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

SECOND SECTION

DECISION

Application no. 30729/05
Resul KARAKOÇ and Others
against Turkey

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

Ksenija Turković, *President,*
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 August 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 Resul Karakoç, Mr Mehmet Karakoç and Mr Mehmet Ali Şimşek, are Turkish nationals and were born in 1937, 1930 and 1933 respectively. They all reside in Elazığ and were represented before the Court by Mr A.H. Altan.

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. The applicants owned plots of land in the Çataklı Village of the Alacakaya District in Elazığ. In March 1999, the impugned plots of land were flooded with water due to the construction of the Kralkızı dam.

5. On 11 July 2002 the applicants brought actions before the Alacakaya Civil Court of First Instance against the General Directorate of National Water Board (*Devlet Su İşleri Genel Müdürlüğü*, hereinafter referred to as "the Board") and sought compensation for *de facto* expropriation of their land.

6. On 20 November 2002 the first instance court found in line with the applicants and awarded them compensation, plus interest at the statutory rate. The Board appealed. Subsequently, the Court of Cassation upheld the judgment of the first instance court and the decisions became final on 12 June 2003.

7. On 16 September 2003 and on 19 July 2004, respectively, the applicants submitted the copies of the final judgments to the Elazığ Enforcement Office and initiated enforcement proceedings. They further asked the enforcement office to apply the maximum interest rate to their compensation award pursuant to Article 46 of the Constitution.

8. On 4 August 2004 the Board made a partial payment to the applicants.

9. On 12 August 2004 the Board filed an objection against the applicants' request for the application of the maximum interest rate to the compensation awards pursuant to Article 46 of the Constitution.

10. On 23 November 2004 the Elazığ Enforcement Court accepted the Board's objection and ruled that statutory interest rate would be applied to the compensation amounts. On 15 March 2005 this ruling was upheld by the Court of Cassation and thus became final.

11. Subsequently, the Board paid the compensation awards in full, together with statutory interest.

12. The details of the applications may be found in the table below.

Applicant's name and information regarding his land	Amount of compensation awarded by the first instance court	Date of enforcement order issued by the enforcement office	Amount of first payment made by the Board	Date and amount of second payment made by the Board
Resul Karakoç, plot no. 132, parcels n^{os} 45 and 46	19,077 TRY (11,757 EUR)	19 July 2004	59,281 TRY (33,028 EUR)	8 June 2007, 7,053 TRY (3,928 EUR)
Mehmet Karakoç, plot no.132, parcel n^{o} 43	8,878 TRY (5,471 EUR)	19 July 2004	27,668 TRY (15,415 EUR)	8 June 2007, 4,355 TRY (2,425 EUR)
Mehmet Ali Şimşek, plot no103, parcels nos. 21 and 25	89,640 TRY (55,244 EUR)	16 September 2003 and 19 July 2004	293,938 TRY (163,768 EUR)	24 July 2007, 34,882 TRY (20,101 EUR)

B. Relevant domestic law and practice

13. The relevant parts of Article 46 of the Constitution, as amended on 3 October 2001, read as follows:

> "Article 46:
>
> ...
>
> The compensation for expropriation and the amount regarding its increase rendered by a final judgment shall be paid in cash and in advance. ...
>
> ...
>
> An interest equivalent to the highest interest paid on public claims shall apply to the ... expropriation compensations which have not been paid for any reason."

14. Section 32(1) of the Enforcement and Bankruptcy Act (Law no. 2004) provides that the enforcement office will issue an enforcement order to the debtor following the submission of a court judgment concerning any money debt. The same section further prescribes that the amount of money determined by the court judgment shall be specified in the enforcement order.

COMPLAINT

15. The applicants complained under Article 1 of Protocol No. 1 to the Convention that the domestic courts' decisions to apply the statutory rate of default interest instead of the maximum rate applicable to public debts, as defined in Article 46 of the Constitution, had breached their right to peaceful enjoyment of their possessions. They alleged that this practice had led to a reduction in the amount of compensation payable to them.

THE LAW

16. The applicants complained of a violation of Article 1 of Protocol No. 1 to the Convention on account of the domestic courts' decisions to apply the statutory rate of default interest to the compensation awarded instead of the maximum interest rate as provided in Article 46 of the Constitution. The applicants thus claimed that the domestic courts' decisions in question had caused them pecuniary losses.

17. The Government contested that argument.

18. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter where it has been introduced within six months from date of the final decision in the process of exhaustion of domestic

remedies. It is not open to the Court to set aside the application of the six-month rule even in the absence of a relevant objection from the Government (see *Belaousof and Others v. Greece*, no. 66296/01, § 38, 27 May 2004; *Miroshnik v. Ukraine*, no. 75804/01, § 55, 27 November 2008; and *Toner v. the United Kingdom* (dec.), no. 8195/08, 15 February 2011).

19. In the present case, the applicants complained about the low interest rate applied to their compensation awards. The Court observes that the interest rate applicable to the applicants' compensation awards for *de facto* expropriation of their property was determined by the Alacakaya Civil Court of First Instance and the proceedings before that court came to an end with the Court of Cassation's decisions of 12 June 2003. The Court therefore concludes that the final decision regarding the applicants' complaint was given on 12 June 2003 by the Court of Cassation (see, *mutadis mutandis*, *Sarıca and Dilaver v. Turkey*, no. 11765/05, §§ 31-32, 27 May 2010).

20. The Court further observes that subsequent to the final decisions of the Court of Cassation of 12 June 2003, the applicants brought enforcement proceedings on 16 September 2003 and on 19 July 2004, respectively. Accordingly, the applicants must have been aware of the final decisions regarding their Convention complaints at the latest on 19 July 2004. However, the present application was lodged with the Court on 8 August 2005, more than six months from that date (see *Şat v. Turkey*, no. 34993/05, §§ 16-18, 14 June 2011, and *Gerçek and Others v. Turkey*, no. 54223/08, §§ 16-18, 13 December 2011).

21. In view of the above, the Court concludes that the application has been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares inadmissible the application.

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

Hasan Bakırcı
Deputy Registrar

Ksenija Turković
President