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

SECOND SECTION

DECISION

Application no. 36230/06
Ahmet Şamil TİSOĞLU
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 October 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 18 August 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ahmet Şamil Tisoğlu, is a Turkish national, who was born in 1938 and lives in İstanbul. He was represented before the Court by Ms C. Şerbetçi, a lawyer practising in Istanbul.

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 14 April 1997 the Ministry of Tourism (the administration) decided to expropriate several plots of land belonging to the applicant in Bodrum.

5. On 9 January 1998 the applicant initiated proceedings before the Bodrum Civil Court of First Instance and asked for additional compensation.

6. On 25 December 2003 the first instance court partially granted the applicant's claim and awarded him a compensation plus interest at statutory rate, running from 4 February 1999.

7. On 3 November 2004 the Court of Cassation upheld the judgment of the first instance court.

8. Subsequently, on 9 December 2004 the applicant applied to the Beyoğlu Execution Office and sent a writ of execution to the administration asking for the payment of the outstanding debt and the accrued interest at the highest rate of interest applicable to State debts in accordance with Article 46 of the Constitution.

9. The administration filed an objection against the calculation method of the interest. Accordingly, proceedings started before the Beyoğlu Enforcement Court to lift the objection raised by the administration.

10. On 6 September 2005 the Beyoğlu Enforcement Court ordered the administration to pay the applicant 2,300,988 Turkish liras (TRY) (approximately 1,374,000 euros (EUR)) for interest.

11. On 15 November 2005 and 23 February 2006 respectively, the applicant's appeal and rectification requests were rejected by the Court of Cassation.

B. Relevant domestic law and practice

12. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraphs 13-14) may be found in *Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013; *Demiroğlu and Others v. Turkey* (dec.), no. 56125/10, 4 June 2013; and *Yıldız and Yanak v. Turkey* (dec.) no. 44013/07, 27 May 2014.

COMPLAINTS

13. Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained about the financial loss he had suffered as a result of late payment of the additional expropriation amount. In this connection, he maintained that the expropriation proceedings had lasted for a lengthy period and that the interest rate had not been calculated pursuant to Article 46 of the Constitution.

THE LAW

14. Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained about the financial loss he had suffered as a result of the late payment of the impugned sums concerning the expropriation of his land.

15. 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-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 application should be rejected for non-exhaustion of domestic remedies as the applicant should avail himself of the new remedy before 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 decision in the case of *Yıldız and Yanak v. Turkey* ((dec.), no. 44013/07, 27 May 2014), the Court declared an 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 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 applicant's 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* (cited above).

19. In 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 the application inadmissible.

Done in English and notified in writing on 26 October 2017.

Hasan Bakırcı
Deputy Registrar

Ledi Bianku
President