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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Action report (02/07/2015)

Communication from Turkey concerning the case of Ozerman and Others against Turkey (Application No. 3197/05)

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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Bilan d'action

Communication de la Turquie concernant l'affaire Ozerman et autres contre Turquie (Requête n° 3197/05)
(anglais uniquement)

EXECUTION

DGI

- 2 JUIL. 2015

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

of the European Court of Human Rights' Judgment

in the case of OZERMAN AND OTHERS v. TURKEY (3197/05)

dated 20 October 2009

ACTION REPORT

A. FACTS

The applicants in the present case complain that they were deprived of their property, designated as forest area, without compensation. They rely on Article 1 of Protocol No. 1 to the European Convention on Human Rights (“the Convention”) (protection of property). The applicants also rely on Article 13 of the Convention (right to an effective remedy).

B. CONTENT OF THE JUDGMENT

2. By its judgment, dated 20 October 2009, the European Court of Human Rights (“the Court”) held that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

3. The Court held that Turkey was to pay to the applicants 170,000 Euros (EUR) in respect of pecuniary damage.

C. INDIVIDUAL MEASURES

D. The just satisfaction awards was paid to the applicants. Evidence has been submitted to the Department of Execution of Judgments

E. GENERAL MEASURES

1. Translation and Publication of the Judgment

5. The *Ozerman and Others v. Turkey* judgment has been translated into Turkish and published on the official web site of the European Court of Human Rights. The judgment is available on <http://hudoc.echr.coe.int/webservices/content/pdf/001-124222>.

6. In addition, the translated text of the judgment has been circulated to Constitutional Court, the Ministry of Interior, the Ministry of Finance and the Court of Cassation.

2. Legislative Adjustments

7. With regard to aspect of the *Özerman* judgment in respect of the fact that the property belonging to the applicants was designated as public forest and therefore could not be owned by private individuals by virtue of the relevant legislation, the same issue was the subject of the ECtHR judgment in the case of *Turgut and Others v. Turkey* (1411/03) examination of which was closed with the resolution adopted by the Committee of Ministers on 6 June 2012 (Resolution CM/ResDH(2012)106).

8. Fundamental principles concerning expropriation are governed by Article 46 of the Constitution and regulated in detail by the Expropriation Law (Law no. 2942). In 2001, by the Law no. 4650, substantial amendments were made to the relevant Law no. 2942.

9. Article 46 of the Constitution of the Republic of Turkey, which was amended 03 Oct. 2001 by Law no. 4709, insofar as relevant, reads as follows:

“The State and public personality shall be entitled, where the public interest requires it, to expropriate privately owned real estate wholly or in part and impose administrative servitude on it, in accordance with the principles and procedures prescribed by law, provided that the actual compensation is paid in advance. The compensation for expropriation and the amount regarding its increase rendered by a final judgment shall be paid in cash and in advance. (...) An interest equivalent to the highest interest paid on public claims shall be implemented (...).”

10. Pursuant to the Expropriation Law, expropriation must serve for public interest; a price must be paid in accordance with the relevant law; and expropriation must be performed in compliance with the procedure set forth in the law. By means of expropriation, the immovable property may be expropriated completely or partly; even it may be sufficient to obtain real rights which are similar to absolute property rights, instead of the property.

11. Pursuant to Article 8 of the Expropriation Law, the administrations shall primarily apply the purchasing procedure for the expropriations to be carried out on the immovable properties registered at the title deed office. In order that purchasing procedure to be applied, the administrations shall assign “Value Appraisal Commission” and “Reconciliation Commission”. These commissions shall notify the owner, without mentioning the estimated cost of the immovable property that the administration is willing to purchase or take over it

through barter. Where the owner of the asset accepts this offer within 15 days, the Reconciliation Commission bargains with the owner at a cost not exceeding the one designated by the Value Appraisal Commission. On the condition that an agreement is reached at a cost, a minute is issued regarding the agreement concluded and on the condition that the owner of the immovable property transfers the asset in the name of the administration at the title deed office, the cost of expropriation shall be paid thereto.

