Istanbul City Council had indeed issued a call for tenders for the development of new sites conforming to modern standards. The first planning contract was awarded to the American firm CVH2M Hill International Ltd, and on 21 December 1992 and 17 February 1993 new sites were designed for the European and Anatolian sides of Istanbul respectively. The project was due for completion in the course of 1993.

9. While those proceedings were still pending, Ümraniye District Council informed the mayor of Istanbul that from 15 May 1993 the dumping of waste would no longer be authorised.

C. The accident

10. On 28 April 1993 at about 11 a.m. a methane explosion occurred at the site. Following a landslide caused by mounting pressure, the refuse erupted from the mountain of waste and engulfed some ten slum dwellings

situated below it, including the one belonging to the applicant. Thirty-nine people died in the accident.

D. The proceedings instituted in the present case

1. The initiative of the Ministry of the Interior

11. Immediately after the accident two members of the municipal police force sought to establish the facts. After taking evidence from the victims, including the applicant, who explained that he had built his house in 1988, they reported that thirteen huts had been destroyed.

On the same day the members of a crisis unit set up by the Istanbul Governor's Office also went to the site and found that the landslide had indeed been caused by a methane explosion.

12. The next day, on 29 April 1993, the Ministry of the Interior ("the Ministry") ordered the Administrative Investigation Department ("the investigation department") to examine the circumstances in which the disaster had occurred in order to determine whether proceedings should be instituted against the two mayors, Mr Sözen and Mr Öktem.

2. The criminal inquiry

13. While those administrative proceedings were under way, on 30 April 1993 the Üsküdar public prosecutor ("the public prosecutor") went to the scene of the accident, accompanied by a committee of experts composed of three civil-engineering professors from three different universities. In the light of his preliminary observations, he instructed the committee to determine how liability for the accident should be apportioned among the public authorities and the victims.

14. On 6 May 1993 the applicant lodged a complaint at the local police station. He stated: "If it was the authorities who, through their negligence, caused my house to be buried and caused the death of my partners and children, I hereby lodge a criminal complaint against the authority or authorities concerned." The applicant's complaint was added to the investigation file (no. 1993/6102), which the public prosecutor had already opened of his own motion.

15. On 14 May 1993 the public prosecutor heard evidence from a number of witnesses and victims of the accident. On 18 May 1993 the committee of experts submitted the report ordered by the public prosecutor. In its report the committee noted, firstly, that there was no development plan on a scale of 1:5,000 for the region, that the urban development plan on a scale of 1:1,000 had not been approved and that most of the dwellings that had been engulfed had in fact been outside the area covered by the urban development plan, on the far edge of the site of the rubbish tip. The experts

confirmed that the landslide – affecting land which had already been unstable – could be explained both by the mounting pressure of the gas inside the tip and by the explosion of the gas. Reiterating the public authorities' obligations and duties under the relevant regulations, the experts concluded that liability for the accident should be apportioned as follows:

> "(i) 2/8 to Istanbul City Council, for failing to act sufficiently early to prevent the technical problems which already existed when the tip was first created in 1970 and have continued to increase since then, or to indicate to the district councils concerned an alternative waste-collection site, as it was obliged to do under Law no. 3030;
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> (ii) 2/8 to Ümraniye District Council for implementing a development plan while omitting, contrary to Regulations on Solid-Waste Control (no. 20814), to provide for a 1,000 metre-wide buffer zone to remain uninhabited, and for attracting illegal dwellings to the area and taking no steps to prevent them from being built, despite the experts' report of 7 May 1991;
>
> (iii) 2/8 to the slum inhabitants for putting the members of their families in danger by settling near a mountain of waste;
>
> (iv) 1/8 to the Ministry of the Environment for failing to monitor the tip effectively in accordance with the Regulations on Solid-Waste Control (no. 20814);
>
> (v) 1/8 to the government for encouraging the spread of this type of settlement by declaring an amnesty in relation to illegal dwellings on a number of occasions and granting property titles to the occupants."

