

Istanbul Water Tribunal

Tütün Deposu, Istanbul, March 14, 2009

CASE: The Ilisu Dam Project in Hasankeyf in the Dicle (Tigris) river

PLAINTIFFS:

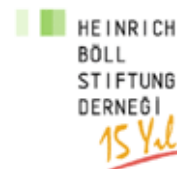
Hasankeyf Survival Initiative

DEFENDANTS:

Ministry of Energy and Natural Resources, ANKARA, Turkey
Prime Ministry of the Republic of Turkey, ANKARA, Turkey
General Directorate of State Water Works (DSI), ANKARA, Turkey
Ministry of the Environment and Forests, ANKARA, Turkey
Chancellor of Germany, Ms. Angela Merkel, BERLIN, Germany
Economy Minister of Germany, Mr. Michael Glos, BERLIN; Germany
Euler Hermes Kreditversicherungs-AG, HAMBURG, Germany
Prime Minister of Austria, Mr. Werner Faymann, WIEN, Austria
Finance Minister of Austria, Mr. Wilhelm Molterer, WIEN, Austria
ÖKB – Österreichische Kontrollbank AG, VIENNA, Austria
President of the Swiss Confederation, Ms. Micheline Calmy-Rey
Swiss Export Loan Organization, ZURICH, Switzerland
Société Générale, PARIS, France
Bank Austria Creditanstalt AG, VIENNA, Austria
DekaBank – Deutsche Girozentrale, VIENNA, Austria
UniCredit Bank, MILAN, Italy

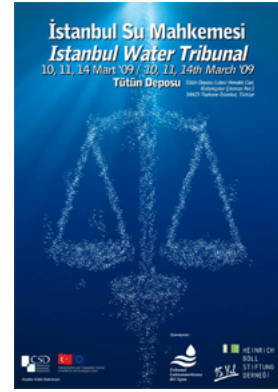
FACTS:

1. The Ilisu Dam Project includes a dam and associated power plant on the *Dicle* (Tigris) River, approximately 45 km from the Syrian border, with an installed potential of 1.200 MW, approximately 2,5 % of Turkey's total capacity. The associated reservoir will cover an area of roughly 313 km².
2. The dam and its reservoir will flood an area of about 60.000 hectares, requiring



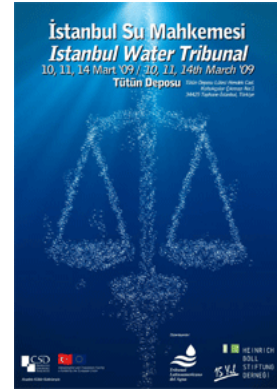
the displacement of approximately 55.000 people, most of whom work in agriculture. Most of the 95 villages and 104 hamlets will be destroyed including the historic city of Hasankeyf. The *Dicle* River Valley has archaeological vestiges dating back approximately 12.000 years.

3. Flora and fauna in the valley will be threatened, many of which are endemic.
4. Studies for the Ilisu Dam project began in 1954. The project was incorporated into the South Eastern Anatolia Project (GAP) in 1982 and into the official regional investment program in 1997.
5. A consortium to build the Ilisu Dam consisting of seven European and three companies was dissolved in 1998 when three European companies and one European Bank withdrew from the project.
6. In 2004, a second consortium was formed with the Turkish State Water Works (DSI) and four domestic companies (NuroI, Cengiz, Celikler and Temelsu Uluslararası) along with six European companies (VA Tech/ Andritz, Züblin, Alstom, Stucky, Maggia and Colencio).
7. Dam construction officially started on 5 August 2006. The dam is expected to be completed in 2013.
8. An environmental impact assessment was conducted in 1999 and a revised version of the report of that evaluation was published in November 2005.
9. The Government of Turkey will borrow the money for the project from European banks. The European governments withheld loan guarantees in 2007 because they were unsatisfied with the revised environmental impact assessment, imposing 153 conditions regarding cultural, social and environmental aspects that they want to be met.
10. In 2008, a committee of experts to evaluate compliance concluded that this requirement had not been met; the banks suspended their decision to grant loans until July 2009 pending the governments fulfilment of the required 153 conditions.
11. The Hasankeyf Survival Initiative was founded on 5 January 2006 by non-governmental organizations, municipalities, professional organizations, and labor unions; 72 groups participate in this Initiative.
12. The Hasankeyf Survival Initiative and the Alliano Initiative filed suit with the Diyarbakir Court and the Council of State on 13 December 2006 against the “decision of principle” of the Supreme Board for the Conservation of Cultural and Natural Assets published in the Official Gazette on 27 October 2006. The decision of principle states “If there are immovable cultural assets and archaeological sites in the area where dam construction is planned, the State Water Works will investigate whether other locations are available for construction.”
13. Four Hasankeyf residents filed suit against a decision to relocate the Hasankeyf township with the Prime Ministry on 11 September 2006, seeking the annulment of the Council of Ministers decision Nr. 2006/10642 published in the Official Gazette on 12 July 2006.
14. In 1999, attorney Kemal Vuraldoğan called for the cancellation of the construction contract for the Ilisu Dam in a lawsuit against the Administrative Court of Ankara. The 10th Chamber of the Council of State decided in July 2003 the bidding process



had been conducted in compliance with the national law. In appeal, the General Assembly of Administrative Chambers of the Council of State decided on 9 February 2007 that the original decision should be stayed until there was a verdict in the case of Cano vs. Administrative Court of Diyarbakir.

15. In 2003, attorney Murat Cano filed suit with the Administrative Court of Diyarbakir requesting the annulment of the Ilisu Project on several grounds; the principal demand claimed that no valid tender procedure has been conducted. The case is still pending.
16. Most recently there have been incidents where local security officers have denied access of individual journalists and activists to the village of Ilisu.

