



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

SECOND SECTION

CASE OF AKSİS AND OTHERS v. TURKEY

(Application no. 4529/06)

JUDGMENT

STRASBOURG

30 April 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 Aksis and Others v. Turkey,

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

Robert Spano, *President*,
Paul Lemmens,
İşıl Karakaş,
Valeriu Griţco,
Stéphanie Mourou-Vikström,
Arnfinn Bårdsen,
Darian Pavli, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 26 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 4529/06) 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 thirteen Turkish nationals (“the applicants”), on 20 December 2005. A list of the applicants and their personal details are set out in the Appendix.

2. The applicants were represented by Mr E. Cinmen, a lawyer practising in Muğla. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants complained, in particular, of a violation of their right to a fair trial and their right to peaceful enjoyment of their possessions on account of the dismissal of their compensation claims by the domestic courts.

4. On 13 June 2017 notice of the complaints was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. The Government informed the Court that four applicants, Ms Fahriye Baran, Ms Hatice Füsün Giz, Mr Mustafa Reha Küpçüoğlu and Mr Mehmet Semih Yazgan, had died on 12 June 2013, 16 May 2013, 13 March 2011 and 27 January 2008 respectively.

6. On 29 January 2018 the applicants’ representative informed the Court that the relatives of the applicants Mr Yazgan, Ms Giz and Mr Küpçüoğlu expressed their wish to pursue the application in their stead (see paragraphs 30 and 34 below).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The facts of the case, as submitted by the parties, and as they appear from the documents submitted by them may be summarised as follows.

A. Background to the case

8. The applicants and/or their relatives were owners of apartments in Yalova. The permits for the building of those apartments were issued on 23 March 1987.

9. On 17 August 1999 an earthquake of a magnitude of 7.4 on the Richter scale hit the city of Yalova, causing the collapse of the applicants' apartments (see *M. Özel and Others v. Turkey*, no. 14350/05 and 2 others, 17 November 2015, and *Hayati Çelebi and Others v. Turkey*, no. 582/05, 9 February 2016, for further details about the earthquake).

B. Compensation proceedings

10. On different dates in 1999 and 2000 the applicants brought actions for compensation against the contractors responsible for their apartments and their business associates before the Yalova Civil Court (see appended table for some details of the proceedings).

11. The applicants maintained, in their petition to the court, that the defendants had failed to construct their apartments in conformity with the applicable laws and regulations and therefore they must be held liable for the losses they had caused in accordance with section 41 of the Code of Obligations (Law no. 818) in force at the material time ("the former Code of Obligations") (see paragraph 21 below). The applicants claimed pecuniary damages with interest starting from the date of the earthquake and reserved their right to further compensation.

12. By decisions dated 19 July 2001, the Yalova Civil Court dismissed the claims, without an examination on the merits, and held that they had been introduced out of time. It held that the ten-year limitation period for introducing an action for damages, provided in sections 125 and 126 § 4 of the former Code of Obligations, had started running from the date on which the building use permit had been issued, that is 23 March 1987, and that the lawsuit had been filed after the expiry of the limitation period.

13. The relevant parts of the court's decision read as follows:

"(...) As a result of the earthquake of 17 August 1999 the apartment that the claimant bought from the defendants was damaged and collapsed. The representatives of the claimant filed the present lawsuit to claim the value of the damaged apartment. It is a known phenomenon that Turkey is located in an earthquake zone. Therefore,

earthquake-resistant buildings must be built. The public conscience has been hurt because of the earthquake. Due to the pain, suffering and losses caused by such an incident it is expected that justice be served. And the judge must be conscious of his responsibility towards society in his or her actions. However, when justice is being served, objective and subjective elements in the laws are taken into account. The judge is bound by the legal rules. Doing the opposite would be against the law.

