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

SECOND SECTION

DECISION

Application no. 23591/09
Necdet CEYHAN and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 November 2020 as a Committee composed of:

Valeriu Griţco, *President,*
Branko Lubarda,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 April 2009,

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. A list of the applicants is set out in the appendix.

2. Four of the applicants, Mr Nevzat Arısüt, Mr Kerim Arısüt, Ms Fatma Arısüt and Ms Neriman Ceyhan, died after their application to the Court. On 19 April 2011 and on 30 May 2019, respectively, the applicants' lawyer informed the Court that the heirs of the deceased applicants, Ms Vildan Arısüt, Mr Salih Arısüt, Mr Ali Sercan Arısüt, Ms Zehra Arısüt, Ms Nilüfer Arısüt (Lermi), Ms Nebiha Yavuzyılmaz, Mr Necdet Ceyhan and Ms Ayşe Ceyhan, wished to pursue the case before the Court.

3. The applicants were represented before the Court by Mr M. S. Gemalmaz, a lawyer practising in Istanbul.

4. The Turkish Government ("the Government") were represented by their Agent.

5. On 3 October 2018 the Court gave notice to the Government of the complaint concerning the decrease in the value of the non-expropriated part of the applicants' land. The remainder of the application was declared inadmissible.

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

7. On 11 December 1992 the General Directorate of Post, Telegraph and Telephone (*Posta, Telgraf ve Telefon Genel Müdürlüğü* - hereinafter "the PTT") decided to expropriate part of the applicants' land in the Bağcılar district of Istanbul for the construction of a telephone exchange building.

8. On 1 March 1993 expropriation compensation of 320,880,000 former Turkish liras (TRL) was deposited in a bank account in the applicants' name.

9. On 31 March 1993 the applicants lodged an action, requesting an increase in the expropriation compensation.

10. On 29 November 2001 the Bağcılar Civil Court of General Jurisdiction carried out an on-site inspection in the presence of a panel of experts. In its report of 12 September 2002, the panel of experts calculated the value of the expropriated part of the property at TRL 1,422,000,000. The experts further concluded that there had been no change in the value of the non-expropriated part of the property as that part was still available for construction.

11. Following the PTT's objection to the first expert report, on 22 October 2002 the Bağcılar Civil Court carried out a fresh inspection of the property with a different panel of experts. By a report of 22 November 2002 the experts reached the same conclusion as the first panel, both regarding the value of the expropriated part of the property and the lack of any change in the value of the remaining part.

12. The applicants did not raise any objection to the expert reports. At the hearings on 17 December 2002 and 6 February 2003 the lawyer of some of the applicants requested the domestic court to conclude the case as both expert reports confirmed each other's conclusion. The PTT objected to the reports.

13. On 6 February 2003 the Bağcılar Civil Court awarded the applicants TRL 1,101,120,000 in addition to the amount which had already been paid to them, in line with the expert reports. The court also ruled that statutory interest should be applied to the amount from 31 March 1993, the date when the applicants had initiated the proceedings.

14. Following an appeal filed by the PTT, on 12 June 2003 the Court of Cassation quashed the judgment, finding that a contribution to planning costs of 35% (*düzenleme ortaklık payı*) should have been deducted from the total amount of the expropriation compensation.

15. On 17 April 2007 the Bağcılar Civil Court complied with the Court of Cassation's decision and awarded the applicants 603 Turkish liras

(TRY)[1] on the basis of two additional expert reports it had obtained, plus statutory interest starting from the date the case had been lodged.

16. The applicants appealed, arguing that the amount awarded to them had been insufficient in view of inflation rates over the fourteen years that had passed since they had initiated the proceedings.

17. On 20 March 2008 the Court of Cassation upheld the judgment.

18. The applicants requested the rectification of the judgment, once again noting the loss in value of the compensation on account of the passage of time and inflation.

19. On 7 October 2008 the Court of Cassation rejected the applicants' rectification request on the ground that the value of the case's subject matter had been less than TRY 7,090, the required threshold specified in the Code of Civil Procedure.

COMPLAINT

20. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had not received the full market value of their expropriated property on account of the domestic authorities' failure to take account of the decrease in the value of their remaining land.

THE LAW

A. The Government's preliminary objection

21. The Government argued that the case should be struck out of the Court's list of cases on account of the death of certain applicants and their heirs' failure to indicate their intention to pursue the case.

22. The applicants objected to the Government's argument. In that connection, they referred to their letters of 19 April 2011 and 30 May 2019, by which the heirs of the deceased applicants had expressed their intention to pursue the proceedings.

23. The Court reiterates that where the applicant has died after the application was lodged, it has accepted that the next of kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014, and the cases cited therein).

24. The Court notes that the heirs of the deceased applicants expressed their wishes to pursue the proceedings by their letters dated 19 April 2011 and 30 May 2019 (see paragraph 2 above). They also provided evidence of

[1] On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000.

their status as direct heirs of the deceased applicants. The Court therefore rejects the Government's request for the case to be struck out (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000 XII).

