



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

SECOND SECTION

Application no. 46815/09  
Michael REISNER  
against Turkey  
lodged on 18 August 2009

**STATEMENT OF FACTS**

The applicant, Mr Michael Reisner, is a German national, who was born in 1961 and lives in Schrobenshausen. He is represented before the Court by Ms J. Ertürk, a lawyer practising in Ankara.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was one of the shareholders of Demirbank, which was identified as the fifth largest private bank in Turkey in 1999. He owned six hundred and fifty German Certificates, purchased through the stock market.

By a decision dated 6 December 2000 (no. 123), the Banking Regulation and Supervision Board (*Bankalar Düzenleme ve Denetleme Kurulu* – hereinafter referred to as “the Board”) decided to transfer the management and control of Demirbank to the Savings Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu* – hereinafter referred to as “the Fund”), pursuant to section 14 § 3 of the Banking Law no. 4389. The Board, which constitutes the decision-making body of the Banking Regulation and Supervision Agency (*Bankalar Düzenleme ve Denetleme Kurumu* - hereinafter referred to as “the Agency”), held that the assets of Demirbank had been insufficient to cover its liabilities, and that the continuation of its activities would threaten the security and stability of the financial system. It accordingly decided that Demirbank’s management and control, and the privileges of its

shareholders except for dividends, be transferred to the Fund. The Fund also confiscated all properties that belonged to Demirbank.

On 31 January 2001 all equities of the bank were removed from its account at the Istanbul Stock Exchange (*Istanbul Menkul Kıymetler Borsası* - hereinafter referred to as “the Stock Exchange”) and were transferred to the account of the Fund.

On 20 September 2001, the Fund entered into an agreement with HSBC and sold Demirbank to the latter.

### *1. Proceedings against the Agency for compensation*

Following the transfer of Demirbank to the Fund, the applicant applied to the Board and claimed compensation. The Board did not respond to his request.

Subsequently, on an unspecified date in 2002, the applicant brought compensation proceedings against the Agency before the Supreme Administrative Court. He argued that he had lost his shares in Demirbank as a result of its transfer to the Fund and requested the annulment of the Board’s implied rejection of his compensation claim.

On 24 June 2003 the Supreme Administrative Court dismissed the applicant’s case. On the basis of a previous judgment it had rendered on 3 June 2003, the court found that the takeover of the bank by the Fund had been in accordance with section 14 § 3 of the Banking Law. The applicant lodged an appeal.

On 21 October 2004 the Joint Administrative Chambers of the Supreme Administrative Court decided to quash the judgment. It indicated that the previous judgment dated 3 June 2003, which had constituted the basis of the latter, had been quashed later on.

The Agency’s rectification request was rejected on 26 May 2005.

On 20 September 2005 the Supreme Administrative Court held that it lacked jurisdiction *ratione materiae* as the applicant’s case merely concerned an implied rejection of the Board which should be assessed by the Ankara Administrative Court.

On 30 December 2005 the Ankara Administrative Court dismissed the case for having been brought out of time. The court held that the applicant should have initiated proceedings within sixty days starting from 31 January 2001, the date when Demirbank’s equities were transferred to the Fund’s account at the Stock Exchange.

The Supreme Administrative Court upheld the first-instance court’s judgment on 12 September 2006.

### *2. Proceedings against the Agency for restitution*

On 5 November 2004, after having assessed a case brought by the main shareholders of Demirbank, the Supreme Administrative Court annulled the Board’s decision dated 6 December 2000 ordering the transfer of the bank to the Fund, as it held that the takeover had been illegal. That judgment became final on 15 December 2005.

Subsequently, the applicant initiated another set of administrative proceedings. Relying on the *restitutio in integrum* principle, he claimed that the Agency should enforce the abovementioned judgment of the Supreme

Administrative Court and that his rights as a shareholder of Demirbank be reinstated.

On 27 September 2007, after indicating the administration's liability to execute judgments which are enforceable, the Ankara Administrative Court held that the enforcement of the Supreme Administrative Court judgment in the instant case was legally impossible as, following its sale to HSBC, Demirbank had been struck off the commercial register.

On 16 March 2009 the Supreme Administrative Court upheld that judgment. The higher court indicated that the execution of the judgment dated 5 November 2004 could be provided by the return of the supervisory and executive rights back to Demirbank's shareholders and did not require the restitution of the actual shares. It maintained that even if that was the case, the judgment could not be executed as Demirbank's shares had ceased to exist as a result of the loss of its legal personality following its merger with HSBC.

The Supreme Administrative Court rejected the applicant's request for rectification of the judgment on 17 September 2009.

### *3. Proceedings against the Fund for compensation following the annulment of Demirbank's transfer to HSBC*

In the meantime, following a case brought by one of the main shareholders of Demirbank, on 21 April 2004 the Ankara Administrative Court found the bank's sale to HSBC unlawful and annulled the said act. The Supreme Administrative Court upheld that judgment. On 24 February 2006 it rejected the administration's request for rectification.

Subsequently, on 30 April 2006 the applicant applied to the Fund, requesting compensation for the loss of his shares resulting from the bank's unlawful sale to HSBC.

The Fund rejected that request on 15 June 2006.

The applicant brought a third set of proceedings against the Fund, claiming compensation for his lost shares on the basis of the annulment of Demirbank's sale to HSBC.

On 15 April 2008 the Istanbul Administrative Court dismissed the case for having been brought out of time, indicating that the sixty-day time-limit to initiate administrative proceedings started running on 31 January 2001, the date when Demirbank's equities were transferred to the Fund's account at the Stock Exchange.

