



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

SECOND SECTION

CASE OF ZÜLFİKARİ AND PEKCAN v. TURKEY

(Applications nos. 6372/05 and 52543/07)

JUDGMENT
(Merits)

STRASBOURG

19 March 2019

FINAL

09/09/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zülfikari and Pekcan v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President*,

Paul Lemmens,

Işıl Karakaş,

Julia Laffranque,

Valeriu Griţco,

Ivana Jelić,

Darian Pavli, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 12 February 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 6372/05 and 52543/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr Kazım Zülfikari and Mr Gökhan Pekcan (“the applicants”), on 11 January 2005 and 26 November 2007 respectively.

2. The applicants were represented by Ms A. Becerik and Mr Mertaşık Kilciler, lawyers practising in Istanbul and Ankara respectively. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that they had been unlawfully and disproportionately deprived of their property, namely their shares in a bank, following the bank’s takeover by the State.

4. On 10 October 2017 the Government were given notice of the complaints under Article 1 of Protocol No. 1 to the Convention and the remainder of the applications were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were born in 1948 and 1963 and live in Istanbul and Ankara respectively.

6. They held a certain amount of shares in Türkiye Tütüncüler Bankası Yaşarbank A.Ş. (hereinafter “Yaşarbank”) - a private bank established in 1924 - which they had bought on the Istanbul Stock Exchange.

A. The background to the case

7. By a decision dated 21 December 1999 (no. 99/13765), the Council of Ministers decided to transfer the management and control of Yaşarbank as well as all of its shareholder rights (except for dividends) to the Savings Deposit Insurance Fund (*Tasarruf Mevduat Sigorta Fonu* – hereinafter “the Fund”), pursuant to section 14(3) and (5) of the Banking Activities Act (Law no. 4389) as amended by Law no. 4491. With the same decision, the Council of Ministers also decided to transfer the ownership of Yaşarbank’s shares to the Fund under section 14(5) of the same Act.

8. At the time of the transfer, 48.48% of Yaşarbank’s shares were owned by Yaşar Holding A.Ş., 32.85% by companies belonging to the Yaşar Group, 2.08% by foundations belonging to the Yaşar Group, and 0.12% by the Yaşar family. Lastly, the remaining 16.47% of capital was held by the public, including the applicants.

9. On 21 December 1999 Yaşarbank’s shares, which were open to the public, sold on the Istanbul Stock Exchange at a price of 1,950 former Turkish liras (TRL) each.

10. A financial report prepared by a private audit company on 22 December 1999 noted that Yaşarbank’s assets and liabilities amounted to TRL 385.46 trillion and TRL 947.16 trillion respectively.

11. On 26 January and 18 February 2001 respectively the Banking Regulation and Supervision Agency (*Bankalar Düzenleme ve Denetleme Kurumu* - hereinafter “the Agency”) decided that Yaşarbank would be consolidated under Sümerbank and that the former’s banking licence would be revoked.

B. Proceedings brought by the main shareholders of Yaşarbank

12. On 4 February 2000 the main shareholders of Yaşarbank, including Yaşar Holding A.Ş., brought an administrative case against the Agency, seeking the annulment of the decision of 21 December 1999 regarding the bank’s transfer to the Fund. They argued, *inter alia*, that the conditions set forth by section 14(3) of Law no. 4389 as regards the transfer of a bank to the Fund had not been satisfied and that accordingly the Council of Ministers’ decision had been unlawful. In that connection, they argued that following its amendment by Law no. 4491, section 14(3) provided for more detailed measures which would be implemented gradually. However, the bank had not been invited to take those measures and the authorities had failed to take account of the recovery plan it had submitted which,

according to them, could have strengthened the bank's financial situation had it been implemented. They also claimed that the transfer of the bank had been disproportionate in view of the other measures provided for by section 14 of Law no. 4389. Lastly, they raised a plea of unconstitutionality.

13. On an unspecified date the main shareholders initiated administrative proceedings, challenging the revocation of Yaşarbank's banking licence.

