

Istanbul Water Tribunal

Tütün Deposu, Istanbul, March 14, 2009

CASE: Konaktepe Dam and Konaktepe I and II Hydropower Plants in the Munzur Valley

Plaintiffs:

The Munzur Valley Preservation Board of the Federation of Tunceli Associations

Defendants:

Ministry of Energy and Natural Resources, ANKARA, Turkey

Prime Ministry of the Republic of Turkey, ANKARA, Turkey

General Directorate of State Water Works (DSİ), ANKARA, Turkey

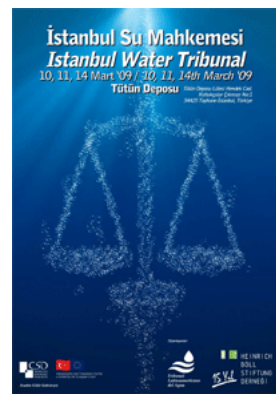
Ministry of the Environment and Forests, ANKARA, Turkey

FACTS:

1) The Munzur Valley National Park – one of the oldest and largest national parks in Turkey, with an area of 42.000 hectares – was assigned national park status in 1971. It is located in Turkey's Tunceli Province and consists of three preservation zones. The area hosts a considerable number of animal and plant species, some of which are endemic.

2) The people in Tunceli are of the Alewi faith. The Munzur Valley hosts the ritual site of *Munzur Baba*, and the Munzur River has great spiritual importance for the Alewites. The Alewite and Kurdish-Zaza identity of the local population differs from the dominant ethnic and religious majority in Turkey. In the last century the region has suffered from continuing political and social instability which caused waves of forced migration. People displaced in 1930s returned to Tunceli after 1950, but since 1994 it still is not feasible for all of the displaced to return.

3) Feasibility studies for the Munzur Project began in the 1960s, when the project was included in the *Fırat* (Euphrates) River Basin Development Report of 1967. It includes six dams and eight hydroelectric power plants. Of these, two dams and one power plant are about to be completed; the master plans for four others and the planning of two pairs of



dams and plants have been completed.

4) The Konaktepe Project (the Project), which entails the construction of a dam and two hydroelectric power plants, Konaktepe I and II, was included in the investment program of the Munzur Project in 1994. Its planning has been finalized. When completed, the Project is foreseen to generate 1.571 GWh/year of energy at a total power of 384,5 MW, which corresponds to 1,2% of Turkey's total energy production. The power generated from this project is valued at 80 million dollars per year.

5) On 10.09.1998, the Council of Ministers awarded the construction contract for the Project to an international consortium formed under a protocol signed between Turkey and the USA on 26.02.1998. The project was included in the investment and implementation program of the State Water Works (DSİ) for the fiscal year 1999, and in the program of the State Planning Organization. On 15.11.1999, the consortium of firms from Turkey and the USA under the leadership of the US firm Stone & Webster was approved by an executive decision.

6) On 10.09.1998, the Council of Ministers decided that the State Tenders Law No. 2886 does not apply to the Project, because it would be performed by a consortium as decided in the protocol signed between the USA and Turkey.

7) The case has been adjudicated in courts in Turkey. On 05.07.2005, the 10th Chamber of the Council of State accepted the plaintiffs' claim for a stay of execution and ordered the cancellation of the project. The Court held that Provisional Article 4 of the Environmental Impact Evaluation Regulation, which under certain circumstances grants exemption from the requirement of environmental impact evaluation report, does not apply to this project because its application design had not been prepared before 07.02.1993, the cut out date specified for exemption. In the absence of such report, the Court held that the project lacked legality in view of that its location falls inside the boundaries of a national park.

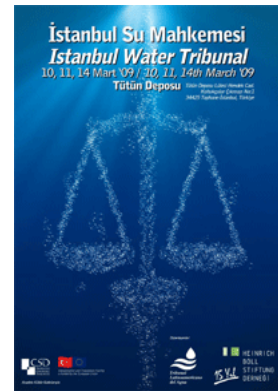
8) Upon appeal of the government, the General Assembly of Administrative Chambers of the Council of State reversed the ruling of the 10th Chamber. The General Assembly reasoned that the project enjoys the exception provided in the Regulation since the location of the dam and the power plant was decided in 1984, when the work on the application design had been completed. It further held that the project was a "work of a special nature" within the meaning of Article 89 of the State Tenders Law, since its entire financing will be covered by the international consortium. However, the General Assembly also noted that upon the request of loan organizations, the consortium was having an environmental impact evaluation report in World Bank standards being prepared.

9) Three years after the General Assembly's decision, there is no evidence that the report was prepared and no results from such a study are publicly available.

10) The plaintiffs' request for a review of the General Assembly's decision was denied on procedural grounds on 25.01.2007. Having exhausted domestic legal remedies, the plaintiffs lodged a complaint with the European Court of Human Rights in Strasbourg. No judgment has yet been made by this court.

11) No archeological surveys have been conducted in the area.

12) The local community is concerned that the project will increase poverty and emigration as well as create further obstacles for the return of those who were displaced from Tunceli in 1994.



