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

SECOND SECTION

DECISION

Application no. 43362/04
Hidayet GÜMÜŞ against Turkey
and 10 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 11 October 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 applications lodged on the various dates indicated in the appended table,

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 are Turkish nationals. Their names and birth dates, as well as the names of their representatives, appear in the appendix.

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. Certain plots of land belonging to the applicants were designated as part of the public forest area. Subsequently, the applicants and/or the administrative authorities initiated proceedings before the domestic courts. Consequently, title deeds of the applicants were annulled and the plots of

land in dispute were registered in the name of the Treasury because the domestic courts found that they were part of the public forest estate or had been formerly, pursuant to Section 2(B) of Law no. 6831. No compensation was awarded to the applicants.

5. The details of the applications are indicated in the table below.

Application no. and case name	**Introduction date**	**Details of the land in dispute**	**Date on which the proceedings were initiated**	**Date and no. of the first instance court decision that annulled the title deed to the land**	**Date and no. of the Court of Cassation's final decision and notification date**	**Articles invoked**
43362/04 Gümüş	01/11/2004	Istanbul, Pendik, Emirli Village, Ağılaltı District, Plot No. 10, Parcel No. 738, 4.080 m^2	21/09/2000	16/04/2003 Pendik Civil Court, E: 2000/573 K: 2003/252	02/03/2004 E: 2004/13235 K: 2004/2070 and 06/05/2004	Article 1 of Protocol no. 1
4517/06 Özdemir	21/01/2006	a) Balıkesir, Ayvalık, Bağyüzü Village, Parcel No. 2, 62.400 m^2	17/09/2003	14/07/2004 Ayvalık Civil Court, E: 2003/471 K: 2004/533	23/06/2005 E: 2005/5158 K: 2005/8459 and 23/07/2005	Article 1 of Protocol no. 1; Article 6 § 1; Article 8; Article 13; Article 17
		b) Balıkesir, Ayvalık, Hacıveliler Village, Parcel No. 129, 237.000 m^2	06/08/2003	14/07/2004 Ayvalık Civil Court, E: 2003/373 K: 2004/520	23/06/2005 E: 2005/5159 K: 2005/8458 and 23/07/2005	Article 1 of Protocol no. 1 ; Article 6 § 1; Article 8; Article 13; Article 17
25878/07 Öztok	15/06/2007	Çanakkale, Sarıcaeli Village, Köyciyarı District Parcel no.772, 16500 m^2	10/05/2006	11/07/2006 Çanakkale Civil Court, E : 2006/334 K : 2006/369	20/04/2007 E: 2007/4173 K: 2007/5312	Article 1 of Protocol no. 1; Article 6 § 1; Article 13
48475/07 Anıltaş İthalat İhracat Pazarlama ve Ambalaj Sanayi A.Ş.	15/10/2007	Yalova, Çınarcık, Esenköy Village, Çeşme District, Block No. 4, Parcel No. 2492, 77.077, 26 m^2	26/07/1999	21/06/2005 Yalova Civil Court, E: 2004/37 K: 2005/1426	09/06/2006 E: 2006/5279 K: 2006/8124 and 20/09/2007	Article 1 of Protocol no. 1
54553/07 Gülsün	03/12/2007	Sinop, Durağan, Ötegeçedüzlük District, Block No. 155, Plot No. 46-47 D-A, Parcel No. 1, 172 m^2	28/11/2005	23/06/2006, Durağan Civil Court, E: 2005/97 K: 2006/77	12/06/2007 E: 2007/6677 K: 2007/8023 and 26/09/2007	Article 1 of Protocol no. 1; Article 6 § 1

