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

SECOND SECTION

CASE OF KAYNAR AND OTHERS v. TURKEY

(Applications nos. 21104/06, 51103/06 and 18809/07)

JUDGMENT

STRASBOURG

7 May 2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kaynar and Others 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,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli*, judges*,
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 2 April 2019,

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

INTRODUCTION

1. The case originated in three applications (nos. 21104/06, 51103/06 and 18809/07) 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 three Turkish nationals, Mr Naci Kaynar (application no. 21104/06), Ms Ayşe Boztepe (application no. 51103/06) and Ms Cemile Bürge Kuşman (application no. 18809/07) ("the applicants"), on 8 April (application no. 51103/06) and 18 December 2006 (applications nos. 51103/06 and 18809/07).

2. The applicants were represented by Mr E. Pekçe and Mr M. Gemalmaz, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their agent.

3. The applicants complained that their right to peaceful enjoyment of their possessions had been infringed on account of legislative interference. In addition, relying on Article 6 of the Convention, the applicant in application no. 51103/06 and the applicant in application no. 18809/07 complained about the excessive length of the domestic proceedings and about a lack of reasoning in the court decisions.

4. On 1 September 2010 notice of the applications was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Turkish nationals who were born in 1953, 1938 and 1967 respectively and live in Çanakkale.

6. In 1993 (application no. 21104/06) and 1995 (applications nos. 51103/06 and 18809/07) respectively, the applicants purchased land

located on the island of Gökçeada. That land was classified as a “category-3 natural site”, title to which was unregistered. In 1996 the land was registered in the name of the Treasury, in connection with cadastral review.

7. On 10 June 1996 the applicants applied to the Gökçeada Land Tribunal (hereinafter “the Tribunal”). They contested the cadastral review and sought registration of the land in their names. In support of their claim they pointed out that they had acquired the land against payment and submitted that the conditions for adverse possession were met in their case.

8. According to the expert report drawn up by an agricultural expert on 28 July 1997, the land had been used for farming. With the development of tourism, however, the farming of the land had been partially discontinued. In that connection, pointing out that the land in question had no characteristics of particular cultural or natural importance and that it had always been used as farmland, the report specified that its classification as a “category-3 natural site” did not prevent its acquisition by adverse possession.

9. The expert report drawn up by an agricultural expert on 25 May 1999 showed that the land in question was properly demarcated but had been left uncultivated for the purpose of raising cattle.

10. In addition, the Tribunal heard testimony from local witnesses on numerous occasions. They stated that the applicants had purchased the land in question from Mr Haralomba Vulgarel and from Ms Kiraça Fukara, who had possessed it as *de facto* owners continuously since at least 1945. The witnesses stated that the applicants had been using the land since acquiring it and explained that, although in recent years its use for raising cattle had meant that it had not been cultivated, the applicants had not abandoned their land but had simply let it lie fallow, ready for cultivation.

11. On 7 October 1999, having carried out site visits, interviewed witnesses and experts, obtained technical and agricultural expert reports and admitted in evidence cadastral maps, the Tribunal granted the applicants’ claim.

It observed that forty years earlier the plot designated by the letter C in the report dated 14 June 1999, which had an area of 55,067.25 sq.m and had hitherto been used by Haralambo Vulgarel, had been transferred by him to his son Yorgi without consideration. The Tribunal noted that the son had sold the plot to the applicant (application no. 21104/06) seven or eight years earlier.

As for the plots designated by the letters D and E in the report dated 14 June 1999, with areas of 45,575 m² and 6,101.10 m² respectively, the Tribunal noted that they had at one time been used by Nikolo Fukara, who had then transferred them without consideration to his daughter Kiraça thirty years earlier. It further noted that four years earlier the daughter had in turn transferred the plot designated by the letter D to the applicant in application no. 51103/06 and the plot designated by the letter E to the applicant in application no. 18809/07, in both cases against payment.

The Tribunal noted that the applicants still had possession of the relevant plots and took the view that such possession, for a total of more than 45 years, all plots combined, owing to cumulative periods of possession, could be characterised as peaceful and continuous. It added that the land had been used as farmland during that period. It took the view that, while the land at issue had not been farmed in recent years on account of livestock farming, the applicants had not abandoned it and its boundaries had remained unchanged. The Tribunal added that, notwithstanding the fact that it was located within the confines of a natural site, the land was not home to any cultural or natural assets in need of protection.

The Tribunal concluded that the conditions for adverse possession were satisfied and ordered that the land be registered in the applicants' names in the land register.

12. On 12 October 2001 the Court of Cassation quashed the judgment of 7 October 1999 on the grounds that the lower court had not duly enquired as to whether the contested land was used for grazing and therefore could not be acquired by adverse possession. The court further noted that, according to the statements from local witnesses and experts, it had been several years since the applicants had used the land; it took the view that it should be determined whether they had abandoned the land and, if so, for how long.

13. Following the Court of Cassation's judgment, the Tribunal again heard local witnesses and experts, obtained technical and agricultural expert reports and admitted cadastral maps in evidence. The local witnesses maintained their original statements to the effect that the applicants had not abandoned their land (see paragraph 10 above).