14. On 27 February 2002, after examining a number of expert reports, the Supreme Administrative Court dismissed the main shareholders' action for the annulment of Yaşarbank's transfer to the Fund.

Firstly, the court rejected the main shareholders' request to refer the case to the Constitutional Court for a preliminary ruling, finding that section 14 of Law no. 4389 did not contravene Article 35 of the Constitution, which guaranteed the right to property.

As to the merits, it found that in line with paragraphs 1, 2 and 3 of section 14 of Law No. 4389 the administration had discretion to choose the measures to be adopted according to the severity of the financial problems involved and that the measures provided for by the different paragraphs of section 14 need not be implemented in order. Moreover, in view of its deteriorating financial situation, Yaşarbank had been placed under the close supervision of the authorities pursuant to the former Banking Activities Act (Law no. 3182). However, it had failed to apply the measures pointed out in the relevant audit reports issued during that period of supervision. Nor had the recovery plan prepared by the bank been sufficient to improve its financial situation. The Supreme Administrative Court concluded that the continuation of Yaşarbank's activities would have jeopardised the rights of its creditors and undermined the reliability and stability of the banking system.

15. On 27 October 2003 the Supreme Administrative Court also dismissed the action regarding the annulment of the revocation of Yaşarbank's banking licence.

16. By two separate decisions delivered on 29 April 2004, the General Assembly of the Administrative Proceedings Divisions of the Supreme Administrative Court (*Danıştay İdari Dava Daireleri Genel Kurulu* - hereinafter "the General Assembly") upheld both judgments. On 8 February 2007 the General Assembly rejected an application for rectification by the main shareholders.

17. A detailed description of the facts surrounding the State's takeover of Yaşarbank and the proceedings initiated by the main shareholders may be found in the case of *Yaşar Holding A.Ş. v. Turkey* ((merits), no. 48642/07, 4 April 2017).

C. Proceedings brought by the applicants

1. *Application no. 6372/05 by Mr Zülfikari*

18. On an unspecified date the first applicant bought a number of shares in Yaşarbank on the Istanbul Stock Exchange.

19. Following the transfer of Yaşarbank to the Fund, the first applicant initiated proceedings, requesting the annulment of the transfer and claiming compensation of TRL 2 trillion, the approximate value of his shares at the time, together with interest. He maintained that he had bought the shares on the stock market, relying on the financial statements of the bank, which had been supervised by the Capital Markets Board (*Sermaye Piyasası Kurulu*) and approved by independent auditing agencies. He argued accordingly that no fault could be attributed to him for Yaşarbank's transfer to the Fund and that he should have received the same protection as that granted to the creditors of the bank.

The first applicant pointed out that the main shares of banks and shares bought on the stock market were subject to different legal provisions and thus should have been dealt with separately during the State's takeover of the bank. In that connection, he argued that the relevant legislation, in particular section 14(5) of Law no. 4389, was unclear in that it referred to the transfer of the shares of the main shareholders and the transfer of all shares of the bank in the same sentence, making it difficult to understand the scope of the transfer covered by that provision. He concluded therefore that the transfer of his shares to the Fund, without any compensation in return, had violated his right to property.

The first applicant also raised a plea of unconstitutionality as regards section 14 of Law no. 4389.

20. On 18 June 2002 the Supreme Administrative Court dismissed the first applicant's case. Referring to its judgment of 27 February 2002 regarding the main shareholders' action for the annulment of the impugned transfer, the court found that the Council of Ministers' decision to transfer the bank to the Fund had been lawful. In that connection, it reiterated that taking account of reports drawn up following inspections of Yaşarbank over a five-year period, instructions given to the bank by the State authorities, and the failure of the bank to improve its financial situation following these instructions, it had become clear that further activity of the bank, whose assets had been insufficient to cover its liabilities, would disrupt the stability of the financial system and make it impossible for the authorities to protect its creditors' rights.