WHEREAS:

1) The universal acknowledgment of water in adequate quantity and quality as a fundamental human right whose full exercise must be guaranteed by the governments (UN Council on Human Rights Declaration, Observation Number 15, 2002);

2) Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such (European Union Water Framework Directive, 2000);

3) Environmental policies should pursue the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources and should be based on the precautionary principle and on the principles that preventive action should be taken (European Union Water Framework Directive, 2000);

4) Water policy requires a transparent, effective and coherent legislative [and administrative] framework (European Union Water Framework Directive, 2000);

5) Local societies evolve on the basis of their dependence on biological resources and the management thereof, developing adequate practices for the conservation of the biodiversity and sustainable use of its components (Convention on Biological Diversity, 1992);

6) Within a river basin where use of water may have transboundary effects, the requirements for the achievement of the environmental objectives should be coordinated for the whole of the river basin district (United Nations Convention on the Protection and Use of Transboundary Water Courses and International Lakes, 1992);

7) Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence by large-scale development projects, which are not justified by compelling and overriding public interests (United Nations Guiding Principles on Internal Displacement, Principle 6(c), 1998);

8) States have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence (United Nations Guiding

Principles on Internal Displacement, Principle 28, 1998);

9) The Konaktepe Project will have significant impacts on the ecosystem and the hydrological cycle, eliminating the aquatic and terrestrial biodiversity as well as the livelihood of substantial numbers of people;

10) The construction of the proposed Project will have serious environmental, ecological, social, economic, and cultural repercussions in the areas to be flooded that need to be taken into account in reconsidering the implementation and financial viability of the project;

11) The construction of the proposed Project will cause serious damages to the unique historical, cultural and religious heritage of Tunceli.

12) The Project may cause a new wave of displacement from Tunceli and prevent the return of individuals displaced in 1994;

13) The construction of dams along the Munzur River, which has a transnational character, may have negative repercussions for Turkey's relations with the neighboring countries of Iran and Syria, which are in the process of improving in recent years (European Union Water Framework Directive, 2000; and European Neighborhood Policy, 2004);

14) The Government has exempted the design and approval of the Project from the procedural rules laid out in the applicable national legal framework through exempting it from the requirement of an environmental impact evaluation report, in violation of the right to live in a healthy and balanced environment (Constitution of Turkey, Article 56; Environment Act No. 2872; the National Parks Act No. 2873);

15) The Government has exempted the process of authorization for the Project from the procedural rules laid out in the applicable national legal framework through exempting it from the requirement of public tender (State Tenders Law, Article 89);

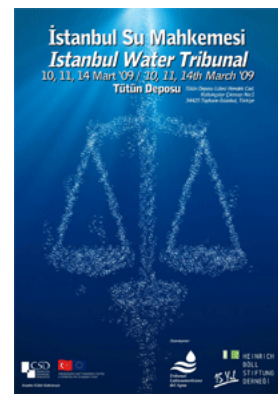
16) In the process of designing and approving the Project, the local community was not duly consulted and their protests against the project were ignored, in violation of the fundamental principles of human rights and democracy enshrined in the Constitution and international human rights conventions that Turkey is a party to.

In view of the facts and considerations preceding, the jury of the Water Tribunal in Istanbul,

RESOLVES:

1) To accept the petition of the plaintiffs to make public the problems to ensue from the projected construction of Konaktepe dams and hydroelectric power plants in the Munzur Valley;

2) To mandate the Government to order the preparation of environmental impact



evaluation reports of the whole development program in the Munzur River Basin, including not only the specific dam projects already constructed and planned;

3) To exhort the Government to respect the principle of democracy and enable the local population to exercise their rights and freedoms deriving from the Constitution and laws as well as the international human rights treaties that Turkey is party to;

4) To call upon the Government to preserve the ecological and cultural treasures in the Munzur Valley which belong to the common heritage of humanity;

5) To deplore the manipulation of the laws and regulations governing the tendering, contracting and implementation processes that has enabled the government to move forward with the Konaktepe Project in spite of the strong and continuous opposition of the people of Tunceli.

RECOMMENDS:

1) The Government to review and redesign its general policies on development, water use and energy, in consultation with civil society and the affected local communities, in order to elaborate alternative policies that make full, effective and sustainable use of local natural resources;

2) In doing this, the Government to comply with its obligations under international conventions it has ratified, including the Convention on Biological Diversity, the United Nations Convention on Climate Change (Kyoto Protocol), the European Convention of Human Rights, the Convention Concerning the Protection of the World Cultural and Natural Heritage of the World Heritage Committee of the UNESCO;

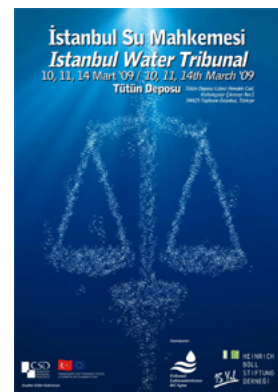
3) The Government to honor the commitment it has made through an executive decision of 17 August 2005 to take into consideration the United Nations Guiding Principles on Internal Displacement in developing an integrated strategy;

4) The Government to fulfill its commitments under the EU accession process to harmonize its national laws on the environment, human rights and cultural heritage;

5) The Government to adhere to the fundamental principles of a democratic society through opening a broad public debate about its policies on water use and energy production and about its present and future projects regarding the Munzur River Basin;

6) The Government to adopt a comprehensive concept of public benefit that rests on a cost-benefit analysis which integrates social, environmental and cultural factors as well as economic considerations;

7) The Government to annul Provisional Article 4 of the Environmental Impact Evaluation Regulation;



In the Auditorium of the Tütün Deposu located in the city of Istanbul, Turkey, after the hearings conducted before the Water Tribunal in Istanbul scheduled March 10th through March 14th, 2009 and once the declarations, evidence and notices from the parties involved were heard, the undersigned members of the jury of the Water Tribunal render the following verdict on the case of the construction of a dam for and two hydroelectric power plants in the Konaktepe Dam and Hydroelectric Power Plant Project, Turkey.

