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

SECOND SECTION

DECISION

Application no. 41420/06
Abdurrahman TİLEN and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 June 2017 as a Committee composed of:

Ledi Bianku, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 29 September 2006,

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, whose details are set out in the appendix, are Turkish nationals and reside in Batman. They were represented before the Court by Mr S. Kaya, a lawyer practising in Batman.

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. On an unspecified date, the National Water Board expropriated a plot of land belonging to the applicants (plot no. 2218) in Körük, Batman.

5. On 26 March 2003 the Batman Civil Court of First Instance partly granted a request by the applicants for increased compensation and awarded

them 174,016,662,500 Turkish liras (TRL) (approximately 95,140 euros (EUR)) plus interest at the statutory rate.

6. On 18 March 2004 the Court of Cassation upheld the first-instance judgment.

7. On 27 April 2005 the administration paid the sum awarded by the court.

8. Subsequently, the applicants applied to the Batman Execution Office and sent a writ of execution to the administration for payment of an outstanding debt caused by the difference between the statutory rate of interest and the highest rate applicable to State debts in accordance with Article 46 of the Constitution.

9. The administration filed an objection against the claim. Accordingly, on 23 November 2005 the Batman Enforcement Court accepted the applicants' claim in part. It ordered the administration to pay the applicants a further 24,758.69 Turkish liras (TRY)[1] (approximately EUR 15,470). On 16 March 2006 the Court of Cassation upheld that ruling.

10. According to the information in the case file, on 26 April 2007 the administration paid the amount in question.

B. Relevant domestic law

11. A description of the domestic law and practise with respect to the Compensation Commission mentioned below (paragraphs 16-17) 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

12. Relying on Article 1 of Protocol No. 1, the applicants mainly complained that the compensation they had been awarded for the expropriation of their land had depreciated considerably in value owing to the prolonged procedure, and that the domestic courts had failed to apply the highest interest rate for State debts laid down in Article 46 of the Constitution, in breach of their right to property.

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.

THE LAW

13. The applicants complained of a breach of Article 1 of Protocol No. 1 on account of the financial loss caused by the depreciation in value of their compensation award as a result of the delay in the proceedings and low interest rates.

14. The Government noted that a new Compensation Commission had been established under Law no. 6384 to deal with applications concerning length of proceedings and the non-execution of judgments. They further noted that the competence of the Compensation Commission had subsequently been enlarged by a decree adopted on 16 March 2014 to examine complaints relating to, among other things, alleged losses in value of expropriation compensation due to the effects of inflation and the length of proceedings. Accordingly, they maintained that the applicants had not exhausted domestic remedies as they had not made any application to the Compensation Commission.

15. 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 *Yıldız and Yanak v. Turkey* ((dec.), no. 44013/07, 27 May 2014), the Court declared an application inadmissible on the grounds 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 depreciation in the value of awards in expropriation cases.

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

17. 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 *Yıldız and Yanak*, given above.

18. In view of those considerations, 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 the application inadmissible.

Done in English and notified in writing on 6 July 2017.

Hasan Bakırcı
Deputy Registrar

Ledi Bianku
President

APPENDIX

No.	Name of applicants	Date of Birth
1.	Abdurrahman Tilen	05/07/1938
2.	Esat Tilen	05/07/1938
3.	Habib Tilen	01/01/1946
4.	Mehmet Tilen	01/01/1947
5.	Mehmet Raşit Tilen	30/09/1949