Thus, the judgment of the 2nd Criminal Chamber of the Court of Cassation No. E (2001/7015) and 2001/4778, dated 21 March 2001, shows the most correct and clear path by holding: “(...) whereas, for a building, it is necessary to prepare the plan and the project, especially to make healthy static calculations, to build the building in accordance with such plan and project by using appropriate material in terms of both quality and quantity, and to inspect the compliance of all these features with the legislation in force; (...) that for example in a building considered as having a hidden defect, section 125 of the Code of Obligations, by the reference to the fourth paragraph of section 126 of the same law, prescribes a ten-year limitation period which starts from the date of the end of the construction works, that is the date of obtaining the building use permit or the date it is supposed to have been obtained; and that if the building collapses during this period, criminal liability may be invoked; but if the building collapses after the expiry of this period due to a defect because the criminal liability of the (authors) can no longer be invoked in so far as legally they no longer have the faculty to solve the problem, it is considered that there is no longer a causal link; that these considerations are also valid in case of grave fault (...)” Our court also endorses this approach.

It is observed that the building use permit for the building of the claimant’s apartment was obtained on 23 March 1987. The ten-year limitation period for filing a lawsuit has elapsed a long time ago. For the purposes of the economy of the procedure and to the extent that there would be no impact on the result, an on-site survey was not ordered. The unfounded objections of the claimant’s representatives [against this decision] were [thus] inadmissible.

In conclusion, while the claimant’s representatives claimed compensation for the damaged apartment, their claim must be rejected because of the expiry of the ten-year limitation period (...).”

14. On 9 December 2003 the applicants lodged an appeal against the Yalova Civil Court’s decision with the Court of Cassation. In their petition of appeal, they firstly argued that even if the dates of the building use permit were to be taken as the starting period of the ten-year limitation period, because the permit issued for their apartments had been renewed in the 1990s, they had introduced their actions within time. They further maintained that, in any event, the date of the earthquake should have been taken as the starting point of the limitation period since the damage caused by the hidden defects in their buildings had become known to them upon the occurrence of the earthquake.

15. On different dates in 2004 and 2005 (see appended table) the 13th Civil Chamber of the Court of Cassation upheld the Yalova Civil Court’s decisions of 19 July 2001. The 13th Civil Chamber ruled that, having regard to the documents and evidence in the case file, which were relied on by the first-instance court, and in particular to the expiry of the limitation period prescribed by section 125 of the former Code of

Obligations, which started running from the date of the transfer of ownership of the properties in question, the applicants' grounds for appeal had been unfounded.

16. Meanwhile, on 1 July 2004, the 4th Civil Chamber of the Court of Cassation, in a similar case lodged by the applicants' representative on behalf of other claimants, held that the limitation periods for claiming damages started running from the date of the earthquake, since at the time the unlawful act was committed by the defendants, that is, when the construction of the defective buildings was completed, the claimants had not suffered any actual loss. The 4th Civil Chamber, by applying section 60 of the former Code of Obligations, ruled that the claimants' action had been introduced less than one year following the occurrence of the earthquake and therefore it had been introduced within the one-year limitation period. On that basis, it quashed the first-instance court's judgment which had found, applying section 125 of the former Code of Obligations, that the lawsuit had been introduced following the expiry of a period of ten years from the issuance of the building use permit (see *Hayati Çelebi and Others*, cited above, § 37, for the relevant parts of a similar decision by the 4th Civil Chamber of the Court of Cassation dated 11 December 2001).

17. On 5 September 2004 the applicants, except Mr Süleyman Öner Erdoğan, Mr Can Erdoğan and Ms Nevzer Zorlu, referring to, *inter alia*, the 4th Civil Chamber of the Court of Cassation's decision of 1 July 2004 (see paragraph 16 above), made an application to the First Presidency of the Court of Cassation requesting the harmonisation of the case-law of the 4th and 13th Civil Chambers of the Court of Cassation on the application of the limitation period to claims for damages arising from the earthquake of 17 August 1999.

18. On the same date, all applicants, except Ms Nevzer Zorlu, requested rectification of the 13th Civil Chamber of the Court of Cassation's decisions, drawing its attention to the discrepancy between its approach and that of the 4th Civil Chamber in respect of the starting date of the limitation periods. They also asked the 13th Civil Chamber to wait for the outcome of their application to the First Presidency of the Court of Cassation for harmonisation of the case-law.

19. On 23 June 2005 the First Presidency of the Court of Cassation dismissed the applicants' application, holding that there was no need for harmonisation of the case-law having regard to the content and nature of the judgments in question.