14. Meanwhile, on 27 July 2004, section 11 of the Cultural and Natural Heritage (Protection) Act (Law no. 2863) was amended. While it had been the case until that amendment was enacted that real estate located in zones classified as "natural sites" could be acquired by adverse possession, the relevant provision specified that land classified as a "natural site", and likewise land classified as "natural and cultural assets the protection of which is necessary", together with "the protected area around them", could not be acquired by adverse possession (see paragraphs 20-21 below).

15. On 9 June 2005 the Tribunal rejected the applicants' claims and ordered that the disputed land be registered in the name of the Treasury.

It found that the plots under dispute were not grazing pastures but corresponded to "category-3 natural sites". It noted however that, after the Court of Cassation's judgment, section 11 of the Cultural and Natural Heritage (Protection) Act (Law no. 2863) had been amended. It observed that, since that amendment, land classified as a "natural site" could no longer be acquired by adverse possession. It therefore concluded that the applicants could not acquire ownership of the land in question by adverse possession.

By way of derogation from the principle of non-retrospective legislation, which normally prohibits the application of a new statute to events which took place prior to its entry into force, the Tribunal held that, as there was a matter of public policy at issue, the aforementioned amendment should be applied to the proceedings before it, in accordance with the case-law of the Court of Cassation.

16. On 31 October 2005 the Court of Cassation upheld that judgment and dismissed the applicants' request for rectification of the judgment on 6 June 2006.

17. On 26 June 2006 the Court of Cassation's judgment of 6 June 2006 reached the first-instance court to be notified to the applicants. The date of notification was not mentioned in the file.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. General conditions for adverse possession

18. Under Turkish law, the registration of real estate in the land register is in principle the only legal act that confers ownership. Thus, pursuant to Article 705 of the Civil Code, the acquisition of real estate is conditional upon registration in the land register. Moreover, under section 14 of the Land Registration Act (Law no. 3402 of 3 July 1987):

> "... title to real estate that is not registered in the land register ... shall be registered in the name of whosoever proves, by means of documents, expert reports or witness statements, continuous possession thereof, as *de facto* owner, for more than twenty years. ..."

19. Under Article 713 § 1 of the Civil Code:

> "Any person who has enjoyed continuous and peaceful possession for twenty years, as *de facto* owner (*malik sıfatıyla*), of real estate not listed in the land register may initiate proceedings to have that real estate registered in said register as being his or her property."

The last paragraph of that Article states, however, that the mechanism so described shall apply subject to any special provisions (*özel kanun hükümleri saklıdır*).

B. Land eligible for acquisition by adverse possession

20. Prior to its amendment on 14 July 2004 the relevant part of section 11 of the Cultural and Natural Heritage (Protection) Act (Law no. 2863 of 21 July 1983) read as follows:

> "... cultural and natural assets the protection of which is necessary, as well as the protected area around them, shall not be eligible for acquisition by adverse possession. ..."

21. The amendment of section 11 of the Cultural and Natural Heritage (Protection) Act (Law no. 2863), enacted on 14 July 2004, extended the scope

of that provision to category-3 natural sites and archaeological sites. As amended, that provision read as follows:

> "... cultural and natural assets the protection of which is necessary, their protected area, [as well as] natural sites, shall not be eligible for acquisition by adverse possession. ..."

On 22 May 2007 that provision was amended again such that category-3 natural sites and archaeological were excluded from its scope. From that date, land classified as a "natural site" or as a "category-3 archaeological site" became eligible for acquisition by adverse possession.

C. Cumulative possession periods

22. Under Article 996 of the Civil Code, possessors who seek to claim adverse possession are entitled to combine their own period of possession with that of their predecessor, provided the latter enjoyed the same rights as they do.

D. Case-law

23. In their judgment of 16 December 1964 the Joint Civil Divisions of the Court of Cassation (*Yargıtay Hukuk Genel Kurulu*) ruled that the acquisition of ownership under the rules of adverse possession did not take place at the time when all the requisite conditions were satisfied but rather on the date on which the decision delivered by the Tribunal finding that all such conditions were satisfied became final. In the Court of Cassation's view, the court decision conferred ownership rather than merely declaring that it had been acquired.

E. Presidential Ordinance no. 809 of 7 March 2019

24. By letter dated 11 March 2019 the Government informed the Court that, by Presidential Ordinance no. 809 of 7 March 2019, published in the Official Gazette on 8 March 2019, the jurisdiction *ratione materiae* of the Compensation Commission created by Law no. 6384 concerning the settlement, by award of compensation, of certain cases before the European Court of Human Rights (for more information see *Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013) had been expanded.

The parts of that Ordinance that are relevant to the present case read as follows:

> "Article 3:
>
> ...
>
> (b) jurisdiction: applications concerning the rights protected under Article 1 of Protocol No. 1 to the Convention which are pending before the Court and fall within the purview of Article 4 of the present Ordinance.

