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

SECOND SECTION

DECISION

Application no. 58227/08
Orhan ŞENSOY and Ayhan Timuçin ŞENSOY
against Turkey

The European Court of Human Rights (Second Section), sitting on 21 November 2017 as a Committee composed of:

Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 November 2008,

Having regard to the decision of 17 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, Mr Orhan Şensoy and Mr Ayhan Timuçin Şensoy, are Turkish nationals, who were born in 1948 and 1975 respectively and live in Ankara. They were represented before the Court by Ms B. Yegül, 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. Following the taking over of the Imarbank by the Banking Regulation and Supervision Agency and Savings Deposit Insurance Fund, on 22 December 2003 the applicants initiated proceedings before the Ankara

Administrative Court to have the annulment of decree no. 2003/6668 on the procedure to be followed after the taking over of Imarbank. At the time when the application was communicated, the proceedings were still pending before the domestic courts.

B. Relevant domestic law

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

COMPLAINT

5. The applicants complained under Article 6 of the Convention that the length of the proceedings had been excessive.

THE LAW

A. Disjoinder of the applications

6. On 19 November 2009 in view of the similarity of the complaints, the Court decided to join five applications, namely *Erdem and Egin Erdem v. Turkey* (no. 28431/06), *Saygı v. Turkey* (no. 55559/07), *Karadağ v. Turkey* (no. 26427/08), *Güney v. Turkey* (no. 38143/08) and *Şensoy v. Turkey* (no. 58227/08); to declare the applications partially inadmissible and communicate the remaining part to the Government. However, the Court considers that it is necessary to separate them. Accordingly, it decides to disjoin the present application from the other ones.

B. Article 6 of the Convention

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

8. 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 v. Turkey* ((dec.), no. 4860/09, 26 March 2013).

9. 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.

10. The Court notes that in its judgment 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.

11. However, taking account of the Government's preliminary objection with regard to the obligation of the applicants 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* (cited above). It therefore concludes that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 14 December 2017.

Hasan Bakırcı
Deputy Registrar

Julia Laffranque
President