

**THE EVALUATION AND IMPLEMENTATION PROCESS REPORT OF
“THE LAW ON COMPENSATION FOR DAMAGE ARISING FROM TERROR AND
COMBATING TERROR”
ON GROUNDS**

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FOUNDATION FOR SOCIETY AND LEGAL STUDIES

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GENERAL BACKGROUND

Due to armed conflicts in southeast of Turkey, state emergency got into force by a governmental decree in 1987 in 5 provinces. The number of the provinces under State of Emergency increased to 13 by 1993. Relying on the State Emergency Law, state security forces forcibly evacuated villages. As a result of this policy approximately 3400 villages and mezras were destroyed and more than 2 million people were forced to leave their living quarters without their desire. ¹

During this period, many people applied to the European Court of Human Rights (ECtHR) complaining about human rights violations. A large number of judgments of ECtHR indicate that Turkish Government was responsible for numerous human rights abuses including evacuation of villages, extra judicial killings and torture. ²

Council of Europe the Parliamentary Assembly, in its 2002 Recommendations to Turkey³ has urged, including others, “*to compensate the suffering of the internally displaced people*”⁴

Through these developments, under the pressure of the Council of Europe, Turkish Assembly passed the “Law on Compensation for Damage Arising from Terror and Combating Terror” (Law no 5233). The law offers to the internally displaced people compensation for their material losses.

¹ The evacuated villages in the southeast and the Internally Displaced Question research Commission” of the Turkish Assembly, Report 1997. however, according to the NGOs like TOHAV, TIHV,IHD, GOC-DER state the number of the forced displaced people more than 3 million.

² See, including others, Akdivar v. Turkey (99/1995/605/693); Menteş v. Turkey (23186/94) Güven v. Turkey,(31847/96); İşçi v.Turkey (31849/96/); Doğan v. Turkey (8803/02),

³ Recommendation 1563 of the European Council Parliamentary Assembly “Humanitarian situation of the displaced Kurdish population in Turkey” 18 September 2002 Doc. 9547
<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA02/EREC1563.htm>

⁴ The Parliamentary Assembly has urged several recommendations to Turkey concerning the IDPs, such as, refrain from any further evacuations of villages;ensure civilian control over military activity in the region and make security forces more accountable for their actions, involve representatives of the displaced population in the preparation of return programmes and projects, ...”

While the law was on the draft before the justice commission in the Turkish Assembly, TOHAV along with the regional bar associations and the related nongovernmental organisations, have submitted a report regarding critics and recommendations to the law.⁵ Later, it has been observed that some of these critics' and recommendations were taken into consideration when the law passed.

The regulation concerning the implementation of the Law no 5233 was issued by the Interior Ministry on 20 October 2004. TOHAV has published a report concerning the problems that might be occurred while implementing.⁶

Legal Aid offered by TOHAV to the IDPs

TOHAV, since its foundation, has seen the forced displacement issue in its working field. TOHAV has carried 23 cases to ECtHR concerning the forced evacuation of the villages.⁷

Considering the fact that, Law no 5233 lacks of legal aid mechanism to the victims, also its complicated nature TOHAV has started a programme including raising awareness and legal aid activities about the law since 2004 November by the support of its members and voluntaries. In this context, TOHAV together with Association for the Help and Solidarity with the Migrants (GÖÇDER) have made raising awareness meetings about the Law 5233 in different districts of Istanbul which got immigration. Subsequently the raising awareness meetings, with 398 victims' interviews have been done to whom have been applied to TOHAV Legal Aid Service. Up to now, while this report was preparing TOHAV brought 249 applications to the related governors (Bitlis, Mardin, Diyarbakır, Siirt, Tunceli, Batman, Muş Van, Şırnak, Bingöl, Elazığ, Erzurum) claiming compensation for damages.