With regard to the first applicant's compensation claim, the court noted that the administration was not liable to pay compensation for any loss resulting from the transfer of Yaşarbank. It noted that the applicant should be considered a partner of the bank as he had owned shares in it, and that

although the aim of commercial activity was to make profit, one could not remove the risk of loss from such activity.

The court also rejected the first applicant's request to refer the case to the Constitutional Court.

21. The first applicant appealed, stating that the Supreme Administrative Court had violated his right to a fair trial as it had not addressed his main argument, that is, the transfer of his shares as a minority shareholder. In that connection, he maintained again that the State authorities had failed in their duty of supervision, in that they had not informed the public of Yaşarbank's deteriorating financial situation and had caused the deprivation of his shares by their wrongful actions.

22. On 29 April 2004 the General Assembly upheld the judgment. The final decision was served on the applicant on 20 July 2004.

2. Application no. 52543/07 by Mr Pekcan

23. On various occasions between 3 and 20 December 1999 the second applicant bought a certain amount of shares in Yaşarbank on the Istanbul Stock Exchange.

24. Following the Council of Ministers' decision to transfer Yaşarbank to the Fund, on 18 February 2000 he brought a case against the Fund, requesting the annulment of that decision. He maintained that he reserved the right to request compensation at a later stage.

He argued, *inter alia*, that section 14(5) of Law no. 4389 as amended by Law no. 4491 did not cover the shares of minority shareholders and its application in Yaşarbank's case had been unlawful as it had resulted in the transfer of all of the bank's shares, including those of minority shareholders such as himself, who had bought their shares on the stock market, relying on information provided by the authorities. In that connection, he maintained that the deprivation of his property had resulted from the authorities' failure to comply with their duty of supervision, and in particular the failure of the Capital Markets Board to inform the public of Yaşarbank's deteriorating financial situation, as required by the Capital Markets Act (Law no. 2499).

The second applicant also raised a plea of unconstitutionality regarding section 14(3) to (5) of Law no. 4389.

25. On 8 October 2002 the Supreme Administrative Court rejected the second applicant's request to refer the matter to the Constitutional Court. The court also dismissed the action for the annulment of Yaşarbank's takeover by the State, finding that the Council of Ministers' decision to transfer the bank to the Fund had been lawful. In doing so it repeated the reasoning it had provided in the first applicant's case.

26. The applicant appealed, arguing that the Supreme Administrative Court's judgment had merely pointed out that the transfer of the bank had been lawful, without addressing his main argument, namely the unlawfulness of the application of section 14(5) and the resulting transfer of

the shares obtained on the stock market together with those of the main shareholders.

27. On 7 October 2004 the General Assembly upheld the judgment.

28. On 3 May 2007 the appellate court rejected a rectification application lodged by the applicant. That final decision was served on the applicant on 3 July 2007.

II. RELEVANT DOMESTIC LAW

29. A description of the relevant domestic law may be found in the case of *Yaşar Holding A.Ş.* (cited above).

30. The relevant provisions of the Capital Markets Act (Law no. 2499 – repealed by the entry into force of Law no. 6362 on 30 December 2012), read as follows:

Section 16a

“In case of ... major changes in the distribution of shares, capital increases, mergers and acquisitions, and any other substantial developments which may affect the value of securities and shares of financial institutions whose shares are open to the public, the Capital Markets Board shall make regulations in order to protect minority shareholders and inform the public.”

Section 22

“The main duties of the Capital Markets Board are as follows:

...

(e) To take decisions and publish communications on the independent supervision of all kinds of financial situations, ... and on the information which may affect the value of financial tools, in order to provide that the public is informed correctly, adequately and on time;

...”

