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

SECOND SECTION

DECISION

Application no. 28678/05
Yakup POLAT
against Turkey

The European Court of Human Rights (Second Section), sitting on 24 November 2015 as a Committee composed of:
Nebojša Vučinić, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Abel Campos, *Deputy Section Registrar,*
Having regard to the above application lodged on 20 July 2005,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Yakup Polat, is a Turkish national, who was born in 1938 and lives in Ankara. He was represented before the Court by Mr C. Özdemir, a lawyer practising in Ankara. 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. The Keçiören Municipality (Ankara) ("the administration") expropriated the land belonging to the applicant and paid 387,570,100 Turkish liras (TRL) as compensation.

4. On 18 October 2000 the applicant brought an action before the Ankara Civil Court of First Instance to increase compensation for the *de facto* expropriation of his land.

5. On 18 July 2001 the Ankara Civil Court of First Instance partially accepted the applicant's increased compensation request and decided on an additional compensation of TRL 5,297,442,832 (approximately 4,750 euros (EUR)), with an interest at the statutory rate running from 8 November 2000.

6. On 19 November 2001 the Court of Cassation upheld the decision of the court of first instance. A request for rectification was rejected by the Court of Cassation on 15 February 2002.

7. On 8 November 2001 the applicant applied to the Ankara Enforcement Office in order to enforce the payment of the additional compensation amount.

8. The enforcement office issued a writ of execution and the administration started to pay its debt to the applicant.

9. According to the information in the case file, between 26 March 2002 and 27 November 2008 the administration paid the applicant a total of 23,213.27 Turkish liras (TRY) [1].

B. Relevant domestic law and practice

10. A description of the domestic law and practise with respect to the Compensation Commission mentioned below (paragraph 13) 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

11. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the administration delayed in paying the additional compensation and that at a time when the annual rate of inflation in Turkey was very high, he was paid insufficient interest.

THE LAW

12. The applicant complained under Article 1 of Protocol No. 1 that he was paid insufficient interest on the additional compensation received following the expropriation of his property and that the authorities delayed paying him the relevant amount.

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

13. The Government noted that pursuant to Law No. 6384 a new Compensation Commission had been established to deal with applicants 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 applicant had not exhausted domestic remedies, as he had not made any application to the Compensation Commission.

14. 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 *Yıldız and Yanak v. Turkey* ((dec.), no. 44013/07, 27 May 2014), the Court declared 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 depreciation of awards in expropriation cases.

15. The Court notes that in its decision in the case of *Ümmühan Kaplan v. Turkey* (cited above, § 77), it is stressed that it could nevertheless examine, under its normal procedure, applications of that type which had already been communicated to the Government.

16. 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 the Law no. 6384, the Court reiterates its conclusion in the case of *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013).

17. In the 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 December 2015.

Abel Campos
Deputy Registrar

Nebojša Vučinić
President