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

SECOND SECTION

DECISION

Application no. 47497/08
Çiğdem ŞARKAYA and Afet SEÇKİN against Turkey
and 14 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 13 December 2016 as a Committee composed of:

Nebojša Vučinić, *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 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 are Turkish nationals. Their names and birth dates, as well as the names of their representatives, appear in the appendix. In application no. 75193/10, the applicant, Mr Hikmet Kaya died on 14 March 2015 and on 29 June 2016 his heirs, Ms Leman Kaya, Mr Fikret Kaya and Mr Can Kaya indicated their wish to continue the application.

2. The Turkish Government ("the Government") were represented by their Agent.

A. The circumstances of the cases

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

4. The applicants all own plots of land. Following local land development plans, their plots of land were designated for public use. Subsequently, complaining about the decrease in the market value of the land and long-term uncertainty about the fate of their plots of land, the applicants initiated compensation proceedings before the civil courts. Their cases were dismissed and as a result they were unable to obtain any redress from the authorities.

5. The details of the applications are set out in the attached table.

B. Relevant domestic law and practice

6. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 10) may be found in *Paksoy and Others v. Turkey* ((dec.), no. 19474/10, 7 June 2016).

COMPLAINT

7. The applicants complained under Article 1 of Protocol No. 1 to the Convention that as a result of the restrictions imposed on their land, their right to peaceful enjoyment of their possessions had been breached. In this connection, they claimed that the restrictions substantially decreased the market value of their land, caused uncertainty and restricted the use of their property. Furthermore, the applicants pointed out that because of the failure of the authorities to compensate them for damage resulting from the said interference, they had to bear an excessive burden.

THE LAW

8. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

9. The applicants complained under Article 1 of Protocol No. 1 to the Convention that the restriction imposed on their land as a result of the local land development plans constituted a disproportionate burden and thus breached their right to peaceful enjoyment of their possessions.

10. 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 decrees adopted on 16 March 2014 and 9 March 2016 to examine

complaints relating to, among other things, the alleged breaches of the right to peaceful enjoyment of possessions on account of applicants' inability to use their land as a result of restrictions imposed by the local land development plans. Accordingly, they maintained that the applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission.

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 *Paksoy and Others v. Turkey* ((dec.), no. 19474/10, 7 June 2016), the Court declared the 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 restrictions imposed on the applicants' land because their land was designated for public use by local land development plan.

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 that type which had already been communicated to the Government.

13. 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 case of *Paksoy and Others*, cited above.

14. In view of the above, the Court concludes that the applicants' complaints 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 19 January 2017.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President

APPENDIX

Application no. and case name	Introduction date	The Applicant's name and date of birth	Name of the Representative	Details of the land in dispute and the date on which the restriction was imposed on the land	Date and no. of the first instance court decision that rejected the compensation claim	Date and no. of the Court of Cassation's final decision
47497/08 Şarkaya and Seçkin	26/09/2008	Çiğdem ŞARKAYA 1937 Afet SEÇKİN 1934	Suner DAĞTEKİN, Antalya	Antalya, Merkez, Hurma District, Block No. 12131 Parcel No. 3(old)/6-7(new) 1995	15/05/2007 Antalya Civil Court, E. 2006/4 K. 2007/108	21/04/2008 E.2008/4092 K.2008/5199
3492/09 Arslan	05/01/2009	Gülseren ARSLAN 1940	Ruşen ARSLAN, Istanbul	Adana, Seyhan, Kurttepe District Plot No. 8284, Parcel No. 3 04/12/1998	27/05/2008 Adana Civil Court, E. 2008/139 K. 2008/188	27/04/2009 E.2009/2988 K. 2009/6374
55534/09 Kervan and Albayrak	09/09/2009	Hanife KERVAN 1943 Feriha ALBAYRAK 1959 Ferda KERVAN 1967 Muhammet Cihat KERVAN 1968 Sabiha KERVAN 1971 Ali Nihat KERVAN 1973	Ersoy GÜNAY, Istanbul	Kocaeli, Gebze, Muallimköy District Plot No. 31, Parcel No. 1498 18/03/1998	13/02/2008 Gebze Civil Court, E . 2007/214 K . 2008/71	17/02/2009 E.2009/169 K. 2009/2144

