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

SECOND SECTION

DECISION

Application no. 34127/06
Turgut AKYAL
against Turkey

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 application lodged on 3 August 2006,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Turgut Akyal, is a Turkish national, who was born in 1948 and lives in Antalya. He was represented before the Court by Mr C. Günal, a lawyer practising in Ankara.

2. 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. Following a dispute arising out of a construction contract, on 10 March 1998 the applicant initiated proceedings before the Antalya Civil Court of First Instance. He alleged that the construction contract that he had signed with the defendant parties to build an apartment block had been

unlawfully revoked. On 24 June 2002 the first instance court found in line with the applicant's request and awarded him compensation.

5. On 14 April 2003 the Court of Cassation quashed the judgment of the first instance court, holding that the trial court had failed in the evaluation of the facts and in applying domestic law.

6. On 5 April 2004, following the reasoning set out in the decision of the Court of Cassation, the first instance court dismissed the applicant's claim.

7. On 25 April 2005 and 30 January 2006, respectively, the applicant's appeal and rectification requests were rejected. The applicant learned about the final decision on 21 February 2006.

B. Relevant domestic law

8. A description of the relevant domestic law may be found in *Turgut and Others v. Turkey* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013).

COMPLAINTS

9. The applicant complained under Article 6 of the Convention that the length of the proceedings had been excessive.

10. The applicant further complained under Article 6 of the Convention about the unfairness of the proceedings and alleged that the domestic courts had erred in their evaluation of the facts of the case.

THE LAW

11. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

12. The Government noted that pursuant to Law no. 6384 a Compensation Commission had been established to deal with applications concerning the length of proceedings and the non-execution of judgments. They maintained that the applicant had not exhausted domestic remedies, as they had not made any application to the Compensation Commission: this ground had also been recognised by the Court in its decision in the case of of *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013).

13. The Court observes that, as pointed out by the Government, a domestic remedy has been established in Turkey following the application

of the pilot judgment procedure in the case f *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Turgut and Others*, cited above, the Court declared a new application inadmissible on the ground that the applicants had failed to exhaust domestic remedies, that is to say the new remedy. In so doing, the Court considered in particular that this new remedy was a priori accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

14. The Court notes that in its judgment in the case of *Ümmühan Kaplan* (cited above, § 77) it stressed that it could nevertheless examine, under its normal procedure, applications of this type which had already been communicated to the Government.

15. However, taking account of the Government's preliminary objection with regard to the applicant's failure to make use of the new domestic remedy established by Law no. 6384, the Court reiterates its conclusion in the case of *Turgut and Others* (cited above). It therefore concludes that the complaint of the excessive length of the civil proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

16. The applicant further complained about the fairness of the domestic proceedings. However, in the light of the material in its possession and in so far as the matters complained of are within its competence, the Court finds that this complaints does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with the Article 35 § 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President