THE LAW

I. JOINDER OF THE APPLICATIONS

31. Given their similar factual and legal backgrounds, the Court decides that the two applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

32. The applicants complained that they had been deprived of their property as a result of Yaşarbank's transfer to the Fund. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

33. The Government contested that argument.

A. Admissibility

34. The Government argued that the second applicant, Mr Pekcan, had failed to exhaust domestic remedies in that he had not brought a compensation case before the administrative courts. In that connection, they maintained that under section 12 of the Administrative Procedure Act (Law no. 2577), the second applicant had had the opportunity to claim compensation together with his application for the annulment of the administrative case. Section 12 also provided that it was open to those concerned to initiate proceedings for the annulment of an administrative act and bring another action for compensation following the judgment delivered as regards the annulment proceedings. In that connection, they argued that the conclusion of the annulment proceedings in favour of the person concerned was not a prerequisite to bringing an action for compensation.

35. The second applicant argued that he had exhausted domestic remedies by initiating proceedings for the annulment of the impugned administrative act. Referring to the first applicant's case, he noted that compensation cases brought against the administration in similar situations had been dismissed by the Supreme Administrative Court.

36. In the present case, the second applicant argued that he had been deprived of his shares as a result of the unlawful transfer of Yaşarbank to the Fund. The Court notes that the action the applicant brought for the annulment of that administrative act specifically aimed at having that unlawfulness recognised. Had his claim for annulment been accepted, the applicant could have hoped that the damage resulting from the administrative action would be compensated. Accordingly, the Court considers that the second applicant did not need to initiate additional compensation proceedings, as he had already made use of the appropriate

domestic remedy by bringing an action for the annulment of the transfer of Yaşarbank. It consequently rejects the Government's objection in this regard (see *Yaşar Holding A.Ş.*, cited above, § 66).

37. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

(i) Mr Zülfikari

38. The first applicant complained that Yaşarbank's transfer to the Fund, which had resulted in the deprivation of his shares without any compensation, had violated his right to peaceful enjoyment of his possessions. In that connection, he argued that the transfer of all the shares of Yaşarbank, which had been made by a decision of the Council of Ministers, had not been in accordance with the law, particularly since the shares of minority shareholders had not been subject to the Banking Act but to the Capital Markets Act. He submitted that the impugned administrative action had not been in the public interest and in any event had been disproportionate.

In relation to his submissions, the first applicant maintained that minority shareholders such as himself, who had obtained their shares on the stock market relying on information provided by the domestic authorities, had had to bear the burden of the Capital Markets Board's failure to inform the public of Yaşarbank's actual financial status before its transfer.

(ii) Mr Pekcan

39. The second applicant complained that he had been unlawfully deprived of his property by Yaşarbank's transfer to the Fund.

40. He argued firstly that the shares in Yaşarbank, which he had bought on the stock exchange, had constituted possessions within the meaning of Article 1 of Protocol No. 1. He maintained that these shares had had an economic value as he had bought them by paying the price determined on the stock exchange, and that their transfer to the Fund in the absence of any prior warning had resulted in the deprivation of his property.

41. The second applicant argued that the transfer had not had a legal basis in that it had neither been accessible nor foreseeable.

He pointed out his status as a minority shareholder who had obtained his shares on the stock exchange, relying on information provided by the

national authorities which had not revealed any deficiencies as regards Yaşarbank up until the Council of Ministers' decision. As a minority shareholder he had not been involved in the bank's management and had not been informed of the audit reports issued in respect of Yaşarbank prior to the Council of Ministers' decision, which had taken effect immediately, without any opportunity for people in his situation to remedy their losses by disposing of their shares on the stock market.

He concluded that he could not have predicted that his shares would be taken over by the State in that there had previously been no legal basis for a transfer of shares of such significance and no precedent of such practice.

42. The second applicant also maintained that the interference had not had a legitimate aim and had in any event been disproportionate to any general public interest pursued.

(b) The Government

43. The Government argued firstly that the applicants had had no possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, in that the shares they had held had lost all of their value as a result of the financial status of Yaşarbank. In that connection, they maintained that the net book value of Yaşarbank had been negative, that is to say the bank's liabilities had been more than its assets. They noted that the value of shares in companies which were open to the public were calculated by dividing the net profits by the number of shares traded in the market, which, in Yaşarbank's case, led to the conclusion that the applicants' shares had had no monetary value.

