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

SECOND SECTION

DECISION

Application no. 29833/05
Hasan Hüseyin ÖZTÜRK and Others
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 3 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, Ms Fatma Ekinci (Öztürk), Ms Ayşe Özalp (Öztürk), Mr Hasan Hüseyin Öztürk, Ms Dudu Bayraktar (Öztürk), Ms Emine Urgur (Öztürk), Ms Hatice Gümüş (Öztürk), Mr Ramazan Öztürk, Mr Ahmet Öztürk and Ms Melek Arıkan (Öztürk) are nine Turkish nationals. They were born in 1924, 1926, 1929, 1930, 1935, 1938, 1943, 1946 and 1955 respectively and live in Denizli. They were represented before the Court by Mr M. Eraydın, a lawyer practising in Denizli.

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 a plot of land in the Acıpayam District of Denizli, which had been registered in the land register as block no. 118, parcel no. 2.

5. On 2 May 1996 the Acıpayam Municipality decided to expropriate the applicants' land. The applicants were officially notified of the expropriation decision by a notice served through the notary public. It was indicated in the notice that the amount of expropriation compensation was fixed at 3,751,000,000 Turkish liras (TRL)[1].

6. On an unspecified date in 1996 the applicants applied to the Aydın Administrative Court in order to have the expropriation decision and the local land development plan which was the basis of expropriation decision set aside. The Aydın Administrative Court held that it lacked jurisdiction *ratione loci*, as the applicants' case should be assessed by the Denizli Administrative Court. On 5 June 2003 the Denizli Administrative Court dismissed the applicants' case. The applicants did not appeal against this decision and it became final on 15 September 2003.

7. On 25 November 1996 the applicants brought a civil action before the Acıpayam Civil Court of First Instance and claimed TRL 15,888,000,000 in additional compensation for expropriation.

8. On 18 February 2004 the Acıpayam Civil Court of First Instance awarded the applicants TRL 5,490,600,588 (the equivalent of approximately 3,240 euros (EUR) at the time) as additional compensation, plus interest at the statutory rate. The applicants' appeal and rectification requests were subsequently rejected by the Court of Cassation and the decision became final on 14 January 2005. The final decision was served on the applicants' representative on 4 February 2005.

9. The Acıpayam Municipality paid the additional expropriation compensation to the applicants in several instalments between 10 February 2005 and 25 May 2005.

10. On 30 April 2009 one of the applicants, namely Ayşe Özalp (Öztürk) died and her heirs, Ms Melahat Özalp (Akbaş), Ms Nezahat Özalp and Mr Hüsnü Özalp applied to continue the application on 10 August 2010.

B. Relevant domestic law and practice

11. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 15) 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.

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

COMPLAINTS

12. The applicants complained under Article 1 of Protocol No. 1 to the Convention that their right to property had been violated by the respondent state on account of the financial loss caused by delayed payment of additional expropriation compensation and the depreciation of the expropriation compensation awarded to them as result of the high inflation rates in Turkey.

13. Relying on the same Article the applicants further complained that their expropriated land was used for a purpose other than that indicated in the expropriation decision, that the amount of additional expropriation compensation was insufficient and that the payment of initial expropriation compensation was delayed.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention concerning the delayed payment of additional expropriation compensation and the depreciation of the expropriation compensation

14. The applicants complained under Article 1 of Protocol No. 1 to the Convention that due to the high inflation rates the amount of the expropriation compensation determined by the domestic courts had been considerably less than the market value of their land and that the Acıpayam Municipality had failed to pay the additional expropriation compensation in due time.

15. 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.

16. 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 *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 both the failure of the authorities to enforce judicial decisions and the depreciation of awards in expropriation cases.

17. 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.

18. 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 cases of *Demiroğlu*, and *Yıldız and Yanak*, cited above.

19. In view of the above, the Court concludes that this part of the application 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

20. The applicants complained of a further violation of Article 1 of Protocol No. 1 to the Convention. In particular, they alleged that the municipality constructed a mosque on their land which was not indicated in the expropriation decision, that the amount of additional expropriation compensation was not sufficient and that the payment of initial expropriation compensation was delayed by the municipality.

21. 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