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64630/09 Satan and Others	01/12/2009	Menduh SATAN 1965 Mustafa TEKİNALP 1951 Fesih TEKİNALP 1966	Osman Kudret SÖNMEZ, İzmir	İzmir, Bornova, Kazımdirik District Block No. 3849 Parcel No. 1 1982	24/11/2008 İzmir Civil Court, E. 2007/346 K. 2008/392	19/10/2009 E.2009/11105 K.2009/12911
6630/10 Öğün	28/12/2009	Süleyman ÖĞÜN 1945 Fatih ÖĞÜN 1948 Şükran ÖĞÜN 1954 Mürsel ÖĞÜN 1959	Oktay POLAT, Ankara	Ankara, Çankaya, 5th District, Block No. 6117, Parcel No. 20 31/07/1987	10/06/2008, Ankara Civil Court, E. 2008/189 K. 2008/198	12/10/2009 E.2009/9267 K.2009/11911
26034/10 Köse	12/04/2010	Erol KÖSE 1951	Şaban ÖZTÜRK, Kayseri	Kayseri, Kocasinan, Argıncık District Plot No. 449 Parcel No. 5180 28/12/2001	29/07/2008, Kayseri Civil Court, E. 2008/190 K. 2008/370	12/10/2009 E.2009/9921 K.2009/11813
38645/10 Güner	01/06/2010	Aytaç GÜNER 1945	Onur ULUOCAK, İstanbul	Osmaniye, Merkez, Raufbey District Plot No. 4, Block No. 37, Parcel No.19 09/04/2003	24/02/2009 Osmaniye Civil Court, E . 2008/362 K . 2009/74	21/12/2009 E.2009/16348 K. 2009/18226
41917/10 Poyraz	02/07/2010	Nesrin POYRAZ 1933		Istanbul, Pendik, 2nd District (Batı) Plot No. 93, Block No. 659, Parcel No.51 31/01/2000	31/03/2009 Pendik Civil Court, E . 2007/397 K . 2009/61	05/04/2010 E.2010/5201 K.2010/5620

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47477/10 Bilgiç	28/06/2010	Nedim BİLGİÇ 1955	Alper Tunga BACANLI, Antalya	Antalya, Merkez, Hurma District Block No. 12131, Parcel No. 6 1998	03/12/2008 Antalya Civil Court, E . 2007/200 K . 2008/538	01/03/2010 E.2009/16714 K.2010/3006
55043/10 Güven	29/07/2010	Turgut GÜVEN 1948	Ayça KAYA, Ankara	Istanbul, Bağcılar, Mahmutbey District, Plot no. 245 DS II-B, Block no. 271, Parcel No. 1 20/06/1990	02/05/2008 Bakırköy Civil Court, E. 2007/583 K. 2008/221	05/04/2010 E.2010/4349 K. 2010/5725
57522/10 Tetik and Others	16/08/2010	Musa TETİK 1943 Hasan TETİK 1953 Aydin TETİK 1966 Bilal BEĞENDİ 1953 Cemal BEĞENDİ 1958 Nuriye AŞIK 1958 Fahriye ÇELİK 1962 Fikriye YILDIRIM 1958	Alev TETİK HORUŞ, Ankara	Ankara, Yenimahalle, 3rd District, Ergazi, Block No. 42990, Parcel No. 1 26/02/1998	22/04/2008 Ankara Civil Court, E. 2006/507 K. 2008/152	22/02/2010 E.2009/17998 K.2010/2471
60898/10 Meşe	07/09/2010	Güllüzar MEŞE 1978	İdris KÖYLÜ, Antalya	Antalya, Merkez, 3. Bölge, Block No. 7269, Parcel No. 4 1989	04/11/2008 Antalya Civil Court, E.2007/384 K.2008/344	14/06/2010 E.2010/6497 K.2010/11047

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74534/10 Mercan and Orhan	19/10/2010	Kezban MERCAN 1927 Fikriye MERCAN 1951 Selahattin MERCAN 1959 Seyfettin MERCAN 1953 Sertap MERCAN 1955 Ümit ORHAN 1975 Mehmet ORHAN 1967 Hulusi ORHAN 1965	Ali GÖYMEN, Ankara	Ankara, Yenimahalle, Çayyolu District, Block no. 42026, Parcel No. 1 1992	21/07/2009 Ankara Civil Court, E. 2008/21 K. 2009/283	26/10/2010 E.2010/11746 K. 2010/18207
75193/10 Kaya	06/12/2010	Leman KAYA 1964 Fikret KAYA 1984 Can KAYA 1998	H. Hüseyin BÜBERAL, Istanbul	Istanbul, Üsküdar, Kısıklı District, Plot No. 161/1 Block No. 2461, Parcels Nos. 1, 2 and 4 17/04/1995	17/12/2009 Üsküdar Civil Court, E. 2009/678 K. 2009/257	01/11/2010 E.2010/12510 K. 2010/18677
50327/12 Arı	25/05/2012	Bekir ARI 1959 Izmir	Sibel Ünlü HASDEMİR, İzmir	İzmir, Aliağa, Köycivarı District Plot No. 1 Parcel No. 5804 1975	24/02/2010 Aliağa Civil Court, E. 2009/326 K. 2010/84	25/10/2011 E.2011/11634 K.2011/17078