16. On 21 May 1993 the public prosecutor made an order declining jurisdiction *ratione personae* in respect of the administrative authorities that had been held liable, namely Istanbul City Council, Ümraniye District Council, the Ministry of the Environment and the heads of government from the period between 1974 and 1993. He accordingly referred the case to the Istanbul governor, considering that it came under the Prosecution of Civil Servants Act, the application of which was a matter for the administrative council of the province of Istanbul ("the administrative council"). However, the public prosecutor stated in his order that the provisions applicable to the authorities in question were Article 230 and Article 455 § 2 of the Criminal Code, which respectively concerned the offences of negligence in the performance of public duties and negligent homicide.

In so far as the case concerned the possible liability of the slum inhabitants – including the applicant – who were not only victims but had also been accused under Article 455 § 2 of the Criminal Code, the public prosecutor expressed the opinion that, as the case stood, it was not possible to disjoin their complaints, having regard to sections 10 and 15 of the above-mentioned Act.

On 27 May 1993, when the investigation department had completed the preliminary inquiry, the public prosecutor's file was transmitted to the Ministry.

3. Outcome of the administrative investigation in respect of the relevant authorities

17. On 27 May 1993, having regard to the conclusions of its own inquiry, the investigation department sought authorisation from the Ministry to open a criminal investigation in respect of the two mayors implicated in the case.

18. The day after that request was made Ümraniye District Council made the following announcement to the press:

> "The sole waste-collection site on the Anatolian side stood in the middle of our district of Ümraniye like an object of silent horror. It has broken its silence and caused death. We knew it and were expecting it. As a district council, we had been hammering at all possible doors for four years to have this waste-collection site removed. We were met with indifference by Istanbul City Council. It abandoned the decontamination works ... after laying two spades of concrete at the inauguration. The ministries and the government were aware of the facts, but failed to take much notice. We had submitted the matter to the courts and they had found in our favour, but the judicial machinery could not be put into action. ... We must now face up to our responsibilities and will all be accountable for this to the inhabitants of Ümraniye ..."

19. The authorisation sought by the investigation department was granted on 17 June 1993 and a chief inspector from the Ministry ("the chief inspector") was accordingly put in charge of the case.

In the light of the investigation file compiled in the case, the chief inspector took down statements from Mr Sözen and Mr Öktem. The latter stated, among other things, that in December 1989 his district council had begun decontamination works in the Hekimbaşı slum area, but that these had been suspended at the request of two inhabitants of the area (see paragraph 11 above).

20. The chief inspector finalised his report on 9 July 1993. It endorsed the conclusions reached by all the experts instructed hitherto and took account of all the evidence gathered by the public prosecutor. It also mentioned two other scientific opinions sent to the Istanbul Governor's Office in May 1993, one by the Ministry of the Environment and the other by a professor of civil engineering at Boğaziçi University. These two opinions confirmed that the fatal landslide had been caused by the methane explosion. The report also indicated that on 4 May 1993 the investigation department had requested the city council to inform it of the measures actually taken in the light of the expert report of 7 May 1991, and it reproduced Mr Sözen's reply:

> "Our city council has both taken the measures necessary to ensure that the old sites can be used in the least harmful way possible until the end of 1993 and completed all the preparations for the construction of one of the biggest and most modern installations ... ever undertaken in our country. We are also installing a temporary waste-collection site satisfying the requisite conditions. Alongside that, renovation work is ongoing at former sites [at the end of their life span]. In short, over the past

three years our city council has been studying the problem of waste very seriously ... [and] currently the work is continuing ...”

21. The chief inspector concluded, lastly, that the death of twenty-six people and the injuries to eleven others (figures available at the material time) on 28 April 1993 had been caused by the two mayors’ failure to take appropriate steps in the performance of their duties and that they should be held to account for their negligence under Article 230 of the Criminal Code. In spite of, *inter alia*, the expert report and the recommendation of the Environment Office, they had knowingly breached their respective duties: Mr Öktem because he had failed to comply with his obligation to order the destruction of the illegal huts situated around the rubbish tip, as he was empowered to do under section 18 of Law no. 775, and Mr Sözen because he had refused to comply with the above-mentioned recommendation, had failed to renovate the rubbish tip or order its closure, and had not complied with any of the provisions of section 10 of Law no. 3030, which required him to order the destruction of the slum dwellings in question, if necessary by his own means. However, in his observations the chief inspector did not deal with the question whether Article 455 § 2 of the Criminal Code was applicable in the instant case.