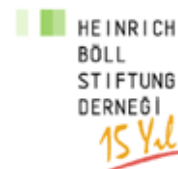
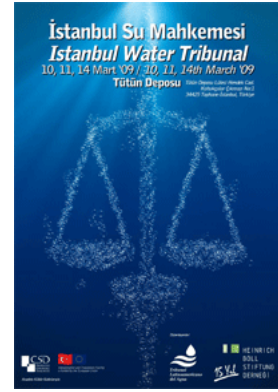


WHEREAS:

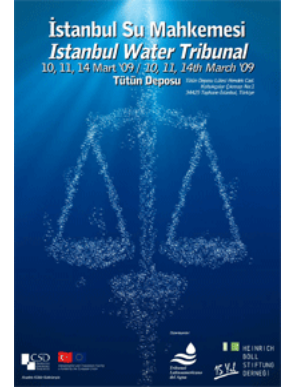
1. The universal acknowledgment of water in adequate quantity and quality is a fundamental human right whose plain exercise must be enforced by the governments (UN Council on Human Rights Declaration, Observation Number 15, 2002);
2. Assuring the social right to water in one region must not come at the expense of the people and environment in the area from which the water is being drawn (European Union Water Framework Directive 2000);
3. 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);
4. 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);
5. 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);
6. The state is responsible for the preservation of historical, cultural, and natural assets and values (Constitution, Article 63);
7. **It is forbidden to make any** kind of constructional or physical changes to, reopen to use, or alter the ways of usage of the immovable cultural and natural assets that must be protected (Domestic Law on the Preservation of Cultural and Natural Assets, Article 9);
8. **The responsibility** for the precautions for the protection of immovable cultural and natural assets and conducting all manner of inspection on them, regardless of who owns and administrates such assets, rests with the Ministry of Culture and



- Tourism.” (Domestic Law on the Preservation of Cultural and Natural Assets, Article 10);
9. No evidence has been presented to the Tribunal that the Higher Board of Preservation of Cultural and Natural Assets has fulfilled its duty to identify alternative locations for this project; nor is it clear if the Ministry of Culture and Tourism has undertaken any activity to protect the cultural and natural assets of the region, although it is evident that the construction of the dam would result in the destruction of natural, historical, and cultural treasures of the region;
 10. Local societies evolve on the basis of their dependence on the cultural and social assets as well as the biological resources and the management thereof, developing adequate practices for the conservation of the biodiversity and sustainable use of its components (Chapter II, Article 4 and 5 of the Convention concerning the Protection of the World Cultural and Natural Heritage of the World Heritage Committee of the UNESCO, 1972; World Cultural Convention on Biological Diversity, 1992);
 11. The continued delays in the implementation of the Ilisu dam and hydroelectric power plant project have occasioned serious damage to the character of the community, its living conditions, economic development and the future of the inhabitants of Hasankeyf and other communities;
 12. The Ilisu project will have significant impacts on the ecosystem and the hydrological cycle, eliminating the aquatic and terrestrial biodiversity as well as the livelihood of tens of thousands of people;
 13. The unique regional historical, archaeological and cultural heritage of Hasankeyf will be destroyed;
 14. No consultation processes were implemented and the affected communities’ concerns remain unattended, reflecting a lack of consideration of the Constitutional mandate to respect human rights (Article 2);
 15. Hasankeyf and its surroundings offer ample alternatives for designing a development strategy that could take advantage of its unique cultural and historic character; the alternative strategy would offer a sustainable diversified productive base that would create additional sources of income;
 16. It is a purpose of the proposed dam to produce electricity and there are a number of more economically viable and ecologically sound alternatives for serving the same purpose;
 17. The present domestic High Voltage power transmission line system suffers transport losses of 21-23 % (by official figures), while the equivalent OECD average is 6-15 %;
 18. The Hasankeyf region has a geothermal energy potential equivalent to approximately 3.600 MW, three times the potential of the Ilisu Power Plant;
 19. The Southeastern Anatolian Region of Turkey offers very suitable wind energy production potential, that however has not been researched yet.



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



RESOLVES:

1. To declare that the project is economically, ecologically and culturally not viable.
2. To call upon the Government to annul the Ilisu dam and hydroelectric power station project in order to preserve Hasankeyf and its surroundings. This would bring the Government into compliance with Article 63 of the Constitution and the Convention concerning the Protection of the World Cultural and Natural Heritage of the World Heritage Committee of the UNESCO, 1972, that Turkey is a party to.

RECOMMENDS:

1. The Government to fulfill its commitments under the EU accession process to harmonize its national laws on the environment, human rights and cultural heritage with the EU's *acquis communautaire*;
2. The Ministry of Culture and Tourism to take steps to nominate Hasankeyf for the UNESCO World Cultural Heritage List;
3. The domestic authorities to realize, in a consultation process with the local population, a social-economic development program taking advantage of the unique archaeological assets of Hasankeyf and its environment;
4. The Government to examine and make use of the possibilities for reducing the present severe electricity losses within the power transmission system, thereby saving at least three times the amount of electricity planned to be produced by the Ilisu Power Station;
5. The Government to examine and make use of the geothermal energy and the ample wind energy production potential, thereby contributing to the economic development of the region and contributing to the attainment of the CO2 reduction goals required by the United Nations Convention on Climate Change (Kyoto Protocol) Turkey is party to;
6. The Government orders a comprehensive ecological assessment of the Southeast Anatolian Region and to subsequently design a program for the region to appropriately and effectively protect flora and fauna and their habitat.
7. The authorities to respect the freedom of movement of its citizens and to allow free and open access of media and civil society to the project site.

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 Ilisu, Turkey.

