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

SECOND SECTION

DECISION

Application no. 4390/08
Penbe YILMAZ against Turkey
and 6 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 5 December 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Valeriu Griţco,
Jon Fridrik Kjølbro, *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. A list of the applicants is set out in the appendix. They are represented before the Court by Mr A.F. Demirkan, a lawyer practising in Bursa.

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

A. The circumstances of the cases

3. The facts of the cases, as submitted by the applicants, may be summarized as follows.

4. In 2004 the General Directorate of Highways seized the applicants' plots of lands located in Bursa and Balıkesir without expropriation for the construction of a highway. The applicants subsequently lodged separate

civil actions in order to obtain compensation for the *de facto* expropriation of their properties. Based on expert reports, the domestic courts established the amount of compensations and these judgments were subsequently upheld by the Court of Cassation. However, no payments were made to the applicants. The details regarding the civil proceedings may be found in the appendix.

B. Relevant domestic law

5. A description of the domestic law regarding the new remedy introduced by Law no. 6384 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

6. Relying on Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, the applicants complained that the domestic authorities' failure to enforce the judgments in their favor constituted a breach of their right to a fair trial and right to the peaceful enjoyment of their possessions.

THE LAW

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

8. The applicants complained under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of domestic judgments given in their favor.

9. 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. Accordingly, they maintained that the applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission.

10. 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 *Demiroğlu and others v. Turkey* ((dec.), no. 56125/10, 4 June 2013), 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 non-execution of judgments.

11. The Court notes that in its judgment in the aforementioned 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.

12. Taking into account the Government's 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 cases of *Demiroğlu*, (cited above, §§ 24-36), *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013).

13. In view of the above, the Court concludes that the applications 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 11 January 2018.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President

APPENDIX

No.	Application no.	Lodged on	Applicant Date of birth Place of residence Parcel no.	Details of first-instance court decision and parcel no.	Amount of compensation awarded (in Turkish liras (TRY))	Date of final court of cassation decision
1.	4390/08	15/01/2008	Penbe YILMAZ 01/01/1938 Balıkesir (parcel no. 381)	31.10.2006 (Bandırma Civil Court) E :2006/248, K:2006/245	5,053.72	23.10.2007
2.	4395/08	15/01/2008	Kamil KANI 01/01/1924 Bursa (parcel no. 42)	28.02.2006 (Karacabey Civil Court) E:2005/887, K:2006/176	1,356	26.06.2006
3.	4417/08	15/01/2008	Hüseyin TORUN 01/01/1958 Bursa (parcel no. 976)	30.11.2006 (Karacabey Civil Court) (E:2006/815, K:2006/969)	9,838.08	29.05.2007
4.	4760/08	15/01/2008	Esat SEVİM 01/01/1952 Bursa (parcel no. 1165 and 1166)	8.06.2006 (Karacabey Civil Court) E:2006/215, K:2006/334	8,750	13.03.2007
5.	4781/08	15/01/2008	Kefayettin YILMAZ 01/01/1959 Balıkesir Mehmet YILMAZ 01/01/1960 Balıkesir (parcel no. 168)	31.10.2006 (Bandırma Civil Court) (E:2006/232, K:2006/232)	10,006.37	22.05.2007
6.	10433/08	15/01/2008	Remziye SÖNMEZ 01/01/1955 Balıkesir (parcel no. 130)	31.10.2006 (Bandırma Civil Court) E:2006/246, K:2006/243	12,339.36	23.10.2007
7.	10446/08	15/01/2008	İbrahim DÜLGER 01/01/1947 Balıkesir (parcel no. 815)	19.04.2007 (Bandırma Civil Court) E:2006/481, K:2007/113	5,916.35	13.11.2007