4. Allocation of subsidised housing to the applicant

22. In the meantime, the Department of Housing and Rudimentary Dwellings had asked the applicant to contact it, informing him that in an order (no. 1739) of 25 May 1993 the city council had allocated him a flat in a subsidised housing complex in Çobançeşme (Eyüp, Alibeyköy). On 18 June 1993 the applicant signed for possession of flat no. 7 in building C-1 of that complex. That transaction was made official on 17 September 1993 in an order by the city council (no. 3927). On 13 November 1993 the applicant signed a notarially recorded declaration in lieu of a contract stating that the flat in question had been “sold” to him for 125,000,000 Turkish liras (TRL), a quarter of which was payable immediately and the remainder in monthly instalments of TRL 732,844.

It appears likely that the initial payment was made to the Istanbul Governor’s Office, which forwarded it to the city council. The applicant paid the first monthly instalment on 9 November 1993 and continued to make payments until January 1996. In the meantime, prior to 23 February 1995, he had let his flat to a certain H.Ö. for a monthly rent of TRL 2,000,000. It appears that from January 1996 the authorities had to avail themselves of enforcement proceedings in order to recover the outstanding instalments.

On 24 March 1998 the applicant, who by that time had discharged his debt to the city council, gave a notarially recorded undertaking to sell his flat to a certain E.B. in return for a down payment of 20,000 German marks.

5. The criminal proceedings against the relevant authorities

23. In an order of 15 July 1993, the administrative council decided, by a majority, on the basis of the chief inspector's report, to institute proceedings against Mr Sözen and Mr Öktem for breaching Article 230 of the Criminal Code.

Mr Sözen and Mr Öktem appealed against that decision to the Supreme Administrative Court, which dismissed their appeal on 18 January 1995. The case file was consequently sent back to the public prosecutor, who on 30 March 1995 committed both mayors for trial in the Fifth Division of the Istanbul Criminal Court.

24. The trial before the Division began on 29 May 1995. At the hearing Mr Sözen stated, among other things, that he could not be expected to have complied with duties which were not incumbent on him or be held solely responsible for a situation which had endured since 1970. Nor could he be blamed for not having renovated the Ümraniye tip when none of the 2,000 sites in Turkey had been renovated; in that connection, relying on a number of measures which had nonetheless been taken by the city council, he argued that the tip could not have been fully redeveloped as long as waste continued to be dumped on it. Lastly, he stated: "The elements of the offence of negligence in the performance of duties have not been made out because I did not act with the intention of showing myself to be negligent [*sic*] and because no causal link can be established [between the incident and any negligence on his part]."

Mr Öktem submitted that the groups of dwellings which had been engulfed dated back to before his election on 26 March 1989 and that since then he had never allowed slum areas to develop. Accusing the Istanbul City Council and Governor's Office of indifference to the problems, Mr Öktem asserted that responsibility for preventing the construction of illegal dwellings lay with the forestry officials and that, in any event, his district council lacked the necessary staff to destroy such dwellings.

25. In a judgment of 4 April 1996, the Division found the two mayors guilty as charged, considering their defence to be unfounded.

The judges based their conclusion, in particular, on the evidence that had already been obtained during the extensive criminal inquiries carried out between 29 April 1993 to 9 July 1993 (see paragraphs 19 and 28 above). It also appears from the judgment of 30 November 1995 that, in determining the share of liability incurred by each of the authorities in question, the judges unhesitatingly endorsed the findings of the expert report drawn up on this precise issue at the public prosecutor's request, which had been available since 18 May 1993 (see paragraph 23 above).

