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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Report (11/10/2024)

Communication from Türkiye concerning the case of Alptekin and Others v. Turkey (Application No. 43969/06)

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Réunion : 1514^e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (11/10/2024)

Communication de la Türkiye concernant l'affaire Alptekin et autres c. Turquie (requête n° 43969/06)
(anglais uniquement)

REVISED ACTION REPORT

Alptekin and Others v. Türkiye (43969/06)

Judgment of and final on 17 March 2020

I. CASE DESCRIPTION

1. The case concerns a violation of the right to access to court on the account of the strict implementation of the six-month statutory time-limit to challenge results of cadastral surveys (Article 6 § 1).
2. The Court ruled that the particularly rigorous interpretation of a procedural rule by the domestic courts deprived the applicants of their right to access to court. The applicants could not have foreseen the application of the six-month time-limit rule in bringing their action, since the period of ten years laid down both by the cadastral commission's announcement and by Law No. 3373, had been in force for more than one year before the date of the announcement of the cadastral commission's decision.

II. INDIVIDUAL MEASURES

Just Satisfaction

3. The European Court awarded the applicants jointly EUR 6,000 in respect of non-pecuniary damages. The just satisfaction awarded was paid to the applicants within the deadline set forth by the Court. Payment information was published on HUDOC-EXEC.

Reopening of the Proceedings

4. At the outset, the Turkish authorities would like to highlight that pursuant to the domestic legislation the applicants have the opportunity to request reopening of the impugned proceedings following the European Court's judgment finding a violation. The relevant statutory provision (notably, Article 377 (1)(e) of the Code of Civil Procedure (Law no. 6100) provides that an application for reopening of the civil proceedings should be filed within three months following the service of the European Court's final judgment.
5. However, the applicants did not lodge an application before the Tekirdağ 1st Civil Court of First Instance with the request of reopening of the impugned proceedings. The Government has no liability for the failure to request the reopening of the proceedings.

Application to the Compensation Commission

6. The Government would like to note that the competence of the Compensation Commission was extended by a decree of March 9, 2016 to enable it to examine, among other things, allegations of violation of the right of ownership due to a cadastral survey which determined the property as a forest area and cancellation of the title deed on the grounds that a piece of land was part of the forest area.
7. The Court noted in its judgment (*Alptekin and Others*, § 26) that this remedy is not capable of compensating the complaint regarding the right to access to court. Nevertheless, the Government would like to give information on the application to the Compensation Commission by the applicants regarding the impugned process.
8. In this context, the Government would like to note that on 27 April 2020 the applicants lodged an application with the Human Rights Compensation Commission. After examining the application, on 23 February 2021 the Commission awarded the applicants 50,945 Turkish liras (TRY) in respect of pecuniary damages. Upon the dismissal by the Regional Administrative Court of the objection filed against it, the decision in question became final. The awarded amount was paid to the applicants in due time.

III. GENERAL MEASURES

9. The violation at hand stems from the particularly rigorous interpretation of a period of prescription by the domestic courts.
10. In the case at hand, the cadastral works were carried out between October 1985 and 22 May 1987 by the Forestry Cadastral Commission and its conclusions were announced on 22 August 1988. The applicants' *de cujus* brought an action against these conclusions before the Tekirdağ Civil Court on 13 August 1998.
11. While the cadastral works - conducted under Article 11 of Law No. 6831 as amended with the Law no 3302 of 5 June 1986- were still ongoing, the applicable time limit to contest the cadastral minutes and conclusions was six months starting from the date of the notification. However, before the conclusion of these cadastral works -which was in 1988- Article 11 of the Law no 6831 was amended with the Law no 3373 dated 22 May 1987. This amendment

provided the persons having title deeds for their property an opportunity to challenge cadastral conclusions in 10 years.

