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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (19/03/2018)

Communication from Turkey concerning the cases of YILDIRIR and GURTAS YAPI TICARET VE PAZARLAMA A. S. v. Turkey (Applications No. 21482/03, 40896/05)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Turquie concernant les affaires YILDIRIR et GURTAS YAPI TICARET VE PAZARLAMA A. S. (requêtes n° 21482/03, 40896/05) (**anglais uniquement**)

Ankara, Mars 2018

DGI

19 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION REPORT

Yıldırım v. Turkey (21482/03)

and

Gürtaş Yapı Ticaret ve Pazarlama A.Ş. v. Turkey (40896/05)

I. CASE DESCRIPTION

1. These cases concern the violation of the applicants' right to peaceful enjoyment of their property in that the executive body did not compensate the dwelling become unlawful and the land seize of which recorded at fault.

2. In the *Yıldırım* judgment, the ECtHR noted that the interference with the applicant's property right pursues a legitimate aim with regard to the application made upon the demolishing of the house on the grounds that the house, which the applicant had purchased in good faith relying on the land registry office records, had not had construction permit. However, the Court indicated that the fair balance had not been struck between public interest and the protection of property on the grounds of the lack of any domestic remedy to afford the applicant redress for the loss of his property, and the lack of any compensation for his demolished house.

3. In *Gürtaş Yapı Ticaret ve Pazarlama A.Ş.* judgment, the Court indicated that the applicant, who purchased the property based on the land registry office records, had taken the consequences of the erroneous registration made by the administration, and this issue had placed a heavy burden to the applicant because of the fact that the compensation had not been awarded in the action for compensation brought by reason that the land's original size had decreased after the correction made by the Government, and this property has a natural continuation with the area therein, and it is a part of a wide scope and does not allow to differentiate the parcel.

II. INDIVIDUAL MEASURES

4. The Turkish Government has taken measures to ensure that the violations at issue have ceased and that the applicants are redressed for their negative consequences.

II.a Just Satisfaction

5. The Court awarded just satisfaction in respect of pecuniary damage in each case. The just satisfaction awarded has been paid to the applicants as well as costs and expenses, i.e. within the deadline set by the Court. The Government therefore considers that the applicants have been redressed for the negative consequences of the violation by way of the just satisfaction awarded by the Court.

6. For the fact that the damage was compensated through the Court's judgment on just satisfaction, the Government maintains that subject matter of the case file does not exist and therefore reopening of the proceeding is not necessary.

7. Therefore, the Turkish authorities consider that all necessary individual measures have been taken and no other measures are required in this respect.

III. GENERAL MEASURES

8. The Government is of the opinion that given that the law is not at fault in those respects, the best way to prevent re-occurrence of violation is to change case law of the relevant high courts.

9. In this sense, the Government would like to mention the *N.A.v. Turkey* (37451/97) resolution (see Resolution CM/ResDH(2012)105). The N.A. group of cases concern the violation of the applicants' right to peaceful enjoyment of their possessions. Within the context of this group of cases, the high court of Turkey has been changed its case law on cancellation of the land registry without compensation within the coastline and the Committee decided these measures adequate in the meaning of general measures.

10. The Turkish Government would like to submit here the changes in the case law of the high courts which should be evaluated adequate as general measures.

III.a With regard to case law on the dwelling become unlawful

11. The reason of the violation in the *Yıldırım* judgment is that the lack of an effective domestic remedy for the demolishing of the house on the grounds that the house, which the applicant had purchased in good faith relying on the land registry office records, had not had the construction permit, and the lack of any compensation to the applicant. In this context, the Government would like to indicate that the case law was established by the Council of State to prevent the violations.