The judges also observed:

> "... although they had been informed of the [experts'] report, the two defendants took no proper preventive measures. Just as a person who shoots into a crowd should know that people will die and, accordingly, cannot then claim to have acted without

> intending to kill, the defendants cannot allege in the present case that they did not intend to neglect their duties. They do not bear the entire responsibility, however. ... They were negligent, as were others. In the instant case the main error consists in building dwellings beneath a refuse tip situated on a hillside and it is the inhabitants of these slum dwellings who are responsible. They should have had regard to the risk that the mountain of rubbish would one day collapse on their heads and that they would suffer damage. They should not have built dwellings fifty metres from the tip. They have paid for that recklessness with their lives ..."

26. The Division sentenced Mr Sözen and Mr Öktem to the minimum term of imprisonment provided for in Article 230 of the Criminal Code, namely three months, and to fines of TRL 160,000. Under section 4(1) of Law no. 647, the Division commuted the prison sentences to fines, so the penalties ultimately imposed were fines of TRL 610,000. Satisfied that the defendants would not reoffend, the Division also decided to suspend enforcement of the penalties in accordance with section 6 of the same Law.

27. Both mayors appealed on points of law. They submitted, in particular, that the Division had gone beyond the scope of Article 230 of the Criminal Code in its assessment of the facts, and had treated the case as one of unintentional homicide within the meaning of Article 455 of the Code.

In a judgment of 10 November 1997, the Court of Cassation upheld the Division's judgment.

28. The applicant has apparently never been informed of those proceedings or given evidence to any of the administrative bodies of investigation or the criminal courts; nor does any court decision appear to have been served on him.

6. The applicant's administrative action

29. On 3 September 1993 the applicant applied to Ümraniye District Council, Istanbul City Council and the Ministries of the Interior and the Environment, seeking compensation for both pecuniary and non-pecuniary damage. The applicant's claim was broken down as follows: TRL 150,000,000 in damages for the loss of his dwelling and household goods; TRL 2,550,000,000, TRL 10,000,000, TRL 15,000,000 and TRL 20,000,000 in compensation for the loss of financial support incurred by himself and his three surviving sons, Hüsamettin, Aydın and Halef; and TRL 900,000,000 for himself and TRL 300,000,000 for each of his three sons in respect of the non-pecuniary damage resulting from the deaths of their close relatives.

30. In letters of 16 September and 2 November 1993, the mayor of Ümraniye and the Minister for the Environment dismissed the applicant's claims. The other authorities did not reply.

31. The applicant then sued the four authorities for damages in his own name and on behalf of his three surviving children in the Istanbul Administrative Court ("the court"). He complained that their negligent

omissions had resulted in the death of his relatives and the destruction of his house and household goods, and again sought the aforementioned amounts.

On 4 January 1994 the applicant was granted legal aid.

32. The court gave judgment on 30 November 1995. Basing its decision on the experts' report of 18 May 1993 (see paragraph 23 above), it found a direct causal link between the accident of 28 April 1993 and the contributory negligence of the four authorities concerned. Accordingly, it ordered them to pay the applicant and his children TRL 100,000,000 for non-pecuniary damage and TRL 10,000,000 for pecuniary damage (at the material time those amounts were equivalent to approximately 2,077 and 208 euros respectively).

The latter amount, determined on an equitable basis, was limited to the destruction of household goods, save the domestic electrical appliances, which the applicant was not supposed to own. On that point the court appears to have accepted the authorities' argument that "these dwellings had neither water nor electricity". The court dismissed the remainder of the claim, holding that the applicant could not maintain that he had been deprived of financial support since he had been partly responsible for the damage incurred and the victims had been young children or housewives who had not been in paid employment such as to contribute to the family's living expenses. The court also held that the applicant was not entitled to claim compensation for the destruction of his slum dwelling given that, following the accident, he had been allocated a subsidised flat and that, although Ümraniye District Council had not exercised its power to destroy the dwelling, there had been nothing to prevent it from doing so at any time.

The court decided, lastly, not to apply default interest to the sum awarded for non-pecuniary damage.

33. The parties appealed against that judgment to the Supreme Administrative Court, which dismissed their appeal in a judgment of 21 April 1998.