12. Before the domestic courts, the applicants' *de jure* relied on the amendment of Law no 3373 extending the time limit for such application from six months to ten years. Nevertheless, the Court of Cassation did not accept this argument. It held that the cadastral works had been conducted under Article 11 of Law no 6831 as amended with Law no 3302. Therefore, the time-limit for such an objection was six months at that time which had thereby already passed. The amendment made with Law no. 3373 was accordingly not applicable to the applicant's case. In reaching its conclusion the Court of Cassation did not take in to account the fact that the conclusions of the cadastral works were announced in 1988, but that the amendment made with the Law no 3373 was already in force as of 1987.
13. The European Court found the above approach of the Court of Cassation incompatible with the Convention requirements. It established that, in view of the cadastral conclusions at issue and Law 3373, which came into force more than a year before the date on which the cadastral conclusions were announced, the Court had serious doubts as to the foreseeability for the applicants of the application of the six-month time limit in the action in question.
14. Subsequently, on 5 November 2003 the relevant article was amended by the Law no. 4999 to ensure that the time-limit for bringing an action be reduced from six months to one month from the date of announcement. In 2012, in a case brought against the Treasury for the annulment of the title deed and registration, the domestic court stated that Article 11 of the Law no. 6831 was against the Constitution. The said provision allowed title owners to bring an action within 10 years after finalisation of forest cadastral report. However, proceedings could not be initiated for any other legal reason within that 10 years' time-limit. The domestic court noted that the provision in question was against Article 13 entitled "restriction of exercise of the fundamental rights and freedoms" and Article 35 entitled "property rights". It further requested the annulment of the provision, which read "Provided that no objection has been filed against commission's decision in one month, it becomes final. This period is statutory time-limit."
15. In its judgment (docket no. 2012/108, decision no. 2013/64), the Constitutional Court granted time to the legislator for a new legal amendment, annulled the foregoing provision by holding that it was in breach of the right to property and right to access to a court, and the judgment on

annulment would enter into force on 14 January 2014. According to the Constitutional Court, the one-month period of prescription -current legislation of that time-, which starts with the announcement of the cadastral commission's decision, eliminates the right of owners of real estate without deeds to file a lawsuit based on legal reasons before the cadastre, causing the property rights of individuals to terminate. For this reason, the contested rule is of a nature that would disrupt the balance between personal benefit and public interest, cause the freedom to claim rights and the right to property to be disproportionately limited, touching the essence of the right and making it unusable.

16. The legislator changed the cancelled one-month period of prescription to 30 days. The legislator also changed the provision of "*title deed holders have the right to file a lawsuit within ten years.*" All claimants have a 10-year period to file a lawsuit according to the provision amended as "*Reports and maps drawn up by forest cadastral commissions shall not be contested or filed against ten years after their finalisation by relying on legal grounds which were existed before cadastral survey, except for the Treasury.*" Accordingly, the legal contradiction between those - who rely on title deed - and the others - who rely on other legal reasons such as possession - was eliminated.
17. As of 26 February 2014, i.e. the date of entry into force of the new legal arrangement, claimers are entitled to initiate proceedings before the Civil Courts of First Instance by relying on reasons before cadastral survey within ten years following finalisation of forest cadastral reports, even if the prescribed time-limit has elapsed. Failure to bring an action before cadastre courts within 30-day time-limit after finalisation of forest cadastral reports has no longer any negative impact in our legal system. Because, the proceedings initiated based on the legal reasons existing before the cadastral survey are handled by the Civil Courts of First Instance in accordance with the same procedure, provided that it should be brought within 10 years.
18. In addition, pursuant to Article 448 of the Code of Civil Procedure, procedural rules in civil proceedings must be applied immediately provided that they do not affect the completed procedures. In its decision dated 29 May 2024 (Docket no. 2023/1-350, Decision no. 2024/285), the Plenary Court of Cassation in Civil Matters examined whether the amendment made to the Cadastre Law no. 3402 was applicable to the present case which was pending. In this respect, the Court of Cassation stated that the application of procedural rules in an overly

formalistic manner, in violation of the constitutionally protected fundamental rights, legal certainty, and legal clarity, would lead to unfair outcomes. The Court of Cassation has numerous rulings in this regard, where it explicitly states that changes in procedural rules in civil proceedings should be immediately applied to pending cases (The 6th Civil Chamber of the Court of Cassation, Docket no. 2021/826, Decision no. 2021/93; the 6th Civil Chamber of the Court of Cassation, Docket no. 2021/2357, Decision no. 2022/1958; the 2nd Civil Chamber of the Court of Cassation, Docket no. 2023/4494, Decision no. 2023/5681).