12. The 14th Chamber of the Council of State made detailed evaluations in respect of the property rights that are regulated in the European Convention on Human Rights and Constitution of the Republic of Turkey in the context of the judgment that concluded the demolishing house which became an unlicensed construction following the cancellation of construction license. In addition to this, it is referred to *N.A. v. Turkey* together with *Yıldırım v. Turkey* in question with regards to the registration of the immovable property in the name of treasury without any compensation to its owner following the cancellation of title deed after the action brought before the court in competence with regard to the immovable property located in the coastline that somehow registered in the name of individual through which it became the subject of privately owned assets. In conclusion, the Council of State quashed the judgment on the account of the misconduct of the administration that had made an unjustifiable plan and given the license based on this plan before demolishing the house, and the Council of the State indicated that the value of the immovable property, that is the subject to demolish, shall be paid to the individuals in good faith (Annex 1).

III.b With regard to case law on the Responsibility of the State for Keeping Land Registers

13. The violation reason of the judgment of *Gürtaş Yapı Ticaret ve Pazarlama A.Ş.* concerns that the applicant is the injured party because of the erroneous data written in the land registry, in other words the damage shall be compensated in compliance with the principle of trust in the land registry. In this context, the Government indicates that there are many judgments with regard to the Government's liability under the principle of trust in the land registry.

14. In this context, for instance, in the judgment dated 1 October 2014 of the 2nd Chamber of the Ankara Gölbaşı Civil Court of General Jurisdiction, the court concluded to award compensation to the claimant with regard to the arrangement of land borders in the land registry on account of being duplicated, by indicating that: "...The Government is liable for the damages resulted from the land registry, and the Government is also liable for the faults made in the land registry records since the cadastre proceedings in the formation stage of the land registry log, and the title deed constitute a whole, under Article 1007 of the Turkish Civil Code..." (Annex 2). The Court of Cassation upheld this decision (Annex 3). In addition, the Court of Cassation held many similar judgments on the liability of the government for the land registry records (Annex 4).

III.c Individual Application Right before the Constitutional Court

15. Although it is not a major response to the European Court's judgment in this case, the authorities would furthermore like to highlight that an individual in the applicants' situation has at his or her disposal today an effective remedy to bring the violation to an end and obtain redress before the domestic authorities. In particular, following the European Court's judgment, in 2012, the legislative measures were taken to introduce an individual application before the Constitutional Court in respect of human rights violations. An individual in the applicants' situation could therefore pursue today the avenue of lodging an individual application to uphold his or her rights under the Convention, including in the present case. The Constitutional Court is also able to award just satisfaction in case of finding a violation of human rights. In this respect, the Turkish authorities would like to recall that the European Court indicated in the *Hasan Uzun* case (application no. 10755/13) that the individual application to the Constitutional Court should be considered as an effective remedy as of 23 September 2012.

16. The constitutional Court had decided in similar issues at the individual application of *Göksel Kum*, docket no 2013/6863, on 30 June 2014 that the Government has strict liability for keeping land registry, but this liability is subject to 1 and 10 years time limit, from learning and from event, respectively. The Constitutional Court reiterated the same understanding at the case of *Zeki Demirel and Yusuf Demirel*, docket no 2014/198, on 20 November 2014.

III.d Publication and dissemination measures

17. The Government ensured that the publication and the dissemination measures have been taken. To this end, the European Court's judgment have been translated into Turkish and made available on the Court's website : <http://hudoc.echr.coe.int/eng?i=001-125616>, <http://hudoc.echr.coe.int/eng?i=001-157651>.

18. Furthermore, the European Court's judgment has been transmitted together with an explanatory note on the European Court's findings to the domestic courts involved in this case as well as to other relevant courts such as the Constitutional Court and the Court of Cassation.

19. The Government therefore considers that the above-mentioned measures are capable of preventing similar violations and no other general measures are required.

IV. CONCLUSIONS

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20. In the light of what the Government has submitted in the individual and general measures about how the applicants were redressed for the negative consequences of the violation and how the probable future violations are to be prevented, the Government considers that all necessary general and individual measures which Turkey is obliged to take under Article 46 § 1 of the Convention have been properly taken. Taking all these elements into account, the Committee of Ministers is respectfully invited to close their examination thereof.