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

SECOND SECTION

DECISION

Application no. 1477/09
Güngör KARAKAPLAN
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 23 December 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Güngör Karakaplan, is a Turkish national who was born in 1951 and lives in Izmir. He was represented before the Court by Mr S. Sert, a lawyer practising in Izmir.

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

3. On 23 January 2019 the applicant's complaint under Article 1 of Protocol No. 1 to the Convention regarding the insufficiency of the interest rate applied to the compensation awarded to him for the *de facto* expropriation of his land was communicated to the respondent Government. The remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

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

A. Proceedings regarding compensation for *de facto* expropriation

5. On 28 April 2005 the applicant brought an action before the Izmir Civil Court of General Jurisdiction, arguing that his property in the Karabağlar district of Izmir had been expropriated *de facto* by the administration for the purposes of road construction. Reserving his right to a surplus, he claimed 6,000 Turkish liras (TRY) in compensation, plus the highest interest rate applicable to public claims running from the date of action.

6. On 16 November 2006 the Izmir Civil Court accepted the applicant's case and held that he should be paid TRY 6,000, together with statutory interest, for partial *de facto* expropriation.

7. The applicant filed an appeal against that judgment, challenging the calculation of the amount awarded and arguing that he should be awarded compensation for the whole of the land, in line with the case-law of the Court of Cassation. In his appeal petition he did not make any submissions regarding the interest rate applied by the first-instance court.

8. On 12 December 2006 the applicant was paid a total amount of TRY 9,860, including interest.

9. On 22 March 2007 the Court of Cassation upheld the judgment.

10. The applicant requested the rectification of the judgment without raising any arguments regarding the interest rate applied. On 5 July 2007 the Court of Cassation quashed the judgment and remitted the case to the first-instance court, finding that the entire plot of land fell within the scope of road construction in the zoning plan and that the applicant should therefore be compensated for the remaining part after *de facto* expropriation.

11. On 11 September 2007 the Izmir Civil Court determined the value of the applicant's land, which was subject to *de facto* expropriation, at TRY 8,625 and the remaining part at TRY 49,914. The domestic court went on to award the applicant TRY 6,000 in line with his claim, without prejudice to his claim to the surplus. The court once again stated that statutory interest running from the date the case had been lodged would be applied to the main amount.

12. The applicant appealed, without making any submissions regarding the interest rate applied. On 21 January 2008 the Court of Cassation upheld the judgment. By a decision of 26 May 2008 the appellate court rejected the applicant's rectification request. The final decision was served on the applicant on 24 June 2008.

B. Proceedings regarding compensation for the surplus

13. On 26 February 2008 the applicant lodged a case, claiming compensation for the remaining amount, that is, TRY 52,539, as determined

by the Izmir Civil Court in its judgment of 11 September 2007. He also requested that statutory interest be applied to that amount starting from 28 April 2005, the date he had initiated the first set of proceedings.

14. On 29 July 2008 the Izmir Civil Court awarded the applicant his claim in full. The applicant did not file an appeal against that judgment.

15. On 11 August 2008 the applicant was paid TRY 81,015.

COMPLAINTS

16. The applicant complained under Article 1 of Protocol No. 1 to the Convention of the insufficiency of the statutory interest rate applied to the amount awarded to him for the *de facto* expropriation of his property.

THE LAW

17. The Government argued that the applicant had failed to exhaust the domestic remedies as he had not raised before the domestic courts his complaint regarding the insufficiency of the interest rate applied. The Government submitted, in the alternative, that the application was manifestly ill-founded as the statutory interest rate applied to the compensation awarded to the applicant had been higher than the inflation rate during the period concerned.

18. The applicant contested the Government's objection and noted that he had had recourse to the available domestic remedies.

19. 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).

20. In the present case, the Court observes that while the applicant initially requested that the highest interest rate applicable to public claims be applied to the amount awarded to him, he did not make any submissions before the Court of Cassation regarding the statutory interest rate applied by the Izmir Civil Court, following either that court's judgment of 16 November 2006 or that of 11 September 2007. The Court further observes that in the second set of proceedings, the applicant made his claim on the basis of the amount previously determined by the Izmir Civil Court together with statutory interest, which claim was awarded to him in full.

21. In view of the foregoing, and notwithstanding the possible sufficiency of the interest rate applied by the domestic court, the Court holds that the applicant failed to raise his complaint before the domestic courts. It therefore 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	Valeriu Griţco
Deputy Registrar	President