20. On unspecified dates in 2005 the 13th Civil Chamber dismissed the applicants' request for rectification.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The second chapter of the former Code of Obligations covered claims arising from tortious acts. The main principle governing tortious acts, as provided in section 41 of the former Code of Obligations, was that any person who causes damage to another in an unjust manner, be it wilfully, negligently or imprudently, shall indemnify that damage.

22. Section 60 of the former Code of Obligations governed limitation periods applicable to actions for damages resulting from a tort. Under the said provision, such an action in tort would become time-barred one year after the date on which the damage and the identity of the author thereof became known or, at the latest, ten years after the commission of the act that had caused the damage.

23. Section 125 of the former Code of Obligations governed limitation periods applicable to claims under contracts. It provided that unless otherwise specified in the said law all actions for contractual claims would become time-barred within ten years. Section 126 § 4 specified that the limitation period was five years for claims under construction contracts with the exception of actions to be brought against the contractor if there was improper or no execution of the contract, in which case the ten-year limitation period under section 125 would become applicable.

24. For a description of the relevant provisions of applicable laws and regulations pertaining to harmonisation of case-law, see *Hayati Çelebi and Others* (cited above, §§ 26-29).

25. Section 375 § 1 (i) of the Code of Civil Procedure of 12 January 2011 (“the CCP”) reads as follows:

“1. The reopening of proceedings may be requested for the following reasons:

(...)

(i) Where the European Court of Human Rights has issued a final judgment finding that the [final domestic] decision has been made in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms or its additional protocols (...)”

26. Section 377 of the CCP provides that the time-limit for reopening of proceedings on the ground stipulated in section 375 § 1 (i) is three months from the date of notification of the final judgment of the European Court of Human Rights and in any case ten years from the date when the domestic court’s decision that is the subject matter of the request for reopening becomes final.

THE LAW

I. PRELIMINARY ISSUES

A. Death of four applicants

27. The Government informed the Court that after the lodging of the application, the applicants Ms Fahriye Baran, Mr Mehmet Semih Yazgan, Mr Mustafa Reha Küpçüoğlu and Ms Hatice Füsün Giz had died, and asked the Court to strike the application out of the list insofar as it concerned those four applicants.

1. As regards the applicants Ms Fahriye Baran and Mr Mehmet Semih Yazgan

28. The Court firstly observes that no heirs or close relatives of Ms Baran have expressed the wish to pursue the application.

29. It has been the Court's practice to strike an application out of the list of cases under Article 37 § 1 of the Convention in the absence of any heir or close relative who has expressed the wish to pursue the application (see *Léger v. France* (striking out) [GC], no. 19324/02, § 44, 30 March 2009, with further references). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case in the part related to the application of Ms Baran. In view of the above, it is appropriate to strike the application out of the list of cases insofar as it concerns Ms Baran.

30. As regards the applicant Mr Mehmet Semih Yazgan, the Court notes that the applicants' representative informed it on 29 January 2018 that Mr Alp Yazgan, the applicant's grandson, wished to pursue the proceedings before the Court in his stead. He also sent by fax domestic court decisions certifying Mr Alp Yazgan's status as heir of the applicant Mr Yazgan and the form signed by Mr Alp Yazgan to authorise the representative to represent him in the proceedings before the Court.

31. By its letter dated 10 April 2018 the Court asked the representative to submit the hard copy of the authority form which bears the original signature of Mr Alp Yazgan. On 24 October 2018 the representative informed the Court that he was unable to contact Mr Alp Yazgan and could not submit the hard copy of the authority form signed by him.

32. In the Court's view the fact that the representative is unable to contact Mr Alp Yazgan must be taken as indicating that the latter has lost interest in pursuing the application within the meaning of Article 37 § 1 (a) of the Convention. Given the representative's inability to establish any communication with Mr Alp Yazgan, the Court considers that the

representative cannot now meaningfully pursue the proceedings before it (see, *mutatis mutandis*, *Khawarin v. the Netherlands and Greece* (dec.), no. 32431/09, 30 March 2010 with further references).

33. In these circumstances, and having regard to Article 37 § 1 (a) of the Convention, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case. In view of the above, it is appropriate to strike out this part of the application as well.