19. In this respect, there is no conflict with the immediate implementation of the rules of procedure. In addition, as regards the case in question, the Government would like to draw the following points to the Committee's attention:

20. Consequently, pursuant to the regulation which came into effect after the annulment decision and is currently in force, the provisions stating that putting on a notice board and announcement serve as official notifications and that cadastral surveys shall become final after the announcement period have been included in the text of the article. With the amendment, the one-month time-limit for filing an objection has been amended as thirty days. However, the new regulation does not include a provision stating that this period has a nature of a prescription period. Additionally, the right to bring an action within ten years, which was previously reserved only for registered property owners, has been extended to cover all types of properties. Accordingly, an action may be filed, on the basis of legal grounds preceding the cadastral process, within ten years from the date of finalisation of the reports and maps prepared by the forest cadastral commissions, regardless of whether the property is registered or unregistered. It is clearly stated both in our legislation and in the decisions of the Court of Cassation that these procedural amendments should be applied immediately to pending cases. The legal amendments indicate an apparent development of the right to access to courts concerning the impugned matter.

Case-law Developments

21. The relevant Civil Chamber of the Court of Cassation's recent case-law regarding the subject has been changed within the framework of the new legal arrangement passed after the Constitutional Court's judgment on annulment.
22. In the judgment of the 20th Civil Chamber (docket no. 2020/878), the claimant requested that the title deed be annulled and registered in his name, alleging that the land, which was registered in the name of Treasury as forest, was an agricultural land in his possession. In the same case, the Civil Chamber previously held (docket no. 2011/15547 and decision no. 2012/2303) that the case should be rejected on the grounds that only title owners could bring such an action within 10-year statutory time-limit for immovables registered in the land registry, however the case was brought on the basis of continuous possession.
23. Upon the claimant's appeal lodged after the legal amendment, the Civil Chamber found in its judgment (docket no. 2015/13837 and decision no. 2015/11645) that the domestic court's dismissal decision was against the legislation in force. The Civil Chamber referred to the Constitutional Court's foregoing judgment and the following legal arrangement, and held that an action may be brought within the time-limit of 10 years on the basis of the legal reasons existing before the cadastral survey whether the impugned immovable was registered in the land registry or not. In the present case, having noted that the case was brought within 10 years and the legal amendment had to apply for the pending cases, the Civil Court concluded that the case should be examined on its merits and a decision should be delivered accordingly.
24. In its decision dated 23 November 2021 (Docket no. 2021/13020, Decision no. 2021/11552), the 8th Civil Chamber of the Court of Cassation made a similar assessment. According to the Court of Cassation, "*Under this new regulation, an action may be filed within ten years from the date of finalisation of the reports and maps, on the basis of legal grounds preceding the cadastral process, regardless of whether the property is registered or unregistered. The present case was brought within the ten-year period in respect of the immovable property registered as a forest following the cadastral process. As the legislative amendment should also apply to the pending cases, the present case must be examined on its merits without a requirement of a land registry record, and a decision must be made accordingly.*"
25. In its decision dated 9 March 2021 (Docket no. 2020/960, Decision no. 2021/368), the Bursa Regional Court of Appeal also stated that the present case had been brought within the ten-

year period in respect of the immovable property registered as a forest as a result of the cadastral process conducted under the Law no. 6831, that the legislative amendment should also apply to pending cases, and that the procedural amendments had to be applied immediately as the relevant issue was of a nature of a procedural rule. Therefore, it held that it was inappropriate to issue the decision at hand since it was necessary to make an examination of the case on its merits without requiring a land registry record and to make a decision accordingly.

26. In view of the aforementioned explanations, having regard to the legislative amendments and the recent judicial decisions, the Government considers that the violation caused by the Court of Cassation's rigorous interpretation of the provision concerning the statute of limitations has been eliminated.

Translation and Dissemination of the Judgment

27. The judgment was translated into Turkish and has been published on the Court's official web site.

28. In addition, the Turkish authorities ensured that the translated text of the judgment, with an explanatory note, was circulated to the relevant first-instance courts, the Constitutional Court, the Court of Cassation, the Turkish Institution of Human Rights and Equality and the Ombudsman Institution.

IV. CONCLUSION

29. The authorities consider that both individual and general measures have duly been taken in respect this case. Individual measures provided a redress for the applicants and the general measures taken are capable of preventing similar violations.

30. In the light of the above the Committee of Ministers is kindly invited to close its supervision on the case thereof.