An application by Istanbul City Council for rectification of the judgment was likewise unsuccessful, and the judgment accordingly became final and was served on the applicant on 10 August 1998.

34. The compensation awarded has still not been paid.

7. Outcome of the criminal proceedings against the slum inhabitants

35. On 22 December 2000 Law no. 4616 came into force, providing for the suspension of the enforcement of judicial measures pending in respect of certain offences committed before 23 April 1999.

On 22 April 2003 the Ministry of Justice informed the Istanbul public prosecutor's office that it had been impossible to conclude the criminal investigation pending in respect of the slum inhabitants, that the only decision concerning them had been the order of 21 May 1993 declining

jurisdiction and that the charge against them would become time-barred on 28 April 2003.

Consequently, on 24 April 2003 the Istanbul public prosecutor decided to suspend the opening of criminal proceedings against the inhabitants, including the applicant, and four days later the criminal proceedings against them became time-barred.

II. RELEVANT DOMESTIC LAW AND PRACTICE

[…]

THE LAW

[…]

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

36. The applicant asserted that the State should be held accountable for the national authorities' negligent omissions that had resulted in the loss of his house and all his movable property, and complained that he had not been afforded redress for the damage sustained. He alleged a violation of Article 1 of Protocol No. 1, 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."

37. The Government denied that there had been any violation on that account.

A. Applicability: whether there was a "possession"

[…]

3. The Court's assessment

38. The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: the issue that needs to be examined is whether the circumstances of the case, considered as a whole, may be

regarded as having conferred on the applicant title to a substantive interest protected by that provision (see, *mutatis mutandis*, *Zwierzyński v. Poland*, no. 34049/96, § 63, ECHR 2001-VI). Accordingly, as well as physical goods, certain rights and interests constituting assets may also be regarded as "property rights", and thus as "possessions" for the purposes of this provision (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II, and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). The concept of "possessions" is not limited to "existing possessions" but may also cover assets, including claims, in respect of which the applicant can argue that he has at least a reasonable and "legitimate expectation" of obtaining effective enjoyment of a property right (see, for example, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII).

39. It was not disputed before the Court that the applicant's dwelling had been erected in breach of Turkish town-planning regulations and had not conformed to the relevant technical standards, or that the land it had occupied belonged to the Treasury. However, the parties disagreed as to whether the applicant had had a "possession" within the meaning of Article 1 of Protocol No. 1.

40. Firstly, with regard to the land on which the dwelling in issue had been built, which had thus been occupied until the accident of 28 April 1993, the applicant stated that there had been nothing to prevent him at any time from taking steps to acquire ownership of the land in accordance with the relevant procedure.

However, the Court cannot accept this somewhat speculative argument. Indeed, in the absence of any detailed information from the parties, it has been unable to ascertain whether the Kazım Karabekir area was actually included in a slum-rehabilitation plan, contrary to what appears to have been the case for the Hekimbaşı area (see paragraph 11 above), or whether the applicant satisfied the formal requirements under the town-planning legislation in force at the material time for obtaining the transfer of title to the publicly owned land he was occupying (see paragraph 54 above). In any event, the applicant admitted that he had never taken any administrative steps to that end.

In those circumstances, the Court cannot conclude that the applicant's hope of having the land in issue transferred to him one day constituted a claim of a kind that was sufficiently established to be enforceable in the courts, and hence a distinct "possession" within the meaning of the Court's case-law (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 25-26, ECHR 2004-IX).

41. That said, a different consideration applies in respect of the applicant's dwelling itself.

It is sufficient in this connection for the Court to refer to the reasons set out above, which led it to conclude that the State authorities had tolerated the applicant's actions (see paragraphs 105-06 above). Those reasons are

plainly valid in the context of Article 1 of Protocol No. 1 and support the conclusion that the authorities also acknowledged *de facto* that the applicant and his close relatives had a proprietary interest in their dwelling and movable goods.

42. On this point, the Court cannot accept that they can be criticised in this way for irregularities (see paragraph 122 above) of which the relevant authorities had been aware for almost five years.