The judgment of the first-instance court was upheld by the Istanbul Regional Administrative Court on 21 January 2009. The decision is final under national law.

## **B. Relevant domestic law**

Section 14 of the Banking Law no. 4389 reads:

"1. Without prejudice to the Agency's right to institute legal proceedings against persons liable, if supervision results reveal any transactions that are contrary to this Act or to decisions taken and legislation introduced under this Act or to the principles and customary practices of banking, and that could jeopardise the secure operation of the bank in question, the Agency shall warn the bank to correct the transactions in question within a period of time specified by it and to take such measures as are

necessary not to allow similar transactions in the future. The bank must, within the periods specified, take the measures required by the Agency and notify the consequences of actions it has taken. In the event that the required measures are not taken or that transactions jeopardising the secure operation of the bank are repeated, the Board shall be authorised, depending on the nature and significance of the transactions in question, to take and implement all such measures as are necessary for the secure operation of the bank and for the protection of depositors, including but not limited to the following:

(a) to appoint new members to the Board by dismissing or replacing all or some of the members of the board of directors or by increasing the number of seats thereon;

(b) to restrict the operations of the bank in such manner as to cover its whole organisation or only those of its branches which will be considered necessary or its relations with correspondent banks,

(c) to increase the deposit insurance premium payable by the bank or to require provisions at the rate of up to one hundred percent for deposits it accepts.

Remunerations of any member of board of directors to be appointed to a bank pursuant to the present section shall be determined by the Board and paid from the Fund.

2. (a) If the Agency, in its sole discretion, determines that the assets of a bank are insufficient, or are about to become insufficient, to cover its liabilities in terms of maturity or the bank does not adhere to regulations governing liquidities, the Agency may ask the bank to remedy this failure in accordance with a plan of action approved by itself and may also, for the purpose of strengthening the liquidities, grant an appropriate period of time to the bank and require it:

(aa) not to invest in long-term or fixed assets;

(ab) to dispose of fixed assets such as real estate and equity holdings;

and to take such other measures as may be deemed appropriate.

(b) If the Agency, in its sole discretion, determines that a bank is about to fail or that it fails to meet the minimum level of capital required to be maintained by the bank pursuant to applicable regulations, the Agency may ask the bank to remedy this situation in accordance with a capital restoration plan approved by itself requiring the bank to increase its capital or to obtain funds that qualify as capital. The Agency may also, for the purpose of strengthening the capital require it;

(ba) not to pay dividends, or to cease additional payments such as honorary payments, bonus, premiums, or in-kind or in-cash social assistance to the members of the Board of Directors, general manager and assistant general managers,

(bb) to limit or end operations which have caused losses,

(bc) to liquidate assets which have low efficiency or are inefficient;

and to take such other measures as may be deemed to be appropriate.

3. If the Agency in its sole discretion determines that,

(a) a bank has not taken the measures in part or in whole stated in paragraph (2) of this Article, the financial structure of the bank cannot be strengthened although the measures have been taken in part or in whole, or the financial structure has become so weak that it could not be strengthened even if those measures were taken, or,

(b) a bank cannot honour its liabilities as they fall due or,

(c) the value of the liabilities of the bank exceeds the value of the assets, in accordance with the valuation standards determined by the Board for the implementation of this Article or,

(d) the continuation of its activities would threaten the rights of depositors and the security and stability of the financial system,

the Board may transfer the management and control and privileges of shareholders, except dividends, of a bank to the Fund or revoke the licence of the bank to perform banking operations and/or to accept deposits, with an affirmative vote of at least five Board members.”

Article 138 § 4 of the Turkish Constitution provides:

“The bodies of executive and legislative power and the authorities must comply with court decisions; they cannot in any circumstances modify court decisions or defer the enforcement thereof.”

Article 28 § 2 of the Code of Administrative Procedure reads:

“Decisions and judgments in administrative law actions concerning a specific amount shall be enforced ... in accordance with the provisions of the ordinary law.”

## COMPLAINTS

The applicant complains under Articles 6 and 13 of the Convention that his right of access to court was breached by the domestic courts’ interpretation of the date when the statutory time-limit started running.

He further argues under the same Article that all three sets of proceedings lasted for an excessively long period of time.

In a letter dated 2 April 2010, the applicant submits under Article 13 of the Convention that the Ankara Administrative Court’s judgment in the restitution case brought against the Agency pointed out that there was no effective remedy in national law for restitution claims as the court neither reinstated his rights nor awarded him compensation.

Relying upon Article 1 of Protocol No. 1 to the Convention, the applicant maintains that his right to peaceful enjoyment of property was violated in that he did not receive any compensation for the loss of his shares in Demirbank. In this respect, he submits that he was unlawfully deprived of his property, in particular having regard to the judgment of the Supreme Administrative Court dated 5 November 2004, by which the higher court held that the Fund’s takeover of Demirbank had been illegal.

### **QUESTIONS TO THE PARTIES**

1. Having regard to the fact that the transfer of Demirbank to the Savings Deposit Insurance Fund was annulled by the domestic courts, has the applicant, as a shareholder of Demirbank, been deprived of his possessions in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1?

If so, did that deprivation impose an excessive individual burden on the applicant (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 59 ECHR 1999-V)?

2. Has the applicant been denied his right of access to court, implicitly guaranteed by Article 6 of the Convention, by the Istanbul Administrative Court's interpretation of the starting date of the statutory time-limit in its judgment dated 15 April 2008?

The parties are requested to inform the Court of the date when the decision of the Supreme Administrative Court dated 24 February 2006, rejecting the request for the rectification of the judgment annulling Demirbank's sale to HSBC, was rendered public.