LAW 5233 IS UNJUST

Internal displacement in Turkey continues to affect millions of people.

This problem was put on the agenda by the EU integration process, and the Turkish parliament responded by passing Law 5233 on Compensation of Damage Arising from Terror and the Fight with Terror as a key solution. Unfortunately, the law is failing to meet its own stated aim of achieving social peace and justice.

On 25 February 2006 a meeting was held at the headquarters of TOHAV (the Foundation for Social and Legal Studies) to discuss Law 5233 and the European Court of Human Rights (ECtHR) judgment in *Aydın İçyer v Turkey*. Participating were TOHAV Director Şehnaz Turan; Meral Danış Beştaş , Board Member of Diyarbakir Bar; Mahmut Kaçan president of Agri Bar, Baki Boğa, Board Member of the Istanbul Branch of the Human Rights Association, Jonathan Sugden of Human Rights Watch, Meryem Kavak of Goc-Der, and TOHAV members M. Selim Okçuoğlu, M. Ali Kahraman, İnan Akmeşe, Yaşar Aydın, Hakan Gündüz as well as the lawyers M. Ali Kırdök, Hasan Kemal Elban, Ayşe Bingöl and Hasip Kaplan.

The meeting reached the following conclusions:

Law 5233 is not effective in meeting the needs of Turkey's internally displaced.

- Obstacles and limitations in the law and associated regulations exclude a substantial number of victims from compensation. For example, village evacuations before 1987 are not covered by the law.
- The law does not provide mechanisms to tackle return issues such as lack of infrastructure, the village guard system, removal of mines etc.
- The law contains no provisions for non-pecuniary compensation contrary to established precedent at the ECtHR.

The structure and working methods of damage assessment commissions prevent them from providing just compensation.

- The number and nature of staff currently serving on commissions are insufficient to meet the volume of applications. For example, in several provinces a limited number of personnel are expected to process, within a reasonable period, tens of thousands of cases. Consequently, there have been no progress in many applications even after a year and a half.
- The commissions take an arbitrary approach to their assessment activities, and this has got worse sine the decision in *Aydın İçyer v Turkey*.
- Commission activities are conducted in a partial manner. Victims and their legal counsel are completely excluded from the preparation stages.
- Commissions often take pains to seek out documents might be used against the victims, but fail to make similar efforts to procure documents that might support victims' claims.
- Investigations are prioritized on the basis of undisclosed principles. New applications may be dealt with, apparently arbitrarily, as a priority, while earlier applications are left on the shelf.

- Lawyers are prevented from examining the files; commissions do not reply to correspondence and requests by claimants or their legal counsel; victims who have appointed lawyers are encouraged to discharge them; applicants are induced to accept lower levels of compensation *on the basis of promises that the application will be dealt with quickly*.
- When commissions evaluate applications, they give priority to applications for compensation made by soldiers, police and village guards.
- The applications are processed by Provincial Special Administration units within the provincial governor's building. In some provinces, the offices of the damage assessment commissions are known as the "Terror Office." The fact that police officials previously employed in Anti-Terror Branches are now working as the secretariat of the commissions creates an atmosphere that undermines victims' confidence in the process.
- There are serious inconsistencies in the amounts of compensation proposed. For example, all trees are valued at a flat rate of 20 YTL (12 EUR) irrespective of the harvest they produce. A death is valued at 14,000 YTL (9,000 EUR) while compensation of 15,000 YTL (9,500 EUR) may be proposed for a tractor.
- In Diyarbakir province, proposed out-of-court settlements undercut the compensation figure calculated by the survey.
- No cross-province standards are applied in the calculation of compensation. For example, in Diyarbakir, the commissions offer 16,000 YTL (10,000 EUR) for a death, while in other provinces commissions offer 15,000 YTL (9,500 EUR).
- Surveys are carried out in a completely irregular manner. Surveys conduct no investigation into the original events or how they happened. Lawyers may not be informed that the survey is to be carried out.
- Commissions offer compensation that is not in keeping with established ECtHR precedents, and is quite low. For example, wounded victims are offered compensation between 4,000 YTL (2,500 EUR) and 1.500 YTL (1,000 EUR). In Hoşgeldi village and an associated hamlet in Varto, Muş province, villagers whose houses were burned or destroyed, and who were not permitted to return to their homes for many years, were offered trifling sums such as 500 YTL (320 EUR) or 900 YTL (570 EUR).
- Arguments set out by victims are not addressed in rejected applications.
- Victims are required to present documents which it would be impossible for them to procure, such as gendarmes' incident reports for enforced village evacuations, or certificates that a particular piece of land was irrigated.
- Large sections of agricultural land are treated as state forest, and these fields and the potential produce thereof are excluded from calculations.

