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

SECOND SECTION

DECISION

Application no. 5583/06
Fatma ÖZKAN against Turkey
and 2 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 13 June 2017 as a Committee composed of:

Ledi Bianku, *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 partial decision of 10 November 2009,

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, whose details are set out in the appendix, are Turkish nationals and they all reside in Trabzon, with the exception of Ms Yıldız Kaya, who resides in Istanbul. They were represented before the Court by Mr H. C. Yalçın, a lawyer practising in Trabzon. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the case

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

3. On 31 October 2000 the Ministry of Industry and Trade ("the Ministry") expropriated plots of land belonging to the applicants. Following applications by the applicants, the Vakfıkebir Civil Court of First Instance awarded them additional expropriation compensation. Those judgments were upheld by the Court of Cassation. The applicants initiated enforcement proceedings. According to the information in the case files, the administration has still not paid the full amounts due.

4. The details of the applications may be found in the attached table.

B. Relevant domestic law

5. A description of the domestic law and practice with regard to the Compensation Commission, mentioned below, may be found in *Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013; *Demiroğlu and Others v. Turkey* (dec.), no. 56125/10, 4 June 2013; and *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, 27 May 2014.

COMPLAINT

6. Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained about the financial loss they had suffered as a result of the late payment of the amounts of expropriation compensation.

THE LAW

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

A. As regards the application lodged by Mr Kemal Kadıoğlu (Application no. 12318/06)

8. The Court notes that one of the applicants, namely Mr Kemal Kadıoğlu, died on 9 April 2005, after the conclusion of the domestic proceedings but before application no. 12318/06 was lodged with the Court. In this connection, the Court points out that an application such as the present application cannot be lodged in the name of a deceased person, since a deceased person is unable, even through a representative, to lodge an application with the Court (see *Macedonia Gavrielidou and Others v. Cyprus* (dec.), no. 73802/01, 13 November 2003). Therefore, neither

Mr Kemal Kadıoğlu nor his heirs can claim to have been the victims of a violation of Article 1 of Protocol No. 1 to the Convention.

9. It follows that application no. 12318/06, in so far as it relates to the complaints made on behalf of Mr Kemal Kadıoğlu, is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

B. Complaints raised under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention

10. Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained about the substantial delay in the enforcement proceedings and the financial loss they had suffered as a result.

11. The Government submitted that, pursuant to Law no. 6384, a new Compensation Commission had been established to deal with applications concerning the length of proceedings and the non-execution of judgments. They further submitted that the competence of the Compensation Commission had been subsequently increased by a decree adopted on 16 March 2014, and that the commission could examine complaints relating to, among other things, the alleged loss of value of an amount of expropriation compensation due to the effects of inflation and the length of proceedings. 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 was 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 *Demiroğlu and Others 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 grounds 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 delays in enforcement proceedings and the depreciation of awards in expropriation cases.

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, such applications which had already been communicated to the Government.

14. However, taking into account the Government's supplementary 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 cases of *Demiroğlu and Others* and *Yıldız and Yanak*, cited above.

15. In view of the above, the Court concludes that the applications should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 6 July 2017.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President

APPENDIX

N	Application no.	Details of the applicants	Case specific details
1	5583/06	Fatma Özkan 1931	Plot no. 126 Decision of the Vakfıkebir Civil Court of First Instance Court dated 21 September 2001 E2001/70 K 2001/120 Date of Court of Cassation decision: 18 March 2002 Amount of compensation: 2,774,102,250 TL
2	12318/06	a) Mustafa Kaya 1935 b) Ömer Kaya 1939 c) Yıldız Kaya 1954 d) Faik Kaya 1927	a)Plot nos. 27,28 Decision of the Vakfıkebir Civil Court of First Instance Court dated 26 June 2001 E2001/71 K 2001/82 Date of Court of Cassation decision: 4 March 2002 Amount of compensation: 40,692,316,500 TL b) Plot Nos 24,27,32,34,38 Decision of the Vakfıkebir Civil Court of First Instance Court dated 21 September 2001 E2001/77 K 2001/122 Date of Court of Cassation decision: 4 March 2002 Amount of compensation: 101,487,832,250 TL c) Plot Nos 17, 36 Decision of the Vakfıkebir Civil Court of First Instance Court dated 21 September 2001 E2001/73 K 2001/121 Date of Court of Cassation decision: 11 March 2002 Amount of compensation: 1,408,532,031 TL d) Plot Nos 13,18,37 Decision of the Vakfıkebir Civil Court of First Instance Court dated 7 June 2002 E2002/75 K 2002/82 Amount of compensation: 116,566,732,000TL

		e) Turan Kaya 1952 f) Emine Yıldız 1947	e) Plot No 33 Decision of the Vakfıkebir Civil Court of First Instance Court dated 23 October 2001 E 2001/69 K 2001/178 Date of Court of Cassation decision:18 March 2002 Amount of compensation: 29,045,130,150TL f) Plot No. 26 Decision of the Vakfıkebir Civil Court of First Instance Court dated 21 September 2001 E2001/68 K 2001/123 Date of Court of Cassation decision: 18 March 2002 Amount of compensation: 113,530,734,000 TL
3	13236/06	Fikriye Kaya 1945	Plot nos. 23,24 27 and 28 Decision of the Vakfıkebir Civil Court of First Instance Court dated 26 June 2001 E2001/78 K 2001/83 Date of Court of Cassation decision: 18 March 2002 Amount of compensation: 3,131,457,500 TL