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

SECOND SECTION

DECISION

Application no. 13789/05
Hacı Agop and Abraham KUYUMCU
against Turkey

The European Court of Human Rights (Second Section), sitting on 11 October 2016 as a Committee composed of:

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

Having regard to the above application lodged on 18 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 Hacı Agop Kuyumcu and Mr Abraham Kuyumcu are two Turkish nationals who were born in 1961 and 1941 respectively and live in Istanbul. They were represented before the Court by Mr H. Tepe, a lawyer practising in Ankara.

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 had two plots of land in the Keçiören District of Ankara, which had been registered in the land register as plot no. 4123, parcel nos. 18 and 19.

5. On 19 August 1997 the Keçiören Municipality decided to expropriate the applicants' land with a view to creating a green area.

6. On an unspecified date the applicants applied to the Ankara Administrative Court to have the expropriation decision set aside. On 26 February 1998 the Ankara Administrative Court set aside the impugned decision on the ground that the land at stake was designated as housing area under the local land development plan.

7. Following an amendment on the local land development plan, on 24 January 2001, the municipality decided anew to expropriate the applicants' land. The amount of expropriation compensation was fixed at 34,776,000 Turkish liras (TRL)[1] by the municipality's commission of experts.

8. On 5 February 2000, the applicants brought a civil action before the Ankara Civil Court of First Instance and claimed TRL 202,584,000,000 in additional expropriation compensation.

9. In a judgment of 20 November 2002 the Ankara Civil Court of First Instance awarded the applicants TRL 48,024,000,000 (approximately 30,500 euros (EUR) at the time) as additional compensation, plus interest at the statutory rate.

10. On 18 March 2003 the Ankara Enforcement Office, upon the applicants' request, ordered the municipality to pay TRL 117,624,280,076 (approximately EUR 68,000 at the time) the applicants as additional expropriation compensation plus interest and costs.

11. On 28 October 2004 the municipality made a payment of TRL 1,000,000,000 (approximately EUR 540 at the time) to the Ankara Enforcement Office.

12. On 24 November 2006 one of the applicants, namely Abraham Kuyumcu died and his heirs, Mrs Varter Kuyumcu, Mrs Narin Dikranuhi Toker and Mr Cenk Tatiyos Kuyumcu, applied to continue the application.

13. On several dates the municipality made partial payments to the Ankara Enforcement Office. However a document issued by the Ankara Enforcement Office on 1 May 2009 indicated that the municipality was still indebted to the applicants the sum of TRY 38,753 (approximately EUR 18,500).

B. Relevant domestic law and practice

14. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 16) may be found in *Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013;

1. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000

Demiroğlu v. Turkey (dec.), no. 56125/10, 4 June 2013; and *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, 27 May 2014.

COMPLAINT

15. The applicants complained without invoking any Article of the Convention that, despite the final domestic court judgments given in their favour, the defendant administrative authority did not pay the full amount in dispute.

16. The Court, master of characterisation to be given in law to the facts of the case, considers that the applicants' complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

17. The applicants complained about the loss they had suffered as a result of the non-payment of the compensation amount awarded by domestic courts.

18. The Government noted that pursuant to Law no. 6384 of 9 January 2013 a new Compensation Commission had been established to deal with applications concerning the length of proceedings and the non-enforcement 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 application should be rejected for non-exhaustion of domestic remedies as the applicants should avail themselves of the new remedy before the Compensation Commission.

19. 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 *Demiroğlu v. Turkey* ((dec.), no. 56125/10, 4 June 2013), 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 failure of the authorities to enforce judicial decisions.

20. 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.

21. 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 *Demiroğlu*, cited above.

22. In view of the above, the Court concludes that the application 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 inadmissible the application.

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

Hasan Bakırcı
Deputy Registrar

Valeriu Griţco
President