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

SECOND SECTION

DECISION

Application no. 34564/06
Mahir ÖZTAŞ
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 October 2015 as a Committee composed of:
Nebojša Vučinić, *President,*
Egidijus Kūris,
Stéphanie Mourou-Vikström, *judges,*
and Abel Campos, *Deputy Section Registrar,*
Having regard to the above application lodged on 24 July 2006,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mahir Öztaş, is a Turkish national, who was born in 1951 and lives in Istanbul. He was represented before the Court by Mr H.K. Elban, a lawyer practising in Antalya. 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 8 June 2000 the applicant initiated compensation proceedings before the Beyoğlu Commercial Court against third parties.
4. On 17 June 2004 basing its decision on expert reports, the Istanbul Civil Court of Intellectual and Industrial Property Rights dismissed the applicant's claims.
5. On 26 January 2006 the Court of Cassation upheld the judgment of the first instance court.
6. On 2 June 2006 the applicant's rectification request was rejected.

B. Relevant domestic law

7. The description of the relevant domestic law may be found in *Turgut and Others v. Turkey* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013).

COMPLAINTS

8. The applicant complained under Article 6 § 1 of the Convention that the proceedings before the national courts had not been concluded within a reasonable time. He further alleged that the domestic courts had failed in the evaluation of evidence.

THE LAW

9. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

10. The Government noted 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 maintained that the applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission: this ground had also been recognised by the Court in its decision in the case of *Turgut and Others* ((dec.), no. 4860/09, 26 March 2013).

11. 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 *Turgut and Others*, cited above, the Court declared a new 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 length of proceedings.

12. 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 this type which had already been communicated to the Government.

13. However, taking account of 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 case of *Turgut and Others*. It therefore concludes that the complaint of the excessive length of the civil proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (see *Rifat Demir v. Turkey*, no. 24267/07, § 35, 4 June 2013, and *Yiğitdoğan v. Turkey* (no. 2), no. 72174/10, § 59, 3 June 2014).

14. The applicant further complained that the proceedings had been unfair. According to the applicant, the domestic court failed in the evaluation of evidence.

15. The Court notes that it is not its task to act as a court of appeal or, as is sometimes stated, as a court of fourth instance, in respect of the decisions taken by domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural or substantive law. Furthermore, it is the domestic courts that are best placed for assessing the credibility of witnesses and the relevance of evidence to the issues in the case (see, among many other authorities, *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B).

16. Having regard to the materials submitted by the applicant, the Court finds that the applicant has failed to substantiate any claim that the procedural guarantees contained in Article 6 were breached in his case.

17. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 November 2015.

Abel Campos
Deputy Registrar

Nebojša Vučinić
President