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

SECOND SECTION

DECISION

Application no. 3743/19
Ali UYANDIRAN and Others
against Türkiye

The European Court of Human Rights (Second Section), sitting on 15 October 2024 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 3743/19) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 January 2019 by the eight applicants listed in the appended table ("the applicants"), who were represented by Mr Y. Ayyıldız, a lawyer practising in Istanbul;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged non-implementation of the Turkish Constitutional Court's decision in which it held that the applicants' right of access to a court had been breached owing to the refusal of their compensation claim by the domestic courts. The applicants' compensation claim before the domestic court concerned an expropriation process that was allegedly carried out in their absence.

1. Background to the case

2. On 2 December 1985 a plot of land belonging to the applicants' predecessors was expropriated. However, as the applicants' predecessors could not be found at their address, on 24 June 1987, a lawyer was appointed as their administrator with a view to protecting their interests during the

expropriation process under Article 377 of the former Civil Code (Law no. 743) which was in force at the material time.

3. The administrator officially received notification of the documents for the expropriation on 10 September 1987, and subsequently brought a case before the Bakırköy Fourth Civil Court on behalf of the applicants' predecessors with a view to increasing the amount of compensation for the expropriation of the plot of land in question. On 6 July 1988 that court granted the request, and this judgment in favour of the applicants' predecessors became final after being reviewed on appeal.

4. On 17 November 1989 the Istanbul Provincial Treasurer was appointed as administrator for the applicants' predecessors in accordance with provisional section 1 of Law no. 3561, which entered into force on 27 May 1989.

5. On 8 March 1991 the relevant authority's action to have the land registered in its name was also allowed by the Bakırköy Third Civil Court, and the land in question was finally registered on 26 August 1991 in the name of that authority.

6. The compensation for the expropriation that had been previously blocked in a bank account, opened in the name of the applicants' predecessors, was transferred to the Treasury, as a result of the appointment of the Istanbul Provincial Treasurer as administrator for the applicants' predecessors (see paragraph 4 above).

2. First set of proceedings

7. On 14 September and 14 October 2011 the applicants initiated proceedings against the authority, claiming compensation for *de facto* expropriation. On 9 April 2013, however, the case was dismissed by the Bakırköy Fifth Civil Court since the decision of the Bakırköy Fourth Civil Court dated 6 July 1988 had constituted a final judgment on the same issue (see paragraph 3 above).

8. On 27 March 2014 the applicants' appeal against this decision was dismissed by the Court of Cassation on the grounds that, pursuant to provisional section 7 of Law no. 2942, which entered into force on 11 June 2013, any claim with respect to the expropriation process in which the expropriated land had been registered in the authority's name would be rejected without an examination on the merits.

9. On 16 June 2014 the applicants lodged an individual application with the Constitutional Court complaining that they had been deprived of the peaceful enjoyment of their possessions and of their right of access to a court. On 19 July 2017 the Constitutional Court, examining the case from the standpoint of the right of access to a court, held that the applicants had been subjected to a disproportionate interference, with reference to its decision of 13 November 2014 in which it had held that provisional section 7 of Law no. 2942 was unconstitutional and had annulled it. In this context, the

Constitutional Court reiterated its findings from its decision of 13 November 2014 that provisional section 7 of Law no. 2942 undermined the right of access to a court, the right to the enjoyment of property and the principle of legal security, as it precluded future claims from being lodged and required the courts to reject actions that were already pending without examining their merits. In this regard, since the Court of Cassation dismissed the applicants' appeal pursuant to provisional section 7 of the Law no. 2942 without assessing the merits of their case, the Turkish Constitutional Court held that the applicants' right of access to a court had been violated. The Constitutional Court, therefore, remitted the case to the Court of Cassation for a rehearing.

3. Second set of proceedings after the Constitutional Court's remittal decision of 19 July 2017

10. In the proceedings following the remittal of the case the Court of Cassation rendered a fresh decision on 17 May 2018 on the basis of the case-file, which was notified to the applicants on 19 July 2018. It firstly acknowledged that its decision of 27 March 2014 had been invalidated by the decisions of the Constitutional Court dated 13 November 2014 and 19 July 2017. It therefore revoked its previous ruling. It then noted that, while the applicants' case concerned a compensation claim for an alleged *de facto* expropriation, the notifications of expropriation had nevertheless been duly served on the administrator for the applicants' predecessors who had been able to successfully increase the amount of compensation for the expropriation before the Bakırköy Fourth Civil Court, a decision which had been reviewed on appeal by the Court of Cassation and had therefore become final. With this reasoning, the Court of Cassation endorsed the conclusion of the first-instance court of 9 April 2013 that the decision of 6 July 1988 in favour of the applicants' predecessors constituted a final judgment on the same issue and therefore upheld the decision.