B. Article 1 of Protocol No. 1

25. The Government argued that the applicants had failed to exhaust the domestic remedies as they had not raised their complaint about the decrease in the value of the non-expropriated part of their land while lodging their case before the Bağcılar Civil Court. Moreover, they had not objected to the expert reports submitted during the course of the proceedings. Instead, at the hearing on 17 December 2002 the applicants' lawyer had noted that both expert reports had reached the same conclusion and requested the domestic court to adopt a judgment. The Government also pointed out that the applicants had not raised the matter in their appeal. In that connection, they maintained that in accordance with the principle of *non ultra petita*, neither the Bağcılar Civil Court nor the Court of Cassation could have taken account of any matter which had not been raised before them. Lastly, they submitted three decisions delivered by the Court of Cassation in separate proceedings, wherein the appellate court took account of the matter when it had been raised as a ground for appeal and had quashed first-instance courts' judgments for failure to award compensation for the decrease in value of the non-expropriated parts of lands.

26. The applicants argued that it had been unnecessary for them to explicitly request compensation for the decrease in value of the remaining part of the property, since it had been the duty of the courts to take into account whether there had been a change in that value, as derived from the wording of section 12 of the Expropriation Act. In that respect, the applicants noted that the experts had indeed made an assessment of whether there had been a decrease in the value of the non-expropriated part of the property and concluded that there had been none. In support of their arguments the applicants submitted two decisions of the Court of Cassation, wherein the appellate court had found that the first-instance courts should have made an assessment *ex officio* as to whether there had been a change in the value of the non-expropriated part of property and should award compensation accordingly, even if there had been no explicit request for the assessment of that issue.

As for their failure to object to the expert reports and to raise the matter in their appeal, the applicants argued that they could not be expected to raise an argument which had not been considered by the Court of Cassation in its previous decision, as doing so would merely prolong the proceedings. Referring to the Court's judgment in the case of *Kozacıoğlu v. Turkey* (no. 2334/03 [GC], §§ 40-41, 19 February 2009), the applicants stated that

the rule of exhaustion of domestic remedies should be applied with some degree of flexibility and without excessive formalism.

27. The Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (see *Micallef v. Malta* [GC], no. 17056/06, § 55, ECHR 2009).

28. In the present case, the Court observes that although the applicants did not request the determination of the decrease in the non-expropriated part of the property when they lodged their case for increased expropriation compensation, the Bağcılar Civil Court endorsed the expert reports which concluded that there had been no such decrease. Accordingly, the domestic court assessed the matter of its own motion, in line with the case-law of the Court of Cassation submitted by the applicants. Nevertheless, the Court notes that the applicants did not object to the finding of the expert reports during the course of the proceedings. Nor did they file an appeal against the first-instance court's judgment of 6 February 2003, which relied on the said reports. Moreover, they failed to raise the matter when they appealed against the Civil Court's subsequent judgment of 17 April 2007.

29. The Court does not consider relevant the applicants' contention that raising an argument before the Court of Cassation, which had not been taken into account by that court in its previous examination of the case, would yield no result but to prolong the proceedings, since, as noted above, the applicants did not file an appeal and raise the matter before the appellate court following the first judgment of the Civil Court. Furthermore, it reiterates that mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Vučković and Others*, cited above, §§ 74 and 84, and *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 99, 20 March 2018).

30. In view of the foregoing, the Court allows the Government's objection and rejects the application for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 November 2020.

Hasan Bakırcı Deputy Registrar	Valeriu Griţco President

Appendix

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Necdet CEYHAN	01/08/1950	Turkish	Balıkesir
2	Alper ARISÜT	08/11/1977	Turkish	Istanbul
3	Emin ARISÜT	03/05/1981	Turkish	Istanbul
4	Emine ARISÜT	01/01/1937	Turkish	Istanbul
5	Fatma ARISÜT	01/01/1930	Turkish	Istanbul
6	Hüseyin ARISÜT	01/02/1962	Turkish	Istanbul
7	Kerim ARISÜT	07/05/1944	Turkish	Istanbul
8	Nevzat ARISÜT	15/10/1950	Turkish	Istanbul
9	Sedat ARISÜT	15/11/1959	Turkish	Istanbul
10	Vedat ARISÜT	25/02/1962	Turkish	Istanbul
11	Ayşe CEYHAN	10/07/1953	Turkish	Balıkesir
12	Neriman CEYHAN	20/01/1944	Turkish	Balıkesir
13	Ayşe GEÇİM	01/06/1965	Turkish	Istanbul
14	Meltem GÜLLÜPINAR	15/05/1983	Turkish	Istanbul
15	Aysel KINSUN	09/11/1949	Turkish	Istanbul
16	Nebiha YAVUZYILMAZ	04/01/1949	Turkish	Istanbul