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

SECOND SECTION

DECISION

Application no. 1372/03
Neriman BELİCE and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 October 2015 as a Committee composed of:

Nebojša Vučinić, *President,*
Egidijus Kūris,
Stéphanie Mourou-Vikström, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 September 2002,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the case

2. On 4 January 1991 the General Directorate of National Roads and Highways (Devlet Karayolları Genel Müdürlüğü) ("the General Directorate") expropriated nine plots of land belonging to the applicants.

3. On 6 October 1999, after the finalisation of the proceedings concerning an ownership dispute over the impugned plots between the applicants and a third party, the expropriation decision was served on the applicants and the expropriation procedure thus became final. According to the assessment made by the General Directorate, the applicants were to be paid 445,667,600 Turkish liras (TRL) (approximately 882 euros (EUR)) as expropriation compensation.

4. On 3 November 1999 the applicants brought an action before the Erzin Civil Court seeking additional expropriation compensation. After

consulting three expert reports, on 5 June 2001 the court awarded the applicants additional compensation of TRL 53,706,077,000 (approximately EUR 55,700) plus interest at the statutory rate, running from 5 November 1999.

5. On 23 January 2002 the Court of Cassation upheld the judgment of the first-instance court. This decision was served on the applicants in February 2002.

6. The applicants subsequently brought execution proceedings against the General Directorate before the İskenderun 2nd Execution Office to recover the amount awarded by the Erzin Civil Court (file no. 2002/364).

7. On 26 June 2002 the administration paid the applicants TRL 145,394,780,000 (approximately EUR 95,447) in additional compensation, together with interest. It appears, however, that the initial expropriation compensation of TRL 445,667,600 remained unpaid.

8. In the meantime, in April 2002 the applicants initiated another set of execution proceedings against the General Directorate before the İskenderun 2nd Execution Office in relation to the initial expropriation compensation which the latter had failed to pay (file no. 2002/633).

9. On 25 April 2002 the General Directorate objected to the execution proceedings, arguing that the impugned money was being held in a blocked account at the central bank due to the applicants' failure to transfer their parcels at the title deed register (*ferağ*).

10. On 29 April 2002 the İskenderun Execution Office stopped the execution proceedings on the basis of the General Directorate's objection and on 6 May 2002 the applicants brought an action before the İskenderun Execution Court to challenge the objection.

11. On 15 July 2002 the execution court rejected the General Directorate's objection. This court held, inter alia, that the administration was liable to pay the expropriation compensation in cash, at once without any reductions or limitations, that the applicants could not be held accountable for the failure of the transfer transactions and that the administration had the authority to complete the procedures before the title deed register unilaterally.

12. On 3 March 2003 the Court of Cassation quashed the judgment of the execution court. It held that the question whether the expropriation compensation could be rightfully claimed and collected was one that had to be resolved before civil courts and that the execution proceedings could thus not proceed without a court decision attesting the administration's debt.

13. On 17 October 2003 the Court of Cassation rejected the applicants' rectification request.

14. On 16 September 2004 the İskenderun Execution Court dismissed the applicants' request in accordance with the Court of Cassation's decision of 3 March 2003. The applicants did not appeal against this judgment. Nor

did they commence proceedings before the civil courts to claim the initial expropriation compensation as indicated by the Court of Cassation.

B. Relevant domestic law and practice

15. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 19) may be found in *Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013; *Demiroğlu v. Turkey* (dec.), no. 56125/10, 4 June 2013; and *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, 27 May 2014.

COMPLAINT

16. The applicants complained under Article 1 of Protocol No. 1 of the non-payment of the initial expropriation compensation.

THE LAW

17. The applicants complained under Article 1 of Protocol No. 1 that the General Directorate had failed to discharge the payment of the expropriation compensation since 1999.

18. The Government noted that pursuant to Law no. 6384 a new Compensation Commission had been established to deal with applications concerning the length of proceedings and the non-execution of judgments. They further noted that the competence of the Compensation Commission was subsequently enlarged by a decree adopted on 16 March 2014 to examine complaints relating to, among other things, the alleged loss of value of the amount of the expropriation compensation due to the effects of inflation and the length of the proceedings. Accordingly, they maintained that the applicant had not exhausted domestic remedies, as he had not made any application to the Compensation Commission.

19. The Court observes that, as pointed out by the Government, a new domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Yıldız and Yanak v. Turkey* ((dec.), no. 44013/07, 27 May 2014), the Court declared an 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 depreciation of awards in expropriation cases.

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

21. However, taking into account 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* ((dec.), no. 4860/09, 26 March 2013).

22. In view of the above, the Court concludes that the application should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares inadmissible the remainder of the application.

Done in English and notified in writing on 5 November 2015.

Abel Campos
Deputy Registrar

Nebojša Vučinić
President

APPENDIX

-Applicants' names and dates of birth-

1. Neriman Belice (1937)
2. Fatma Doğan (1935)
3. Melek Karan (1955)
4. Mustafa Doğan (1957)
5. Halime Doğan (1960)
6. Şehriban Doğan (1969)
7. Mustafa Karan (1948)
8. Fatma Arat (1948)
9. Hüseyin Karan (1956)
10. Ahmet Karan (1950)
11. Sıdıka Atav (unknown)
12. Hasan Karan (1953)
13. Ali Karan (1959)
14. Sadık Karan (1962)
15. Nimet Kurt (Karan) (1965)
16. Hatice Karan (1964)
17. Mustafa Karan (1954)
18. Dursun Belice (1966)
19. Hüseyin Karan (1958)
20. Sıdıka Karan (1956)
21. Necla Karan (1935)
22. Afet Bellioğlu (1955)
23. Fatma Ayyıldız (1960)
24. Taylan Karan (1969)
25. Kenan Ulaş Karan (1976)
26. Kamile Karan (1918)
27. Sadık Karan (1942)