It does, admittedly, accept that the exercise of discretion encompassing a multitude of local factors is inherent in the choice and implementation of town and country planning policies and of any resulting measures. However, when faced with an issue such as that raised in the instant case, the authorities cannot legitimately rely on their margin of appreciation, which in no way dispenses them from their duty to act in good time, in an appropriate and, above all, consistent manner.

That was not the case in this instance, since the uncertainty created within Turkish society as to the implementation of laws to curb illegal settlements was surely unlikely to have caused the applicant to imagine that the situation regarding his dwelling was liable to change overnight.

43. The Court considers that 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" within the meaning of the rule laid down in the first sentence of Article 1 of Protocol No. 1, which provision is therefore applicable to this aspect of the complaint.

B. Compliance

[…]

3. The Court's assessment

44. The Court considers that the complexity of the factual and legal position in issue in the instant case prevents it from falling into one of the categories covered by the second sentence of the first paragraph or by the second paragraph of Article 1 of Protocol No. 1 (see *Beyeler*, cited above, § 98), bearing in mind, moreover, that the applicant complained not of an act by the State, but of its failure to act.

It considers, therefore, that it should examine the case in the light of the general rule in the first sentence of the first paragraph, which lays down the right to the peaceful enjoyment of possessions.

45. In that connection, the Court would reaffirm the principle that has already been established in substance under Article 1 of Protocol No. 1 (see *Bielectric S.r.l. v. Italy* (dec.), no. 36811/97, 4 May 2000). Genuine,

effective exercise of the right protected by that provision does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions.

46. 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.

In arguing that the Turkish authorities cannot be criticised for having refrained on humanitarian grounds from destroying the applicant's house (see paragraphs 80 and 131 above), the Government's submissions would appear to be directed towards the issue of "legitimate aim" for the purposes of paragraph 2 of Article 1 of Protocol No. 1.

47. The Court cannot, however, accept that argument and, for substantially the same reasons as those given in respect of the complaint of a violation of Article 2 (see paragraphs 106-08 above), finds that the positive obligation under Article 1 of Protocol No. 1 required the national authorities to take the same practical steps as indicated above to avoid the destruction of the applicant's house.

48. Since it is clear that no such steps were taken, it remains for the Court to address the Government's submission that the applicant could not claim to be the victim of a violation of his right to the peaceful enjoyment of his possessions as he had been awarded substantial compensation for pecuniary damage and had been able to acquire subsidised housing on very favourable terms.

The Court does not agree with that submission. Even supposing that the advantageous terms on which the flat in question was sold could to a certain extent have redressed the effects of the omissions observed in the instant case, they nonetheless could not be regarded as proper compensation for the damage sustained by the applicant. Accordingly, whatever advantages may have been conferred, they could not have caused the applicant to lose his status as a "victim", particularly as there is nothing in the deed of sale and the other related documents in the file to indicate any acknowledgment by the authorities of a violation of his right to the peaceful enjoyment of his possessions (see, *mutatis mutandis*, *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

As regards the compensation awarded for pecuniary damage, it is sufficient to observe that the sum has still not been paid even though a final judgment has been delivered (see paragraph 42 above), a fact that cannot be

regarded as anything other than interference with the right to enforcement of a claim that has been upheld, which is likewise protected by Article 1 of Protocol No. 1 (see *Antonakopoulos and Others v. Greece*, no. 37098/97, § 31, 14 December 1999).

However, the Court considers that it is not necessary for it to examine this issue of its own motion, having regard to its assessment under Article 13 of the Convention.

49. There has accordingly been a violation of Article 1 of Protocol No. 1 in the instant case.

[…]

[…]

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 2 of the Convention in its substantive aspect, on account of the lack of appropriate steps to prevent the accidental death of nine of the applicant's close relatives;

2. *Holds* by sixteen votes to one that there has also been a violation of Article 2 of the Convention in its procedural aspect, on account of the lack of adequate protection by law safeguarding the right to life;

3. *Holds* by fifteen votes to two that there has been a violation of Article 1 of Protocol No. 1;

[…]