2. As regards the applicants Mr Mustafa Reha Küpçüoğlu and Ms Hatice Füsün Giz

34. On 29 January 2018 the applicants' representative informed the Court that Ms Birgül Küpçüoğlu, the wife of Mr Mustafa Reha Küpçüoğlu, and Ms Meltem Giz Çağlayaner, and Mr Tansu Giz, the daughter and son of Ms Hatice Füsün Giz, wished to pursue the proceedings before the Court in the applicants' stead. He also sent by fax domestic court decisions certifying that Ms Birgül Küpçüoğlu was the heir of Mr Mustafa Reha Küpçüoğlu and that Ms Meltem Giz Çağlayaner and Mr Tansu Giz were the heirs of Ms Hatice Füsün Giz, together with their authority form for legal representation signed by them.

35. By its letter dated 10 April 2018 the Court asked the representative to submit hard copies of the authority forms bearing the original signatures of Ms Birgül Küpçüoğlu, Ms Meltem Giz Çağlayaner and Mr Tansu Giz.

36. The representative submitted on 25 June 2018 the original authority forms signed by Ms Meltem Giz Çağlayaner and Mr Tansu Giz. Subsequently, he submitted on 24 October 2018 the original authority form signed by Ms Birgül Küpçüoğlu.

37. The Court reiterates that where an applicant dies during the examination of a case his heirs or next-of-kin may in principle pursue the application on his behalf (see *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX). Furthermore, in a similar case against Turkey, the Court recognised the right of the relative of the deceased applicant to pursue the application (see *Hayati Çelebi and Others*, cited above, § 48).

38. Consequently, the Court holds that Ms Birgül Küpçüoğlu, Ms Meltem Giz Çağlayaner and Mr Tansu Giz have standing to continue the present proceedings. For practical reasons, however, Mr Mustafa Reha Küpçüoğlu and Ms Hatice Füsün Giz will continue to be called as "applicants" in this judgment although Ms Birgül Küpçüoğlu, Ms Meltem Giz Çağlayaner and Mr Tansu Giz are now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI, and *Çakar v. Turkey*, no. 42741/98, § 2, 23 October 2003).

B. As regards the applicant Ms Nevzer Zorlu

39. The Court first notes that the Government raised a plea of non-exhaustion in respect of Ms Zorlu on account of her failure to request a rectification of the Court of Cassation's decision on appeal. The applicant contested this argument by submitting that an application for rectification is not an effective remedy according to the Court's relevant case-law and in any case the applications made by other applicants had not yielded any positive results.

40. The Court does not find it necessary to examine the Government's preliminary objection concerning the applicant's failure to exhaust domestic remedies, since the application of Ms Zorlu is in any event inadmissible for reasons set out below.

41. On 10 April 2018 the applicants' representative was also asked to provide the Court with an authority form duly signed by Ms Zorlu since the power of attorney purported to be submitted together with her application was missing from the case file. On 24 October 2018 the representative informed the Court that he was unable to establish any communication with Ms Zorlu and therefore could not submit a power of attorney or an authority form for legal representation signed by her.

42. The Court considers it essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim within the meaning of Article 34 of the Convention on whose behalf they purport to act (see *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009).

43. In the present case the file contains no document in which the applicant has indicated that she wished Mr E. Cinmen to lodge an application with the Court on her behalf. The applicant has never been in contact with the Court directly either.

44. Consequently, in the circumstances of the case, this part of the application, in so far as it concerns Ms Zorlu, must be rejected for want of an "applicant" for the purposes of Article 34 of the Convention and be declared inadmissible as incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention (see *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicants complained that the dismissal of their claim as being out of time and the inconsistencies in the application of the limitation periods by different chambers of the Court of Cassation had violated their right to a fair trial as provided in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

46. The Government contested the applicants’ arguments.

A. Admissibility

47. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

48. The Government submitted that the applicants had not brought an action in tort but claimed compensation for breach of contract. They maintained that in their petition for appeal the applicants had invoked the contractor’s liability for hidden defects and therefore based their arguments on the limitation periods applicable to contractual claims. In their view, the 13th Civil Chamber of the Court of Cassation had characterised the dispute in line with the applicants’ requests and calculated the limitation period on the basis of the defendants’ contractual liability. Referring to the Court’s decision in the case of *Uçar v. Turkey* ((dec.), no. 12960/05, 29 September 2009), the Government argued that the difference between the decisions of the 4th Civil Chamber of the Court of Cassation and the decision of the 13th Civil Chamber of the Court of Cassation delivered in the present case was justified by the difference of facts surrounding those cases and did not amount to conflicting decisions on the same matter. They submitted that the present case should therefore be distinguished from the *Hayati Çelebi and Others* case (cited above).

