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

SECOND SECTION

DECISION

Application no. 2715/06
Ahmet AKSU against Turkey
and 8 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 7 November 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Paul Lemmens,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

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

1. The applicants are Turkish nationals. Their names, birth dates, and places of residence appear in the appendix.

2. The applicants were represented by Mr Y. Uysal, a lawyer practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the case

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

4. The applicants all owned plots of land. On various dates between 1990 and 1996, the General Directorate of National Roads and

Highways (*Karayolları Genel Müdürlüğü*, hereinafter referred to as "the Directorate") decided to expropriate the applicants' plots of land. However the applicants were not officially notified of the expropriation decisions.

5. In the meantime, on different dates between 1989 and 1999, the Directorate started to use the plots of land for construction of motorway.

6. From 1 August 2003 onwards, the applicants brought actions before the İzmir Civil Court of First Instance against the Directorate and sought compensation for *de facto* expropriation of their land.

7. On various dates between 2003 and 2004, the İzmir Civil Court of First Instance found in line with the applicants and awarded them compensation, plus interest at the statutory rate. The Directorate appealed. Subsequently, the judgments of the first instance court were upheld by the Court of Cassation and they thus became final on various dates between 2004 and 2006.

8. Following notification of final decisions delivered by the İzmir Civil Court of First Instance, the applicants submitted the copies of those decisions to the İzmir Enforcement Office and initiated enforcement proceedings. They further asked the enforcement office to apply the maximum interest rate to their compensation awards pursuant to Article 46 of the Constitution. However the Directorate filed objections against the applicants' requests for the application of the maximum interest rate to their compensation awards. The İzmir Enforcement Court accepted the Directorate's objections and ruled that the statutory interest rate would be applied to the applicants' compensation awards. On different dates between 2006 and 2010, the applicants' appeals were rejected by the Court of Cassation and the İzmir Enforcement Court's rulings thus became final.

9. On various dates between 1 September 2006 and 31 May 2007, the Directorate paid the compensation awards in full, together with the statutory interest, to the applicants.

10. The details of the applications are set out in the attached table.

B. Relevant domestic law

11. The relevant parts of Article 46 of the Constitution, as amended on 3 October 2001, read as follows:

> "Article 46:
>
> ...
>
> The compensation for expropriation and the amount regarding its increase rendered by a final judgment shall be paid in cash and in advance. ...
>
> ...
>
> An interest equivalent to the highest interest paid on public claims shall apply to the ... expropriation compensations which have not been paid for any reason."

12. Section 32(1) of the Enforcement and Bankruptcy Act (Law no. 2004) provides that the enforcement office will issue an enforcement order to the debtor following the submission of a court judgment concerning any money debt. The same section further prescribes that the amount of money determined by the court judgment shall be specified in the enforcement order.

COMPLAINT

13. Invoking Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention the applicants complained that the domestic courts' decisions to apply the statutory rate of default interest instead of the maximum rate applicable to public debts, as defined in Article 46 of the Constitution, had breached their rights to a fair trial and to peaceful enjoyment of possessions. They alleged that this practice had led to reductions in the amounts of compensation payable to them.

THE LAW

14. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

15. The applicants complained that the non-application of the maximum interest rate as provided in Article 46 of the Constitution to the compensation awards for their *de facto* expropriated land had caused them significant pecuniary losses. They invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention in this respect.

16. The Government contested that argument.

17. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter where it has been introduced within six months from date of the final decision in the process of exhaustion of domestic remedies. It is not open to the Court to set aside the application of the six-month rule even in the absence of a relevant objection from the Government (see *Belaousof and Others v. Greece*, no. 66296/01, § 38, 27 May 2004; *Miroshnik v. Ukraine*, no. 75804/01, § 55, 27 November 2008; and *Toner v. the United Kingdom* (dec.), no. 8195/08, 15 February 2011).

18. In the present cases, the applicants complained about the low interest rate applied to their compensation awards. The Court observes that the interest rate applicable to the applicants' compensation awards for *de facto* expropriation of their property was determined by the İzmir Civil Court of First Instance and the proceedings before that court came to end with the

Court of Cassation's decisions, the details of which appear in the appendix. The Court therefore concludes that the final decisions regarding the applicants' complaint were those of the Court of Cassation given on appeal against judgments of the İzmir Civil Court of First Instance (see, *mutadis mutandis*, *Sarıca and Dilaver v. Turkey*, no. 11765/05, §§ 31-32, 27 May 2010). However, the present applications were lodged with the Court more than six months after the dates on which the respective final decisions had been served on the applicants (see *Şat v. Turkey*, no. 34993/05, §§ 16-18, 14 June 2011, and *Gerçek and Others v. Turkey*, no. 54223/08, §§ 16-18, 13 December 2011).

19. In view of the above, the Court concludes that the applications have been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 30 November 2017.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President

APPENDIX

Application no. and date of introduction	**Applicant's name, date of birth and place of residence**	**Date and no. of the İzmir Civil Court of First Instance's judgment**	**Date and no. of the Court of Cassation's decision**	**Date of notification of the final decision**
2715/06 27 December 2005	Ahmet Aksu 12.06.1962 İstanbul	06.07.2004 E.2004/83 K.2004/421	20.04.2005 E.2005/2362 K.2005/4696	16 May 2005
14936/06 21 March 2006	Özgül Bike Tezcan (Yücalan) 05.07.1968 Konya	20.05.2004 E.2004/41 K.2004/213	10.02.2005 E.2004/11051 K.2005/996	24 February 2005
29653/06 3 July 2006	Birsen Erkut 04.12.1948 Ankara Nihan Erkut 06.06.1979 Ankara	01.07.2004 E.2003/1005 K.2004/301	20.04.2005 E.2005/2257 K.2005/4697	27 May 2005
29661/06 3 July 2006	Abide Güleç 10.06.1940 İzmir Ayfer Saygı 01.03.1962 İzmir Esma Gülfer Tekin 20.09.1964 İzmir Ali Rıza Güleç 29.08.1967 İzmir Zafer Güleç 05.01.1960 İzmir	02.07.2004 E.2004/17 K.2004/312	20.04.2005 E.2005/2258 K.2005/4705	27 May 2005
29673/06 3 July 2006	Siyami Başara 01.01.1930 Istanbul	01.07.2004 E.2003/1006 K.2004/302	20.04.2005 E.2005/2259 K.2005/4701	27 May 2005

29681/06 3 July 2006	Murat Sabancı 03.03.1949 İzmir	17.11.2003 E.2003/732 K.2003/954	27.12.2004 E.2004/11737 K.2004/13005	17 January 2005
44042/07 20 September 2007	Cerhan İlhan Ağan 10.03.1937 İzmir	21.05.2004 E.2004/82 K.2004/307	24.02.2005 E.2004/11404 K.2005/1722	31 March 2005
52060/07 10 October 2007	Muazzez İlter 01.09.1950 Ankara Cevdet İlter 08.10.1951 Ankara Edibe İlter 01.12.1931 Ankara	24.12.2004 E.2004/304 K.2004/687	02.03.2006 E.2006/1311 K.2006/2192	21 March 2006
53315/08 20 September 2005	Selma Yıldırım 03.08.1955 Bursa Funda Kutay 17.06.1977 Bursa Filiz Yıldırım 21.07.1978 Bursa Volkan Yıldırım 23.08.1980 Bursa Hakan Yıldırım 10.01.1982 Bursa	21.05.2004 E.2004/143 K.2004/308	24.02.2005 E.2004/11405 K.2005/1724	17 March 2005