The aim of this report:

TOHAV has been implementing a project called “ Turkey – EU Monitoring project” since September 2005. The project aims to strengthen Turkey's full harmonization to Copenhagen

⁵ See “ TOHAV Report- Observations and Recommendations to the Draft law on Compensation for Damage Arising from TError” <http://www.tohav.org/index.php?option=content&task=view&id=16&Itemid=2>

⁶ TOHAV Report, 22 March 2005 “ Observations and Recommendations to the regulation about the implementation of the Law no 5233”

⁷ some cases of TOHAV

political criteria with respect to minority rights, prevention of torture and internally displaced people. In this context we have established “TOHAV European Union Institution”. The Institution is going to compare the domestic regulation with Copenhagen Political Criteria with, and will focus on where European standards are not being met and also will monitor the compliance of the reforms with Copenhagen political criteria and the effectiveness of the reforms in implementation.

Therefore TOHAV EU Institution besides offering legal aid to the IDPs, also monitors the implementation process of the law, the gaps between the law and compare it with the *UN Guiding Principles with respect to Internally Displaced People*.

For these reasons, TOHAV Legal Aid Service, between 29 August and 5 September, in order to monitor and determine the machinery of the loss assessment commissions, current practice, the ongoing process of the applications and the implementation problems has made a visit to Diyarbakır, Batman, Siirt, Bitlis, Mardin and Elazığ provinces in the southeast of Turkey. In this context, interviews have been made with the personnel of the loss assessment commissions, related NGO representatives, representatives of bar associations and victims. This report includes the conclusions that are reached from these interviews.

Our observations about the implementation

Diyarbakir

In Diyarbakir, two loss assessment commissions have been established under the Diyarbakir Provincial Administration according to the Law no 5233. It has been informed that approximately 30.000 applications have been submitted claiming for compensation. These applications have been taken into consideration by the commission from January 2005. In order to quicken the work of the commissions in the province, personnel have been charged to the all districts in Diyarbakir.

The members of the Diyarbakir Bar Association have pointed out these issues in the meeting: The personnel assigned to the commission are not specialized. No proper explorations are being conducted in order to determine the occurrence of the loss and the incidents and are not

conducted in accordance to the law. The officials who conduct explorations just take notes about the losses; there is no information about the occurrence of the incident. The legal representatives of the victims couldn't have a proper access, couldn't really attend and intervene the process. Therefore the occurrence of the loss remains abstruse. This means that the minutes of the explorations are only performed by the agents of the administration. The objective assessment of the damages isn't found.

The monetary compensation demands are predominately. The lawyer state that this is related to the indefinite character of the compensation in kind and the lack of confidence among the victims to the compensation in kind.

The lawyers stated that applicants are generally ready to accept fewer amounts that the commission would award because of their economic weakness.

There is also a problem in assessing the retrospectively income of the products obtained from the land. The administration for some villages, for instance, assuming that the armed conflict has ended in 2000, and there is no barrier left in practice for return and don't calculate the losses occurred from that times even the villager in the reality didn't return.

Mardin

Estimated number of the applications made to the loss assessment commission is about 14.000. Despite nearly a year has passed over the applications, the majority of the cases are still in the registration level. Moreover, in Mardin the exploration commission hasn't established yet. The commission has only asked the list of the evacuated villages from the security forces.

The loss assessment commission classified the applications to death, injured and monetary damages. The commission has rejected some monetary damages which are not complied with the law. Some limited cases have been concluded which are connected with the death incidents.

The commission hasn't established an approach among the monetary losses (land, product, tree, livestock, household, movable) for the compensation, in such cases hasn't taken into consideration yet.

Majority of the applications in Mardin are about monetary compensation. There is no application asking for compensation in kind and there is no return to the villages up to now. Despite the majority of the villages have been evacuated due to security reasons, there is no systematic and sustainable work yet. There is still an indefinite situation about how and which criteria will be taken for compensation.

Batman

According to the information obtained from the loss assessment commission in Batman, approximately 8.000 applications were submitted. 500 cases involving death incidents have been concluded. Among these cases 249 of them were admitted and the monetary compensation was paid. In order to quicker the commission activities, personnel have been charged to the all district.

According to the meeting with the lawyers and the NGO representatives, the majority of the cases are about monetary compensation. It has been informed that compensation in kind was asked in some limited cases in the Sason district, Heybeli and Balbaşı villages.