23258/08 Genç	08/05/2008	Trabzon, Maçka, Ormanüstü Village, Block No. 137, Parcel No. 2, 3.654, 95 m^2	20/11/2002	17/10/2006, Maçka Civil Court, E: 2002/352 K: 2006/258	23/11/2007 E: 2007/13469 K: 2007/15063 and 17/12/2007	Article 1 of Protocol no. 1
36580/08 Kunter	28/07/2008	İstanbul, Silivri, 1. Bölge, Büyükçavuşlu Village, Ahmet Faki District, Parcel no.803, 4900 m^2	24/10/2005	27/12/2006 Silivri Civil Court, E : 2006/420 K : 2006/87	25/03/2008 E: 2008/1474 K: 2008/4667	Article 1 of Protocol No. 1; Article 6
47356/08 Tuğtepe and Others	22/09/2008	Kocaeli, Gebze, Pelitli Village, Plot no.77 Parcel no.1692, 10460 m^2	06/10/2004	09/03/2007 Gebze Civil Court, E : 2007/29 K : 2007/55	12/02/2008 E: 2007/18424 K: 2008/2078 and 31/03/2008	Article 1 of Protocol No. 1
52368/08 Konuklu	16/10/2008	İstanbul, Silivri, 1. Bölge, Büyükçavuşlu Village, Sırameşeler District I- Plot no.3 Parcel nos./m^2 671/ 4081 m^2 672/ 2950 m^2 673/ 2950 m^2 II- Plot no.4 Parcel no.684, 3750 m^2	24/10/2005	28/06/2007 Silivri Civil Court, E : 2006/287 K : 2007/332	07/04/2008 E: 2008/3166 K: 2008/5352 and 05/05/2008	Article 1 of Protocol No. 1; Article 6
54187/08 Öztürkcan	04/11/2008	İstanbul, Ümraniye, Ömerli, Plot no.6 Block no.35 Parcel no.19, 4449 m^2	19/01/2004	22/11/2005 Ümraniye Civil Court, E: 2004/54 K: 2005/495	09/04/2008 E: 2008/3303 K: 2008/5690 and 06/05/2008	Article 1 of Protocol No. 1
5400/09 Küçükşen	17/12/2008	İstanbul, Pendik, Emirli Village, Kokoğlu District, Plot No. 5, Parcel No. 825, 4.361,46 m^2	26/03/2004	14/12/2006 Pendik Civil Court, E: 2004/157 K: 2006/527	14/05/2008 E: 2008/3322 K: 2008/7376 and 20/06/2008	Article 1 of Protocol no. 1; Article 6 § 1; Article 14: Article 17

B. Relevant domestic law and practice

6. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 10) may be found in *Savaşçın and Others v. Turkey* (dec.), no. 15661/07, 7 June 2016.

COMPLAINTS

7. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they were deprived of their property without receiving any compensation.

8. In some cases, the applicants raised further complaints relying on Articles 6, 8, 13, 14 and 17 of the Convention.

THE LAW

9. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

10. The applicants complained under Article 1 of Protocol No. 1 to the Convention that the annulment of their title deeds without any compensation constituted a disproportionate burden and thus breached their right to the peaceful enjoyment of their possessions.

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 annulment of applicants' title deeds where the land at issue is classified as part of the public forest. 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 *Savaşçın and Others v. Turkey* ((dec.), no. 15661/07, 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 annulment of the applicants' title deeds because their land was classified as part of the public forest area.

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 *Savaşçın and Others*, cited above.

15. In view of the above, the Court concludes that the applicants' complaints regarding the annulment of their title deeds should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Other Alleged Violations of the Convention

16. In the applications nos. 4517/06, 25878/07, 54553/07, 36580/08, 52368/08 and 5400/09, the applicants also raised other complaints under various articles of the Convention. However, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court concludes that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares inadmissible the applications.

Done in English and notified in writing on 17 November 2016.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President

APPENDIX

No	Application No	Applicant's name, Date of birth and Place of residence	Represented by
1.	43362/04	Hidayet GÜMÜŞ 1929 Istanbul	Bilal DAĞTEKİN
2.	4517/06	Önder ÖZDEMİR 15/07/1954 Balıkesir	Vincent İŞİTMEZ
3.	25878/07	Mustafa ÖZTOK 10/10/1966 Çanakkale	-
4.	48475/07	ANILTAŞ İTHALAT İHRACAT PAZARLAMA VE AMBALAJ SAN A.Ş. Yalova	Saadet AYHAN
5.	54553/07	Mahmut GÜLSÜN 3/04/1955 Sinop	Zeynel KADAYIFCI
6.	23258/08	Ali Fahri GENÇ 1/02/1928 Trabzon	Ahmet Metin GENÇ
7.	36580/08	Ahmet Mithat KUNTER 1/09/1951 İstanbul	Ahmet BEKAR
8.	47356/08	Vildan TUĞTEPE 13/03/1951 Kocaeli Nimet ALPASLAN 25/03/1938 Kocaeli Huriye GÜLÜMSER 25/12/1919 Kocaeli Kıymet TUNA 27/11/1944 Kocaeli	Ayten GÜRLEYEN

No	Application No	Applicant's name, Date of birth and Place of residence	Represented by
9.	52368/08	Hasibe KONUKLU 19/04/1942 Diyarbakır	Nazif YAVUZ
10.	54187/08	Nahit ÖZTÜRKCAN 5/09/1951 Istanbul	Faruk ÖKSÜZ
11.	5400/09	Yusuf KÜÇÜKŞEN 1/1/1933 Leiderdorp	Türkan YILMAZ