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

SECOND SECTION

DECISION

Application no. 3570/09
Ayfer DOĞAN and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 8 November 2016 as a Committee composed of:

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

Having regard to the above application lodged on 10 January 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. The applicants, Ms Ayfer Doğan, Ms Nezahat Doğan, Mr Turgay Doğan and Mr İsmail Doğan are Turkish nationals. They were born in 1965, 1943, 1977 and 1967 respectively. They were represented before the Court by Ms A. Gürleyen, a lawyer practising in İzmit.

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. In 1968 İsa Doğan, the applicants' predecessor, purchased a plot of land (no. 73, parcel no. 1609) in Pelitli Village, in the Gebze District of Kocaeli.

5. In 1987, following a cadastral survey conducted by the forest administration, the applicants' land was classified as part of the public forest estate and an annotation was made in the land register indicating the land's classification.

6. On 26 September 1995 the applicants instituted proceedings before the Gebze Civil Court of First Instance, seeking the annulment of the outcomes of the cadastral survey.

7. On 11 May 2007 the Gebze Civil Court of First Instance dismissed the applicants' case, holding that the applicants' land had the characteristics of public forest and the cadastral survey was thus in conformity with law. The appeal and rectification requests of the applicants were subsequently dismissed by the Court of Cassation and the decision became final on 30 June 2008. The final decision was notified to the applicants' representative on 21 July 2008.

B. Relevant domestic law and practice

8. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 11) may be found in *Alemdar and Others v. Turkey* (dec.), no. 9944/06, 7 June 2016.

COMPLAINT

9. Relying on Article 1 of Protocol No. 1 to the Convention the applicants complained that although they had valid title deeds, they could not use or dispose of their property. According to the applicants, they were deprived of their property without receiving any compensation.

THE LAW

10. The applicants maintained that the designation of their land as part of the public forest and the annotation made in the land register constituted a disproportionate individual burden and thus breached their right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

11. The Government noted that pursuant to Law no. 6384 a new Compensation Commission had been established in Turkey to deal with applications concerning the length of proceedings, the delayed execution of judgments and the non-execution of judgments. They further noted that the competence of the Compensation Commission was subsequently enlarged by decrees adopted on 16 March 2014 and 9 March 2016 to examine

complaints relating to, among other things, the alleged breaches of the right to peaceful enjoyment of possessions on account of the fact that land has been classified in cadastral surveys as part of the public forest estate. Accordingly, they maintained that the applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission.

12. 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 *Alemdar and Others v. Turkey* ((dec.), no. 9944/06, 7 June 2016), the Court declared the 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 classification of the applicants' land as part of the public forest area in cadastral surveys.

13. 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.

14. However, taking into account the Government's preliminary objection with regard to the applicants' failure to make use of the new domestic remedy established by Law no. 6384, the Court reiterates its conclusion in the case of *Alemdar and Others*, cited above.

15. In view of the above, the Court concludes that the applicants' complaint 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 the application inadmissible.

Done in English and notified in writing on 1 December 2016.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President