The Governor of Batman has issued the list of the evacuated villages. However, the lawyers and the victims have concerns about the accuracy of the list. According to the lawyers there is no need to submit the incident report for the villages which are in the list.

Moreover, the exploration activities has not started properly yet. This results delays for the conclusions of the cases.

Like Diyarbakır, there is a real problem while assessing retrospectively the products obtained from the land. In some cases, the administration in reply to the legal representatives, states that "... village is evacuated and is open to return from the date." Therefore, even the applicants haven't returned to their villages yet in the reality, the commission while calculating the loss amount doesn't take into consideration after the date which is permitted to return by the administration. This results serious right losses.

Up to change in the article 27 of the Regulation⁸ concerning the implementation of the Law no 5233, the victims and the legal representatives of the victims couldn't directly correspondence with the military authorities. The correspondences are done through the kaimakam authorities. This situation has changed by the amendment in the Article 27 of the Regulation in 22 August 2005.

The loss assessment commissions while conducting explorations, don't keep roll, jus take notes. Like the other provinces they don't consider how the incident has occurred. The commissions don't properly assess the losses. The applicants because of security problems and the trauma suffered mainly ask for monetary compensation instead of compensation in kind. Also, they accept the less amount of the compensation.

Siirt

According to the information obtained from the Loss assessment commission in Siirt approximately 11.000 applications were made. Up to now, the compensation awarded for 13 cases related to death and 250 cases were rejected.

Despite the number of the applications in Siirt, the work of one commission to register, examine and conclude the cases is insufficient. It is not realistic to expect from one commission to examine and conclude the 11.000 applications. Though it was decided to establish a second commission, it is observed that no other commission was established yet.

Because of the applications are still in the registration level, no explorations have been conducted yet.

Bitlis

Two loss assessment commissions have been established in Bitlis and approximately 8.500 applications have been made. The commission here regularly recorded the applications. However, only 150 applications have been concluded.

⁸ Yönetmeliğin 22/8/2005 tarihinde değiştirilen 17. maddesi: Başvuru sahibi, başvuru dilekçesiyle birlikte olayın meydana geliş tarzını açıklayan ve zararın tespit ve ölçümünde dikkate alınabilecek her türlü bilgi ve belgeyi komisyona sunar. Ayrıca komisyon, gerekli gördüğü taktirde zararın tespit ve ölçümünde dikkate alınabilecek her türlü bilgi ve belgeyi adli, idari ve askeri mercilerden ister. ..

As it has been observed like in the other cases, the commissions in Bitlis don't regularly conduct explorations. The monetary compensation claims are the majority.

Elaziğ

One loss assessment commission was established in Elaziğ. The commission is not sufficient to examine and conclude the cases. It has been observed that the commission has a tendency to conclude the case on file and not to conduct explorations. Though several months have been passed since the submission of the applications, nothing has been done for the cases except the death cases. Particularly, it is observed that the applications of the districts Palu and Arıcak where mainly the village guards live were admitted.

It is observed that there were police officers working in the loss assessment commission. Moreover, the office established to carry out the applications in the Governor of Elazığ, is named "Terror Bureau".

Evaluation

Below conclusions have been reached from visit to Diyarbakir, Batman, Mardin, Siirt, Bitlis and Elaziğ between 29 August and 5 September 2005 of the TOHAV Legal Aid Service;

- The time limit of the law should be extended. It is a positive situation that the extending time limit is going to be on the agenda of the Turkish Assembly. Another positive development is the amendment of the article 17 of the Regulation.
- The law doesn't cover non-pecuniary damages. However, it is well known that IDPs has also suffered psychological trauma. This situation is established by several reports including TOHAV Torture Rehabilitation Center 2002 Report.⁹
- The commissions are not independent, their enforcement power is limited. The chair of the commissions is Governor and it is directly under the supervision of the Interior Ministry. Thus, the commissions doesn't have any position to use its own initiative and take independent decisions.