49. The applicants disagreed with the Government’s submissions and argued that the reason why their actions were dismissed as out of time was not that they had filed their claims on the grounds of contractual liability but that different chambers of the Court of Cassation determined the starting point of the limitation periods in actions for damages caused by the earthquake of 17 August 1999 differently. They alleged that if their appeal had been examined by the 4th Civil Chamber of the Court of Cassation, which, contrary to the 13th Civil Chamber of the Court of Cassation, calculates the limitation periods not from the date of the building use permit but from the date of the earthquake, their actions would have been examined on their merits. In their view, the dismissal of their application to the First Presidency of the Court of Cassation for harmonisation of case-law had deprived them of the possibility of remedying the conflict between the approaches of the 4th and 13th Civil Chambers of the Court of Cassation.

50. The Court notes at the outset that, by declaring the applicants' claims inadmissible for not being introduced within time, the domestic courts seemingly restricted the applicants' right of access to a court. It considers, however, that it is not necessary to examine whether this limitation of the right of access to a court constitutes in itself a violation of Article 6 § 1 of the Convention since it is first and foremost necessary to examine the applicants' complaint about the divergence of case-law within different chambers of the Court of Cassation (see *Hayati Çelebi and Others*, cited above, § 53).

51. The Court observes that it was the national courts and not the applicants which qualified the applicants' action as a contractual claim, by applying sections 125 and 126 § 4 the former Code of Obligations. It notes that section 41 of the former Code of Obligations invoked by the applicants in their claim to the Yalova Civil Court governed tortious liability. Moreover, even though in their appeal they referred to the defendants' liability for "hidden defects" in their buildings they did not base their claims on breach of the construction contract. Instead, they put emphasis on the fact that the damage caused by the defendants had not been known to them before the occurrence of the earthquake and therefore pleaded that the date of the earthquake should be taken as the starting point of the limitation period (see paragraphs 11 and 14 above).

52. The Court considers that in any case the qualification made by the applicants could not be said to have any bearing on the outcome of the present proceedings. The Court recalls that even though the applicants in the case of *Hayati Çelebi and others* (cited above) had invoked the liability of the contractors of their buildings both in tort and in contract, the 13th Civil Chamber of the Court of Cassation, as it was the case for the applicants in the present case, upheld the decision delivered by the first-instance court which characterised the dispute as a contractual dispute and held that the limitation periods started to run from the date when the construction works were completed (*ibid.*, §§ 11-13).

53. The Court further recalls that in *Hayati Çelebi and Others* it found a violation of Article 6 § 1 of the Convention, holding that the apparent contradictions in the case-law of the Court of Cassation and the failure of the mechanism designed to ensure the harmonisation of practice within that court had led to the applicants' action against the contractors being declared out of time, while other persons in a similar situation were able to have their cases examined on their merits (*ibid.*, § 66).

54. Turning to the present case, the Court finds that the crux of the applicants' complaints precisely concerns the difference in the way the 4th and 13th Civil Chambers of the Court of Cassation qualified the claims for compensation of losses caused by the earthquake of 17 August 1999 and calculated the limitation periods. The reason why the applicants' claim for damages was considered out of time was because their appeal was reviewed

by the 13th Civil Chamber of the Court of Cassation, which characterised their claim as a contractual claim and took the view that the ten-year limitation period under section 125 of the former Code of Obligations started to run from the date when the construction works had ended, whereas in similar cases, the 4th Civil Chamber of the Court of Cassation characterised claimants' actions as actions in tort, applied section 60 of the former Code of Obligations and took the date of the earthquake as the basis in calculating the limitation period. The Court further notes that the application made by the applicants for harmonisation of the case-law was dismissed by the First Presidency of the Court of Cassation, which, without giving a detailed explanation, held that there was no need for harmonisation (see paragraph 19 above).