11. The applicants did not lodge a new application before the Turkish Constitutional Court.

4. Complaint

12. The applicants complained, under Article 1 of Protocol No. 1 to the Convention, that the plot of land in question had been expropriated by the relevant authorities without properly informing their predecessors and without compensating them for the act of expropriation. Relying on Article 6 of the Convention, they further complained about the non-implementation of the Constitutional Court's decision of 19 July 2017 by the Court of Cassation.

THE COURT'S ASSESSMENT

13. The Court refers to the general principles concerning the rule of exhaustion of domestic remedies and the subsidiary character of its role (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 38-40, ECHR 2006-V; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, §§ 69-70, ECHR 2010; *Uzun v. Turkey* (dec.), no. 10755/13, §§ 36-39 and §§ 68-70, 30 April 2013; *Vučković and Others v. Serbia (preliminary objection)* [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and *Öztırak v. Türkiye* (dec.), no. 46472/19, §§ 36-39, 26 March 2024). In particular, to be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success. There is no obligation to have recourse to remedies which are inadequate or ineffective. However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Vučković and Others*, cited above, §§ 73-74).

14. Turning to the present application, the Court observes that the applicants' main grievance is that in the remittal proceedings the Court of Cassation disregarded the findings of the Constitutional Court, which, in their view, amounted to a non-implementation of the Constitutional Court's decision in breach of Article 6 of the Convention. For the same reason the applicants appear not to have made a second application with the Constitutional Court, following the impugned decision of the Court of Cassation of 17 May 2018, regarding their complaint under Article 1 of Protocol No. 1.

15. In examining whether there existed any circumstances in the present case that absolved the applicants from lodging a second individual application with the Constitutional Court, following the Court of Cassation's decision of 17 May 2018, in order to exhaust domestic remedies, it is necessary to examine the course of the original and remittal proceedings and the nature of the decisions given by the domestic courts.

16. The Court firstly notes that the first-instance court rejected the applicants' action on 9 April 2013 on the basis of the matter having become *res judicata*. On appeal, the Court of Cassation, without making any

assessment of the correctness of the first-instance court's decision, rejected the case on the basis of the mandatory nature of provisional section 7 of Law no. 2942. The Court of Cassation's decision of 27 March 2014 was thus of a procedural nature and it did not examine the applicants' case on the merits. The Constitutional Court, as a consequence, examined the applicants' individual application solely from the perspective of their right of access to a court and found that this right had been breached.

17. The Court further considers that the Court of Cassation complied with the decision of the Constitutional Court of 19 July 2017 in as much as it revoked its previous decision of 27 March 2014 in which it had made no assessment of the merits of the applicants' case and then examined the merits of that case on separate grounds. In this regard, the Court notes that in its second decision of 17 May 2018 the Court of Cassation considered that the notifications of expropriation had been duly served on the administrator appointed for the applicants' predecessors, in accordance with the law at the relevant time. With that conclusion it endorsed the reasoning of the Bakırköy Fifth Civil Court's decision of 9 April 2013, namely that the decision of 6 July 1988 in favour of the applicants had constituted a final judgment on the same issue.

18. The Court is aware that the rejection of the applicants' claim on *res judicata* grounds was not a new issue as the first-instance court had already made a finding to that effect in its decision of 9 April 2013. However, the Court of Cassation did not have an opportunity to examine the case from this perspective because the provisional law, having entered into force in the meantime, made it mandatory to reject all pending cases. The Constitutional Court in turn reviewed the grounds on the basis of which the Court of Cassation had rejected the case. In other words, the Constitutional Court could not review the first-instance court's initial conclusion that the case could not be heard in accordance with the *res judicata* principle, since that initial conclusion itself had not yet been reviewed by the Court of Cassation.

19. Thus, there is nothing to indicate that in the circumstances of the case, a fresh individual application to the Constitutional Court was not an effective remedy offering reasonable prospects of success for the applicants' grievances. It was therefore incumbent on the applicants to lodge a new application with the Constitutional Court after the Court of Cassation's decision of 17 May 2018 in order to comply with the requirement of exhaustion of domestic remedies (compare and contrast *Antonić-Tomasović v. Croatia*, no. 5208/03, § 33, 10 November 2005).

20. It follows that the application must be rejected in accordance with 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 14 November 2024.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President

Appendix

List of applicants:

No.	Applicant's Name	Year of birth	Nationality
1.	Ali UYANDIRAN	1946	Turkish
2.	Ekrem ALBEREN	1984	Turkish
3.	Fatma ALBEREN	1958	Turkish
4.	Muammer ALBEREN	1950	Turkish
5.	Nergiz ALBEREN	1990	Turkish
6.	Refik TIKNAZ	1945	Turkish
7.	Ahmet UYANDIRAN	1952	Turkish
8.	Nail UYANDIRAN	1948	Turkish