⁹ See TOHAV Torture Rehabilitation Center 2002 Report -

- There is no civil society and local administration participation in the loss assessment commissions. There are also police officers working for the commission.
- Establishment of the commissions under the building of the Governorships creates a negative psychological effect among the applicants. Most of the applicants are discouraged to make claims because of that.
- Current personnel quantity and quality of the loss assessment commissions are not sufficient. This results technical, administrative and bureaucratic delays in processing claims.
- Comparing the number of the claims with the established loss assessment commissions, it could be easily seen that in one province a commission should conclude more than 10.000 applications with 3 or 4 personnel.
- Because of security concerns no explorations were conducted in Bitlis , Tunceli , Elazığ , Diyarbakir.
- Within the conducted explorations it is not investigated whether the incidents related to damage is occurred or not, how the damage was occurred. The exploration commission only finds about the damage amount.
- There is no standard and common criterion while assessing the compensation to be awarded. This creates question remarks for just satisfaction and an open door for administrative arbitrary.

Recommendations;

TOHAV has the following recommendations for a fair and reasonable compensation regarding Law no 5233;

- The time limit for the law should be extended at least to one year.

- The law should be reviewed, and the non-pecuniary damages should be covered by the Law. The applicants should be given additional petition right for moral compensation.
- Local and civil society participation should be afforded in the commissions.
- The applications should be concluded in a reasonable time.
- Standard and common criteria should be established while awarding compensation.
- The explorations should be concluded according to the law and the incident reports should be included in the reports.
- The technical personnel and the means of the commissions should be increased.
- Instead of police officers, technical personnel like engineers should be charged in the commissions.
- The commissions shouldn't wait from the applicants such documents which the applicants couldn't reach.

Conclusion

The forced displacement fact in Turkey has resulted direct traumatisation of 3 million people. However there has been no decisive solution policy among governmental authorities. Particularly, through EU integration process the problem and needs of IDPs has come to agenda. At this point, Turkish Government has presented the Law 5233 as a key for the solution of the problem.

According to the Ministry of Interior, up to now, 100.000 applications have been submitted to loss assessment commissions claiming for compensation.

However, this law is far from to reach a comprehensive solution to the problem of IDPs. First of all the law doesn't include any provision or mechanism for return. It is obviously not sufficient to award monetary damages to the victims. Besides all of the critics to the Law the

commissions are under the supervision of the central administration and thus it is difficult to have independent and impartial decisions and to have a standard approach. Therefore, the work of the commission is directly related with political approach. One of the factors of the indefinite characteristic of the commission works and delays should be seen with this manner.

For the reasons given above, TOHAV is in the opinion that the Law 5233 with its structure and practice can't be a solution by itself. In order to have a real solution for the internally displaced people comprehensive social, political and economic projects should be implemented in the future.

September 29, 2005

Dear Helen Flautre,

I am writing you on behalf of Foundation for Society and Legal Studies (TOHAV). TOHAV is a non-governmental and independent legal human rights organisation founded by 46 lawyers in 1994 in Istanbul/ Turkey. We have been bringing human right cases, including prohibition of torture, right to property, freedom of expression, right to have a fair trial, prohibition of discrimination before the European Court of Human Rights for 10 years.

As it is known, since Turkey was recognized as an EU candidate country in Helsinki Summit by 1999, democracy and human rights is one of the fundamental areas identified to be in need of reform. The EU accession process has been one of the most effective forces for Turkey for promoting human rights.

However, for fulfilling the Copenhagen political criteria and a proper implementation of the reforms there is a great need for an organized and continuous civil society participation in order to monitor the accession process of Turkey and to show the gaps between the reforms and the implementation.

For these reasons, we have started a project in order to effectively monitor the compliance of the reforms and human rights practices of Turkey with international conventions and the effectiveness of the reforms in implementation particularly in the areas of minority rights, Internally displaced people and the combating against torture.

The report that I am sending in the attach is *"The Evaluation and Monitoring Report of "The Law on Compensation for Damage Arising from Terror and Combating Against Terror on grounds"*. This report includes current functioning of the Law 5233 regarding to give compensation to the people who have forced to evacuate their villages.

The question of internally displaced Kurds still needs a solution.