44. The Government stated that even assuming that the applicants had had possessions, the interference at issue had been made on the basis of accessible and foreseeable provisions, namely section 14(3) and (5) of Law no. 4389, which had satisfied the conditions of "law". Moreover, in view of the financial crisis in Turkey at the time, the State's takeover of Yaşarbank had been in the public interest to maintain financial stability and protect the banking system.

45. Lastly, as regards proportionality, the Government submitted that the applicants had obtained Yaşarbank's shares on the stock market with the sole aim of making a commercial profit. They maintained that such commercial activities contained an element of risk, which the applicants had taken of their own accord by not selling their shares until the very last minute, even though they could have predicted the situation and the resulting transfer of the bank as investors.

46. Taking account of the procedural guarantees provided by the domestic courts and referring to the Court's decision in the case of *Olczak v. Poland* ((dec.), no. 30417/96, ECHR 2002-X (extracts)), the Government concluded that the interference with the applicants' right to property had not imposed an excessive burden on them and had been proportionate to the

general public interest pursued, particularly since their shares had had no economic value.

2. *The Court's assessment*

(a) **Whether the applicants had possessions and whether there has been interference**

47. The Court notes firstly that the Government did not dispute that the applicants had owned the shares concerned. It reiterates in that connection that a share in a company is a complex object. It certifies that the holder possesses a share in a company together with the corresponding rights. In the present case, although the Government argued that the shares held by the applicants could not be considered “possessions” as they had not had any value in view of the actual financial situation of Yaşarbank, the Court cannot give weight to that argument as it observes that the shares of the bank were being sold on the stock exchange until the time the Council of Ministers announced its decision. Accordingly, it finds that the shares held by the applicant had an economic value and thus constituted “possessions”, and that as a result of the measures complained of they lost their entire value. Article 1 of Protocol No. 1 is therefore applicable in the present case (see *Olczak*, cited above, § 60, and *Reisner v. Turkey*, no. 46815/09, § 45, 21 July 2015).

48. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 98, ECHR 2014).

49. The Court observes that the applicants had been shareholders in Yaşarbank before it was taken over by the State authorities. They lost the ownership of their shares by Yaşarbank's transfer to the Fund under section 14(3) and (5) of Law no. 4389, as that transfer concerned all shares of the bank as well as its management and control. In the Court's view, there has therefore been an interference with their right to peaceful enjoyment of their property (see *Süzer and Eksen Holding A.Ş. v. Turkey*, no. 6334/05, § 143, 23 October 2012, and *Reisner*, cited above, § 47). The

Court further observes that the Council of Ministers' decision to take over the bank was adopted as a measure to control the country's banking sector. It is true that it involved a deprivation of property, but in the circumstances the deprivation formed a constituent element of a scheme for controlling the banking industry. It is therefore the second paragraph of Article 1 of Protocol No. 1 which is applicable in the present case (see *Süzer and Eksen Holding A.Ş.*, §§ 146-147; *Reisner*, § 47; and *Yaşar Holding A.Ş.*, § 89, all cited above).

50. The Court must therefore determine whether the interference in question was lawful and "in the public interest", and whether it struck a fair balance between the owner's rights and the interests of the community.

(b) Whether the interference was in accordance with the law

51. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be "lawful": the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws" (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII, and *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 81, ECHR 2005-VI). The principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Guiso-Gallisay v. Italy*, no. 58858/00, § 82, 8 December 2005, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 163, ECHR 2006-VIII).