55. In light of the above, the Court cannot accept the Government's argument that the present case differs from the case of *Hayati Çelebi and Others* (cited above). It therefore finds that the same considerations are applicable to the instant case and that there is no reason to depart from its finding in that case.

56. It follows that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

57. The applicants further complained that the dismissal of their action for damages for being introduced after the expiry of the limitation period had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

58. The Government contested the applicants' submissions.

59. The Court notes that this complaint is closely linked to the one examined above and must therefore likewise be declared admissible.

60. Having regard to the finding relating to Article 6 § 1 of the Convention (see paragraph 56 above), the Court considers that it is not necessary to examine this complaint separately (see, among other authorities, *Ateş Mimarlık Mühendislik A.Ş. v. Turkey*, no. 33275/05, § 60, 25 September 2012).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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.”

A. Damage

62. Each applicant claimed 334,736 Turkish liras (TRY) (approximately equivalent to 56,500 euros (EUR) at the material time) in respect of pecuniary damage, an amount which corresponds to the alleged appraised value of their apartments together with interest accrued from the date of the earthquake and TRY 20,000 (approximately equivalent to EUR 3,380 at the material time) in respect of non-pecuniary damage.

63. The Government submitted that the applicants’ just satisfaction claims were excessive and unfounded.

64. The Court notes that where, as in the instant case, an individual has been the victim of a breach of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if he or she so requests, represents, in principle an appropriate way of redressing the violation (see, *mutatis mutandis*, *Cudak v. Lithuania* [GC], no. 15869/02, § 79, ECHR 2010). Turning to the present case, the Court notes that section 377 of the CCP provides for a ten-year time-limit for an application to have the proceedings reopened, which starts running from the date when the impugned domestic court decision became final (see paragraph 26 above). In this connection, the Court observes that more than ten years have elapsed since the Court of Cassation’s final decisions taken in respect of the applicants in the course of 2005 (see paragraph 20 above). The Court, therefore, notes that the applicants may not be given leave to have the proceedings reopened, should they choose to make such an application, on the grounds that their application has been lodged outside the ten-year time-limit provided for by section 377 of the CCP.

65. The Court further notes that while it cannot speculate as to what the outcome of the proceedings complained of would have been had the violation of Article 6 § 1 of the Convention not occurred, it does not find it unreasonable to regard the applicants as having been deprived of a real opportunity in so far as they were unable to have the merits of their compensation claims examined (see, *mutatis mutandis*, *Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98, § 47, ECHR 2004-IX). In addition, the Court considers that the applicants suffered some non-pecuniary damage which is not sufficiently compensated for by the finding of a violation of the Convention.

66. Therefore, taking into account the domestic law provisions which do not allow proceedings to be reopened after ten years from the date when the impugned decision became final and having regard to the nature of the violation found, the Court decides, on an equitable basis, to award under all heads of damage combined, plus any tax that may be chargeable, (i) EUR 12,500 to Ms Birgül Küpçüoğlu (the heir of the applicant Mr Mustafa Reha Küpçüoğlu); (ii) EUR 12,500 to Ms Meltem Giz Çağlayaner and Mr Tansu Giz (the heirs of the applicant Ms Hatice Füsün Giz) jointly; (iii) EUR 12,500 to the applicants Ms Müjgan Erdoğan, Mr Süleyman Öner Erdoğan and Mr Can Erdoğan jointly, on the grounds that they took part as claimant in the same proceedings before domestic courts; and (iv) EUR 12,500 to each of the applicants Ms Türkan Aksis, Ms Ayşe Alanur Çimendağ, Ms Gülden Okan, Mr Selçuk Tekbaş and Mr Aziz Cüneyt Yüksel.

B. Costs and expenses

67. The applicants claimed an amount equal to 20% of the just satisfaction awarded by the Court in costs under the terms of the legal services agreement they allegedly have entered into with their representative in respect of their legal representation in the proceedings before the Court.

68. The Government objected to the applicants' claim, arguing that they had not provided a copy of the legal services agreement or any other document proving they had incurred any costs.

69. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

70. The Court observes that the applicants were represented throughout the proceedings before the Court by Mr E. Cinmen. However, the applicants did not submit a copy of the legal services agreement showing that they had already incurred the above expenses or were under a legally enforceable obligation to pay any fee to Mr E. Cinmen (see, *mutatis mutandis*, *Salmanov v. Russia*, no. 3522/04, § 98, 31 July 2008). The Court also observes that the applicants did not submit any itemised statements, or the rates and number of hours for which the representative had charged either.

71. The Court therefore rejects the applicants' claim under this head.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in so far as it concerns the applicants Ms Fahriye Baran and Mr Mehmet Semih Yazgan;
2. *Holds* that the applicant Mr Mustafa Reha Küpçüoğlu's wife, Ms Birgül Küpçüoğlu, and the applicant Ms Hatice Füsün Giz's children, Ms Meltem Giz Çağlayaner and Mr Tansu Giz, have standing to continue the present proceedings;
3. *Declares* the application in so far as it concerns Ms Nevzer Zorlu inadmissible;
4. *Declares* the remaining applicants' complaints under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1 admissible;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *Holds* that there is no need to examine the complaints under Article 1 of Protocol No. 1;
7. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage:
 - (i) EUR 12,500 (twelve thousand five hundred euros) to Ms Birgül Küpçüoğlu (the heir of the applicant Mr Mustafa Reha Küpçüoğlu);
 - (ii) EUR 12,500 (twelve thousand five hundred euros) to Ms Meltem Giz Çağlayaner and Mr Tansu Giz (the heirs of Ms Hatice Füsün Giz) jointly;
 - (iii) EUR 12,500 (twelve thousand five hundred euros) to the applicants, Ms Müjgan Erdoğan, Mr Süleyman Öner Erdoğan and Mr Can Erdoğan jointly;
 - (iv) EUR 12,500 (twelve thousand five hundred euros) to each of the applicants, Ms Türkan Aksis, Ms Ayşe Alanur Çimendağ, Ms Gülden Okan, Mr Selçuk Tekbaş and Mr Aziz Cüneyt Yüksel;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President

LIST OF APPLICANTS AND DETAILS OF THE DOMESTIC PROCEEDINGS

No	Firstname LASTNAME	Birth date	Place of residence	Date of the lawsuit and Docket no.	Date of the 13 th Civil Chamber of the Court of Cassation's decision on appeal
1.	Türkan AKSİS	01/03/1926	Istanbul	24/12/1999 1999/1896 E.	14/06/2004
2.	Ayşe Alanur ÇİMENDAĞ	15/05/1949	Istanbul	16/08/2000 2000/1338 E.	21/06/2004
3.	Müjgan ERDOĞAN	01/05/1952	Istanbul	28/04/2000 2000/576 E.	14/06/2004
4.	Süleyman Öner ERDOĞAN	03/09/1944	Istanbul		
5.	Can ERDOĞAN	30/04/1986	Istanbul		
6.	Hatice Füsun GİZ	14/06/1928	Istanbul	01/11/1999 1999/1532 E.	21/06/2004
7.	Mustafa Reha KÜPÇÜOĞLU	25/03/1931	Istanbul	31/01/2000 2000/114 E.	14/06/2004
8.	Güliden OKAN	20/08/1946	Istanbul	24/12/1999 1999/1922 E.	25/05/2004
9.	Selçuk TEKBAŞ	02/02/1937	Bursa	17/08/2000 2000/1408 E.	21/06/2004
10.	Aziz Cüneyt YÜKSEL	30/05/1954	Istanbul	01/11/1999	14/06/2004

No	Firstname LASTNAME	Birth date	Place of residence	Date of the lawsuit and Docket no.	Date of the 13 th Civil Chamber of the Court of Cassation's decision on appeal
				1999/1536 E.	
11.	Fahriye BARAN	19/10/1929	Istanbul	16/08/2000 2000/1336 E.	21/06/2004
12.	Mehmet Semih YAZGAN	20/05/1955	Ankara	02/08/2000 2000/1146 E.	21/06/2004
13..	Nevzer ZORLU	25/09/1946	Yalova	24/12/1999 1999/1918 E.	13/09/2005