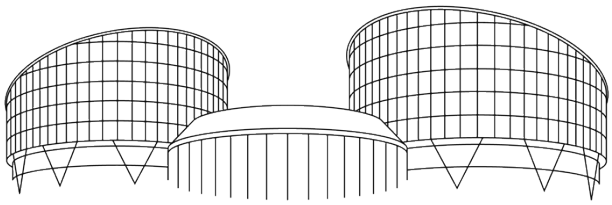

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42316/04
by Halil ALTIN and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 11 May 2010 as a Chamber composed of:

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges*,
and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 2 September 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Halil Altın, Mr Haydar Sadi Halat, Mr Hüseyin Özer, Mr Coşkun Özkaya, Mr Şevket Tamer Turan, Mr Rıza Aycan, Mr Hadi Halat and Ms Aygül Halat, are Turkish nationals who were born in 1953, 1954, 1953, 1948, 1954, 1959, 1957 and 1959, respectively, and live in Ankara. They were represented before the Court by Mr M. Erdoğan, a

lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants were the founders and members of a co-operative by the name of S.S. Gölbaşı Bizim Yeşilkent Konut Yapı Kooperatifi ("the co-operative").

In 1991 the General Directorate of National Roads and Highways (*Devlet Karayolları Genel Müdürlüğü*) ("the General Directorate") expropriated a plot of land partially owned by the co-operative (plot no. 339), located in the village of Hacılar, in the Höyük district of Gölbaşı, Ankara.

On 17 January 1992 the co-operative brought an action before the Gölbaşı Ankara Civil Court seeking additional compensation. On 4 November 1992 the Gölbaşı Ankara Civil Court awarded the co-operative additional compensation of 129,608,430 Turkish liras (TRL), plus interest.

On an unspecified date in 1992, the applicants allegedly sought the enforcement of this judgment before the Ankara 6th Enforcement Office. They have not, however, submitted any supporting documents regarding these enforcement proceedings, which they blamed on the destruction of the archives of the enforcement office.

On 8 March 1993 the Court of Cassation quashed the judgment of the first-instance court.

On 29 September 1994 the Gölbaşı Ankara Civil Court re-examined the case and awarded the co-operative additional compensation of TRL 73,108,633, plus interest.

On 6 March 1995 the Court of Cassation upheld the judgment of the Gölbaşı Ankara Civil Court with a minor amendment (*düzelterek onama*) and awarded the co-operative TRL 72,348,000 instead of the amount previously calculated by the first-instance court.

On 22 December 1997 the money owed to the co-operative, together with statutory interest, was deposited with the General Directorate's accounting office (a total of TRL 218,848,000).

By a letter dated 3 March 1998 the co-operative's lawyer was invited to apply to the accounting office of the General Directorate to collect the additional compensation.

In 1999 the co-operative was liquidated.

On 8 July 2004 the applicants sent a warning letter to the General Directorate through a notary public, requesting payment of the compensation awarded by the Gölbaşı Ankara Civil Court, together with interest.

On 27 July 2004 the General Directorate replied that they could not be held responsible for the non-payment as the co-operative had failed to collect the compensation despite the official letter dated 3 March 1998 inviting them to do so. In this letter, they also informed the applicants that

the payment would be effected upon their application to the accounting office.

According to the information in the case file, the applicants have still not obtained the additional compensation awarded by the Gölbaşı Ankara Civil Court.

COMPLAINTS

The applicants complained under Article 1 of Protocol No. 1 of the non-enforcement of the judgment of the Gölbaşı Ankara Civil Court, which had also led to a reduction in the value of the additional compensation awarded by the domestic court in view of the high inflation rates.

THE LAW

The applicants complained under Article 1 of Protocol No. 1 that the domestic court's judgment awarding them additional expropriation compensation remained unenforced, which in turn inflicted a financial loss on them over the years on account of the high inflation rates.

The Court considers at the outset that the alleged financial loss sustained is merely a consequence of non-enforcement and does not *per se* raise a separate complaint in the present circumstances.

The Government contested the applicants' allegations regarding non-enforcement of the domestic judgment, and asked the Court to declare the application inadmissible for lack of victim status under Article 34 of the Convention. They argued in this regard that the additional expropriation compensation had been duly deposited at the accounting office of the General Directorate of National Roads and Highways. The applicants, however, never applied to collect this money despite having been invited to do so, not even after the letter of 27 July 2004, which reiterated that the payment would be made upon their application. Moreover, the Government contended that, contrary to their allegations, the applicants never brought enforcement proceedings against the administration to obtain their compensation.

The applicants argued in reply that they had indeed brought enforcement proceedings against the General Directorate in 1992 before the Ankara 6th Enforcement Office. The administration, however, made no payment to the enforcement office. The applicants moreover alleged that they never received the administration's letter of 1998, inviting them to collect the money at the accounting office, as it had been sent to the wrong address. They argued, in any event, that they could not be expected to apply

to the accounting office to receive their money as the only proper place of payment was the enforcement office.

The Court observes in the first place that the Gölbaşı Ankara Civil Court's judgment remains unenforced to date. The Court, however, also notes that while the enforcement of a final, binding judicial decision is the responsibility of the State and a person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings, the successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt (*Burdov v. Russia (no. 2)*, no. 33509/04, §§ 68-69, 15 January 2009). It is, therefore, essential to establish in the instant case whether the relevant State authorities took the necessary initiatives to comply with the domestic judgment and, if so, whether the applicants took the required steps to receive their compensation.

The Court notes in this connection that the additional compensation was made available to the applicants at the General Directorate's accounting office, albeit with a delay of approximately two and a half years, and the co-operative was informed of this in 1998. Even assuming that the applicants never received this letter as they allege, the Court finds it curious that they did not demand their compensation until 2004, almost ten years after the judgment became final. Furthermore, even when they received another invitation in the letter of 27 July 2004 to collect the compensation, which they do not deny having received, they took no further steps to obtain the money but instead brought this issue before the Court. The fact that the applicants might have initiated enforcement proceedings back in 1992, which remains contested by the Government and is not satisfactorily documented by the applicants, is not on its own sufficient to hold that they have taken all steps expected of them to recover the judgment debt, particularly because they do not appear to have taken any action for twelve years after the purported initiation of the enforcement proceedings. The Court similarly cannot give heed to the applicants' argument that the judgment debt would be only discharged in the instant case by payment via the enforcement office, particularly in the absence of an argument that seeking the compensation from the General Directorate itself instead would somehow impose an onerous burden on them.

In the light of the above circumstances, the Court concludes that the applicants have not shown sufficient diligence in order to obtain the payment in question in due time.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Sally Dollé Registrar	Françoise Tulkens President