52. The Court notes at the outset that in the case of *Yaşar Holding A.Ş.*, which had been brought by one of the main shareholders of Yaşarbank, it found a violation of Article 1 of Protocol No. 1 to the Convention on account of the unlawfulness of the interference at issue, namely the transfer of Yaşarbank to the Fund. The Court held that section 14(5) of Law no. 4389 as amended by Law no. 4491, which had constituted the basis of the impugned transfer, had lacked foreseeability as it had been applied only two days after the entry into force of the amendment allowing for the transfer of the ownership of the bank's shares. In that connection, the Court noted that a transfer of such significance could not be made pursuant to the legislation in force prior to the amendment of section 14(5) (see *Yaşar Holding A.Ş.*, cited above, §§ 91-101).

53. The Court sees no reason to reach a different solution in the present case, especially as the applicants, as minority shareholders, were not involved in the management of the bank.

54. In this respect, the Court also notes the following with respect to how the Supreme Administrative Court dealt with the applicants' argument

that the Council of Ministers' decision was unlawful. In the proceedings for the annulment of that decision, the applicants pointed, in particular, to their status as minority shareholders and the deficiencies in the supervision of Yaşarbank. The Supreme Administrative Court dismissed their actions for annulment, relying on the reasoning it had provided in the case brought by the main shareholders for the annulment of the Council of Ministers' decision. The Court notes that in its judgment in the case of *Yaşar Holding A.Ş.*, it found no reason to question the findings of the Supreme Administrative Court in the main shareholders' case, in which the domestic court had concluded that in view of the difficulties encountered by Yaşarbank and its failure to implement the required measures, the continuation of its activities would have jeopardised the rights of its creditors and undermined the reliability and stability of the banking system (cited above, § 94). While it does not depart from that conclusion in the present case, it notes that the applicants' main submission before the Supreme Administrative Court was the unlawfulness of the application of section 14(5) in a manner which included the transfer of their shares together with those of the main shareholders. According to the applicants, their shares should not have been subject to that provision on account of their position as minority shareholders who had obtained their shares on the stock exchange. The Court observes that by dismissing the applicants' requests for the annulment of the Council of Ministers' decision on the same grounds it had relied on in the main shareholders' case, the domestic court did not address the applicants' main argument about the lawfulness of the application of section 14(5) to their shares.

55. In view of the above, and taking due account of its previous finding in the main shareholders' case as regards the unlawfulness of Yaşarbank's takeover by the State (see *Yaşar Holding A.Ş.*, cited above, § 101), the Court finds that the interference with the applicants' right to peaceful enjoyment of their possessions cannot be considered lawful within the meaning of Article 1 of Protocol No. 1 (compare *Reisner v. Turkey*, no. 46815/09, § 48, 21 July 2015, in which the Court concluded that the transfer to the Fund of shares bought by the applicant on the stock exchange could not be considered lawful, in view of a judgment of the Supreme Administrative Court which had found the takeover of the bank at issue to be unlawful).

56. That being so, the Court is not required to determine whether the interference pursued a legitimate aim and, if so, whether a fair balance has been struck between the demands of the general interest of the community, and the protection of the individual's fundamental rights.

57. The Court therefore concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

59. The first applicant claimed 12,000,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

60. He also claimed 23,259 Turkish liras (TRY) for the costs and expenses incurred before the domestic courts and TRY 16,100 for those incurred before the Court.

61. The second applicant claimed a total of EUR 1,427,734.02 in respect of pecuniary damage and EUR 56,731.15 in respect of non-pecuniary damage.

62. He also claimed EUR 222,229.77 for the costs and expenses incurred before the Court.

63. The Government contested these claims, considering the requested amounts unsubstantiated and excessive.

64. Having regard to the circumstances of the case, the Court finds that the question of the application of Article 41 of the Convention is not ready for decision (see *Yaşar Holding A.Ş.*, cited above, § 108). Consequently, the question should be reserved in whole and the further procedure fixed, taking into account the possibility of an agreement being reached between the respondent State and the applicants (see Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision; accordingly,
 - (a) reserves the said question in whole;
 - (b) invites the Government and the applicants to submit, within six months from the date of notification of this judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) reserves the further procedure and delegates to the President of the Court the power to fix the same if need be.

Done in English, and notified in writing on 19 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President