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

SECOND SECTION

DECISION

Application no. 13155/05
Mustafa EMREM and Mehmet DURAN
against Turkey

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

Paul Lemmens, *President,*
Ksenija Turković,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 March 2005,

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, Mr Mustafa Emrem and Mr Mehmet Duran, are Turkish nationals, who were both born in 1953 and live in Kütahya. They were represented before the Court by Mr İ. Durmaz, a lawyer practising in Kütahya. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the case

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

3. In 2001, the Dumlupınar University expropriated a plot of land belonging to the applicants (no. 6/205 in Civli Village, Kütahya Province). Subsequently, pursuant to section 10 of Law no. 2942 proceedings were

initiated before the Kütahya Civil Court of General Jurisdiction to determine the amount of compensation that should be awarded to the applicants.

4. Based on expert reports, on 18 June 2003 the Kütahya Civil Court rendered its judgment and determined the amount of compensation to be paid to the applicants for the expropriation of their land. On 17 March 2004 the Court of Cassation upheld the judgment of the first instance court. No interest was applied to the amount paid.

B. Relevant domestic law

5. A description of the domestic law regarding the new remedy introduced by Law no. 6384 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.

COMPLAINTS

6. Relying on Article 1 of Protocol No. 1, the applicants mainly complained that the compensation that had been awarded for the expropriation of their land had depreciated considerably in value due to the prolonged procedure, and that the domestic courts had failed to apply the highest interest rate for State debts laid down in Article 46 of the Constitution, in breach of their right to property. The applicants also complained that the domestic courts had erred in the classification of the type of their land and the calculation of the awards.

THE LAW

A. Complaint regarding the alleged financial loss suffered by the applicants

7. Relying on Article 1 of Protocol No. 1 to the Convention, the applicants complained about the financial loss they had suffered as a result of the late payment of the expropriation amount.

8. 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 applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission.

9. 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.

10. 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.

11. 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 *Yıldız and Yanak*, cited above.

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

B. Remaining complaints

13. Relying on Article 1 of Protocol 1 to the Convention, the applicants complained of the inadequacy of the compensation that had been awarded by the domestic courts and about the allegedly false classification of the type of their land.

14. 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 these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

15. 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 1 December 2016.

Hasan Bakırcı
Deputy Registrar

Paul Lemmens
President