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Contact: John Darcy
Tel: 03 88 41 31 56

Date: 19/04/2018

DH-DD(2018)423

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

Item reference: Revised action report (17/04/2018)

Communication from Turkey concerning the case Dokmeci v. Turkey (Application No. 74155/14)

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

Référence du point : Bilan d'action révisé (17/04/2018)

Communication de la Turquie concernant l'affaire Dokmeci c. Turquie (requête n° 74155/14) (**anglais uniquement**)

DGI

17 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

April, 2018

REVISED ACTION REPORT

Dökmeci v. Turkey (no.74155/14)

Judgment of 6 December 2016, final on 24 April 2017

I. CASE DESCRIPTION

1. The case concerns a violation of the right to property on account of the failure of the authorities in 2009 to pay interest on the final installment of compensation for expropriation although the applicant was deprived of possession of his land property after payment of the provisional installment (Article 1 of Protocol No 1).

II. INDIVIDUAL MEASURES

2. The Turkish Government has taken measures to ensure that the violation at issue has ceased and that the applicant is redressed for their negative consequences.

Just Satisfaction

3. The European Court awarded just satisfaction in respect of the pecuniary damage sustained by the applicant. The amount awarded as just satisfaction was deposited in an escrow account as the applicant could not be reached. The deposition of the just satisfaction was notified to the applicant's lawyer on 26/10/2017.

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

5. Moreover, the Government would like to note that as the applicant failed to submit the documents pertaining to the payment, the applicant is liable. As a matter of fact, since the legal interest accruing between the date of deposit and the date of second notification to the applicant is below EUR 100, it should not be taken into account also on the basis of the practices of the Department for Execution of the Judgments of the Council of Europe. The Turkish authorities therefore consider, in accordance with the Committee of Ministers' practice, that the delayed payment in this case should not prevent its closure (see, in particular, Resolution CM/ResDH(2014)298) concerning Ormancı group of cases against Turkey as well as Resolution CM/ResDH(2016)35 concerning Atanasović group of cases against "the former Yugoslav Republic of Macedonia").

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III. GENERAL MEASURES

6. The Turkish Government considers that the violation at hand is a repetitive case. The *Yetiş* (40349/05) group of cases is directly relevant to the violation found in the case at hand.

7. The Turkish Government has taken a number of measures aiming at preventing similar violations. These measures include, in particular, legislative measures and measures on the publication and dissemination of the Court's judgment.

III.a. Legislative Measures

The Amendment to the Law No 2942

8. The 4th Judicial Package, which envisaged amendment in the legislation provisions leading to violation of ECtHR judgments, was prepared in order to strengthen the human rights standards. Article 10 of the Expropriation Law (Law no. 2942) has been amended on 30 April 2013 so as to read as follows:

“...If the case which is filed to determine the expropriation price cannot be concluded within four months the interest shall be applied to the determined amount after the end of the period...”

9. The amendment made to the Law No. 2942 on Expropriation enables the opportunity to pay interest in the expropriation cases. With the amendment, it is aimed at compensating the decrease in the value of the expropriation costs due to inflation, by the payment of the interests. It is provided that, if the case is not concluded within a four-month period, the payment of the interests will be possible from the end of this time period to the date of the payment of the expropriation costs.

Decision of the Council of Ministers on Extending the Competence of the Human Rights Compensation Commission

10. The decision of the Council of Ministers, dated 10 February 2014 and no. 2014/5917, on extending the competence of the Human Rights Compensation Commission established by *the Law no. 6384 on Settlement of Some Applications Lodged with the European Court of Human Rights by Means of Paying Compensation* entered into force after being published in the Official Gazette of 16 March 2014.

11. In this respect, *“the applications filed with the allegation that the loss of value in the expropriation cost or the right of easement due to inflation or lengthy proceedings in the cases of*

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entitling the right of easement or expropriation carried out under the Expropriation Law no. 2942” has been included in the competence of the Commission.

12. Following this decision, regarding this amendment, the Court declared application of *Cemalettin Yıldız and Teyfik Yanak v. Turkey* (44013/07) inadmissible, indicating that the Compensation Commission was the competent authority. It pointed out in the decision that the Government must provide a redress more promptly as prescribed by Article 1 of the Convention through making the relevant persons enjoy the rights and freedoms guaranteed under the Convention in line with the Recommendations of the Committee of Ministers of the Council of Europe and the Declarations of Interlaken, Izmir and Brighton Conferences; in the contrary case, it must make contribution to decrease the work load of the Court that will have to examine a great number of applications of similar kind; and therefore, it would fulfil its duty in the Convention system through settling such issues at the national level.

13. In this regard, 424 application concerning violation have been filed before the Human Rights Compensation Commission since the Commission began its duty (October 2017). 364 of these applications were settled. Among those, 124 of them were accepted while 240 of them were dismissed. In respect of the accepted applications, an amount of 2.800.000 Turkish liras was paid as compensation.

14. Moreover, during the time passed between the above-mentioned law amendment of April 2013 and the change in practice of the Human Rights Compensation Commission, the Court did not render any judgment finding a violation of similar kind.

III.b. Individual Application Right before the Constitutional Court

15. The authorities would furthermore like to highlight that a person in the applicant’s 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 applicant’s situation could therefore pursue today the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case. The Constitutional Court is also able to award just satisfaction in case of finding a violation of human rights.

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16. In a judgment concerning an application filed as a result of proceedings carried out before the above-mentioned law amendment, the Constitutional Court decided that the right to property was violated, indicating that *“the expropriation cost established according to the date of the action for the determination of the expropriation cost that is the subject matter of the application was paid to the applicants in two stages, namely, the first one was in the action for urgent expropriation and before the date of determination of the cost, and the second one was 23 months after the date of the determination of the cost; that interest was not charged on the amount paid at the end of the action for the determination of the cost; that during this time, the increase in the inflation rates was 16.29 % according to the data of the Central Bank; that the ratio of the value loss against the total amount of expropriation cost was 13.51 %; and that regarding the relevant value loss in the expropriation cost, the applicants were under disproportional burden that could not be justified by the legitimate public interest that the administration tried to reach”* (see Application of Nurettin Albayrak and Others, Application No.2013/4809, 22 January 2015, § 80).

III.c. Publication and dissemination measures

17. The Government ensured that publication and 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=001-174029>).

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, the Court of Cassation, the court which rendered the impugned decisions and the relevant institutions.

19. The Government therefore considers that the above-mentioned measures are capable of preventing similar violations and is also of the opinion that *Dökmeci v. Turkey* (74155/14) judgment may be examined within *Yetiş* (40349/05) group of cases in which the Government has submitted action report so far.

IV. CONCLUSION

20. In light of what the Government has submitted in the individual and general measures about how the applicant was 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

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and individual measures have been properly taken. Taking all these elements into account, the Committee of Ministers is respectfully invited to close the *Dökmeci* case examination thereof.