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

SECOND SECTION

DECISION

Application no. 25397/05
Mehmet Şah ORUN
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 7 July 2005,

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 Mehmet Şah Orun, is a Turkish national, who was born in 1956 and lives in Batman. He was represented before the Court by Mr M.M. Erken, a lawyer practising in Batman.

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 applicant had a plot of land in the Yolağzı Village of Batman, which had been registered in the land register as parcel no. 410.

5. On an unspecified date in 1999, the General Directorate of National Water Board ("the Board") decided to expropriate the applicant's land.

6. On 7 March 2000 the applicant's land was registered as belonging to the Board in the land registry and an amount of 3,358,388,000 Turkish liras (TRL)[1] determined by the Board's commission of experts was paid to the applicant as initial expropriation compensation.

7. On 20 March 2000 the applicant brought a civil action before the Batman Civil Court of First Instance and claimed TRL 50,000,000,000 as additional expropriation compensation.

8. On 25 September 2003 the Batman Civil Court of First Instance awarded the applicants TRL 8,463,849,553 as additional compensation for expropriation, plus interest at the statutory rate.

9. On 18 March 2004 the Court of Cassation accepted the applicant's appeal and quashed the judgment of the Batman Civil Court of First Instance.

10. On 14 October 2004, following a re-assessment of the value of the land, the Batman Civil Court of First Instance awarded the applicants TRL 11,419,401,529 (the equivalent of approximately 6,230 euros (EUR) at the time) as the additional compensation, plus interest at the statutory rate.

11. The applicant's appeal was rejected by the Court of Cassation and the judgment became final on 17 March 2005.

12. On 27 September 2005 the Board paid the applicant the additional compensation including the interest, namely 40,941.13 Turkish liras (TRY) (approximately EUR 25,500 at the time).

B. Relevant domestic law and practice

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

COMPLAINTS

14. The applicant complained of a violation of his right to a fair trial under Article 6 of the Convention on account of the length of the judicial proceedings.

15. Relying on Article 1 of Protocol No. 1 to the Convention the applicant complained about the financial loss caused by the insufficient amount of additional expropriation compensation, the delayed payment of

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

additional expropriation compensation and the depreciation of the expropriation compensation.

THE LAW

A. Alleged violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention

16. The applicant complained that the civil proceedings in his case were not concluded within a reasonable time as required by Article 6 § 1 of the Convention. The applicant also complained under Article 1 of Protocol No. 1 to the Convention that due to the length of domestic proceedings and the high inflation rates in Turkey the amount of the expropriation compensation determined by the domestic courts had been less than the real value of his land and that the Board had failed to pay the additional expropriation compensation in due time.

17. 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 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.

18. 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 decisions in the cases of *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), the Court declared the applications 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 length of proceedings, the failure of the authorities to enforce judicial decisions and the depreciation of awards in expropriation cases.

19. 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.

20. However, taking into account the Government's preliminary objection with regard to the applicant's failure to make use of the new domestic remedy established by Law no. 6384, the Court reiterates its conclusion in the cases of *Turgut and Others*, *Demiroğlu* and *Yıldız and Yanak*, cited above.

21. In view of the above, the Court concludes that the applicant's complaints regarding the length of domestic proceedings, the depreciation of the expropriation compensation and the delayed payment of additional expropriation compensation as from the date on which its amount was fixed 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

22. The applicant complained of various other violations of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention. In this regard, he alleged that the domestic courts evaluated evidences and expert reports in his case erroneously and awarded him an insufficient amount of additional expropriation compensation. He also alleged that the payment of additional expropriation compensation was belated during the continuation of domestic proceedings for determination of the amount of the compensation and this constitutes a breach of his right to property.

23. In the light of all the material in its possession and in so far as the matter complained of is 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,

Declares inadmissible the application.

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

Hasan Bakırcı
Deputy Registrar

Valeriu Griţco
President