12. Where the Reconciliation Commission could not reach an agreement with the owner of the immovable property; as per Article 10 of the Expropriation Law, “on the condition that expropriation is not performed by means of purchasing, the administration shall apply to the authorized court of first instance which has original jurisdiction on that matter and shall request for the award of a decision for the determination of the expropriation cost of the asset and registration of such immovable property in the name of the administration, provided that the cost of expropriation is paid in advance or in installments.”

13. According to Article 14 of the Expropriation Law, the owner of the immovable property subject to expropriation have the right to file an annulment lawsuit before the administrative jurisdiction and a correction lawsuit against substantial errors before civil courts within 30 days as from the date of notification made by the court or the date of announcement in the newspaper made by the court in return for the notification. The lawsuits filed before the administrative court have priority. The administration shall have the right to file correction lawsuits against substantial errors before civil courts within 30 days as from the date on which the documents pertaining to the expropriation are submitted to the court.

14. As per Article 10 of the Expropriation Law no. 2942, the administration shall be given 15 days to submit the receipt showing that the cost of expropriation is deposited in the name of the right holder or the cost of expropriation is deposited to a blocked bank account to be given to the right holder in the future where she/he cannot be determined. The judge shall give time twice at most to block the cost of expropriation in the bank account. Upon the lodgment of the receipt by the administration showing that the cost of expropriation is deposited in the name of the right holder, the court shall decide “for the registration of the immovable property in the name of the administration and for the payment of the cost of the expropriation to the right holder”.

15. Article 18 of the same Law governs the expropriation procedures for the disputed properties.

16. The administration shall investigate whether any controversy exists on the immovable property considered to be expropriated.

17. Should, as a result of the investigations, it be revealed that any controversy exists on the immovable property either registered at the title deed office or that any suit filed exists before the cadastre courts with respect to the property in question or registered at the land cadastre office, the administration shall provide all the documentation prepared in accordance with Article 10 of the same Law to the court of first instance which has original jurisdiction. It also ask the court to appraise the expropriation cost and to decide on the registration of the asset in question in the name of the administration in return for either cash payment to the right holder who is to be identified as a result of the settlement of the dispute existing on ownership or for payment in installments in case the expropriation is made in accordance with the second paragraph of Article 3 of that Law.

18. After the notifications and announcements are made to all the parties of the case on the controversies related to the immovable property as per Article 10, the cost of expropriation of the property shall be appraised and be deposited by the administration to a bank account that should be renewable for three-month terms. That amount will be paid to the right holder who is identified by the court.

19. The cost will be paid to the right holder upon submittal of the instruction of the court, who is inscribed following the application of the right holder to the court after the conclusion of the case.

20. As a result of the amendments made in 2001, expropriation cannot be performed without depositing the cost of expropriation in the name of the right holder or without depositing it in a blocked bank account to be given to the right owner in the future where a dispute exists

21. Accordingly, the subject matter of the violation is an exceptional one, and necessary general measures have been taken by making amendments on relevant laws in order to prevent such violation to occur again.

22. Furthermore, in November 2009, the joint civil divisions of the Court of cassation reversed their previous position and, relying on the European Court's case-law, held that the State bore responsibility for any irregularities in the land registers. The joint civil divisions of the Court of cassation considered that the State could be held liable for the loss or privation of any interest or rights as a result of incorrect entries in the land registers and that the State was

accountable for any damage stemming from entries that were incorrect or had no basis. They held that where a private individual's document of title had been declared void because the land was part of the public forest estate, the individual concerned was entitled to claim compensation under Article 1007 of the Civil Code.

In October 2011 the 20th Civil Division of the Court of Cassation ruled that anyone whose title to property had been annulled and transferred to the Treasury could bring a claim for compensation under Article 1007 of the Civil Code within 10 years, in accordance with Article 125 of the Code on Obligations. It specified that the State incurred strict liability for any irregularities in the land register and that the amount of compensation should be assessed on the basis of the use, nature and value of the property in question.

F. CONCLUSION

22. In light of the submissions made above, the Government maintains that all necessary individual and general measures have been taken for the execution of this judgment. The Government therefore respectfully invites the Committee of Ministers to close its supervision on that case.