Out-of-court settlements are imposed on the injured parties

- Out-of-court settlements are prepared unilaterally by the commissions. Neither the victim nor their legal counsel participate in their preparation. Victims and their legal counsel have no opportunity to discuss the terms, and in some places are not allowed to suggest alternatives.
- The processed files are presented to the applicant or their legal counsel almost as a *fait accompli*. No alternative suggestions are accepted, and any alternative proposal is effectively regarded by the commission as a rejection, and the file is shelved.

The ECtHR's İçyer judgment does not absolve the government from its responsibility to pay compensation

In the İçyer judgment, the ECtHR ruled that Law 5233 was an effective remedy, and that applicants would therefore have to exhaust this new domestic route. In the press, this judgment was interpreted as relieving the Turkish government of a 20 billion Euros compensation bill, and Foreign Minister Abdullah Gül described it in similar terms.

Contrary to what the Foreign Minister claims, the European court's inadmissibility decision in *Aydın İçyer v Turkey* does not exempt Turkey from paying compensation, because this was not a judgment about the merits of the case. In *Doğan and others v Turkey* the European court looked into the merits of a group of victims in circumstances very similar to those of Aydın İçyer and gave judgment that there had been a clear violation.

Consequently, the European court's judgment in *Aydın İçyer v Turkey* is not a judgment that can be interpreted as releasing the government from its responsibility to pay compensation to the victims of enforced internal displacement. The İçyer judgment merely changes the address of the body that is to decide the compensation. If the government does not show sufficient will to compensate victims for their losses, and if the irregularities of the Damage Assessment Commissions and the provincial governors continue, we may see many applications set once again before the ECtHR.

Recommendations

- The government should implement Law 5233 using the standards established by the ECtHR, and especially the ownership criteria indicated in *Doğan and others v Turkey*.

- Necessary administrative and legal measures must be promptly taken to halt the arbitrary practices of the Damage Assessment Commissions established under Law 5233, which cannot be reconciled with the state's serious responsibilities in this matter. Otherwise, Law 5233 will inevitably prove ineffective and insufficient, and the consequence of this will be that large numbers of applicants apply to the European court.

- The government must show political will to ensure that the Damage Assessment Commissions operate in a more just, effective and transparent manner that is accessible for victims and their legal counsel.

- The requests of victims for compensation should not be perceived as unjustified to secure personal gain. Victims actually have quite realistic expectations in terms of justice and compensation. They should not be subject to excessive demands for proof and documentation.

- We therefore support the call made by the Special Representative of the U.N. Secretary General Walter Kälin in his September 7, 2005 report for the Turkish government to establish a compensation mechanism that will allow victims of enforced internal displacement to return to their villages in dignity to make a new life, or, if they do not wish to return to the village, to make a new start in the place in which they are currently living.

In conclusion; besides the concerns raised above, we the participants have decided to form a "***Civil Monitoring Committee***" of non-governmental civil society organizations to monitor the implementation of Law 5233. We invite the public, and especially all individuals and NGOs working in this area, to maintain vigilance concerning this issue.

AĞRI BAR	DİYARBAKIR BAR	FOUNDATION FOR SOCIETY AND LEGAL STUDIES
GÖÇ-DER	HUMAN RIGHTS ASSOCIATION	HUMAN RIGHTS WATCH