> Article 4- (l) The following ... subject matter has been brought within the purview of the Commission ... :
>
> (a) to examine and determine, provided they are lodged with it within one month from the date of notification of the final judgment of the European Court of Human Rights, any claims for compensation in respect of pecuniary and non-pecuniary damage in applications in respect of which the European Court of Human Rights has found a violation of Article 1 of Protocol No. 1 to the Convention but has not ruled on the claims in respect of damage under Article 41 of the Convention or has decided to reserve [the question of the application of that Article]."

THE LAW

I. JOINDER OF THE APPLICATIONS

25. Having regard to the similar facts and subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

26. The applicants complained that their right to peaceful enjoyment of their possessions had been infringed on account of legislative interference. They argued that they had fulfilled all the conditions for adverse possession at the time the impugned legislative amendment was enacted and that, had it not been for that amendment, the national courts would have registered the land in their names in the land register. They relied on Article 1 of Protocol No. 1 to the Convention, the relevant part of 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.
>
> ..."

27. The Government contested that argument.

A. Admissibility

28. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds listed thereunder. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The applicants submitted that all the legal conditions were satisfied for the land in question to be registered in their names in the land register. They added that the domestic courts had established that they had possessed the land continuously for more than twenty years and that, as such, they ought to have obtained proof of title to the land under the laws applicable at the time the proceedings were instituted. They pointed out that the courts had nevertheless dismissed their claim on the basis of section 11 of the Cultural and Natural Heritage (Protection) Act (Law no. 2863), as amended on 14 July 2004, while their cases were still pending before the national courts. They therefore submitted that, owing to a legislative amendment enacted during the proceedings, they had been deprived of the possibility of obtaining proof of title to the relevant land. In their view, it was a case of *de facto* expropriation.

30. The Government submitted that the applicants did not have "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. Referring to a judgment delivered by the Joint Civil Divisions of the Court of Cassation on 16 December 1964 to the effect that the date of acquisition of ownership was the date on which the first-instance judgment ordering that the relevant land be registered in the applicants' names had become final (see paragraph 23 above), they argued that there had been no interference with the applicants' right to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. They pointed out that the fact that the judgment delivered by the Tribunal had acknowledged occupation on the part of the applicants did not mean that they had been recognised as having any ownership rights. They argued that, following the legislative amendment enacted in 2004, adverse possession of the land in question could no longer serve as the basis for acquiring ownership. Consequently, in their view, the applicants had never had ownership of the land in question. The Government added that the applicants could not claim to have had "existing possessions" any more than they had had any "legitimate expectation" of seeing their claim succeed.

31. Moreover, in the alternative, the Government submitted that, even if such had been provided for by law, which had not been the case, the applicants could not have relied on adverse possession since they had not, according to the Government, been using the land, and that this had led the Tribunal to consider whether they had abandoned it.

2. The Court's assessment

(a) Whether the applicants had possessions

32. The Court notes that the parties had diverging views as to whether the applicants did or did not hold possessions eligible for protection under Article 1 of Protocol No. 1 to the Convention. It must therefore determine whether the legal situation in which the applicants found themselves fell within the ambit of Article 1 of Protocol No. 1 to the Convention.

33. As to the autonomous meaning of the concept of "possessions", the Court refers to its well-established case-law (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II, and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR-2000-I). The issue that needs to be examined, in each case brought before the Court, is whether the circumstances of the case, considered as a whole, conferred on the applicant a substantive interest protected by Article 1 of Protocol No. 1 to the Convention. The Court considers that that approach requires it to take account of the following points of law and of fact.

34. It reiterates that under Turkish law the registration of real estate in the land register is in principle the only legal act that confers ownership (see *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey*, nos. 37639/03 and 3 others, § 42, 3 March 2009, and *İpseftel v. Turkey*, no. 18638/05, § 50, 26 May 2015). In that connection, it notes that neither party contested the fact that the applicants did not hold title to property registered in the land register. It observes, however, that prior to the legislative amendment, the applicants had obtained a first-instance judgment in their favour (compare *Smokovitis and Others v. Greece*, no. 46356/99, § 32, 11 April 2002). The Court thus notes that, in its judgment of 7 October 1999, the Gökçeada Land Tribunal, which decided the case at first instance, concluded that the conditions for acquisition of ownership by adverse possession had been met. It further notes that, in establishing that the applicants had indeed had continuous possession of the land in question, the Tribunal took into account a certain amount of evidence, such as the agricultural expert reports, the statements from witnesses and from local, technical experts, together with documents submitted by the parties or obtained *proprio motu*, including cadastral maps and the tax and land records relating to the land in question (see paragraph 11 above).

35. As to the Court of Cassation, in its judgment delivered on 12 October 2001 it quashed the judgment of 7 October 1999 on the grounds that the lower court had not duly enquired as to whether the land in question was used for grazing and therefore could not be acquired by adverse possession. The Court of Cassation further found that, according to the statements from the local witnesses and experts, it had been several years since the applicants had used the land, and considered that it should be determined whether they had abandoned it and, if so, for how long (see paragraph 12 above).

36. The Court finds that, in the proceedings following the Court of Cassation's quashing of the first-instance judgment, the Tribunal completed the file in accordance with the Court of Cassation's request. The Tribunal thus established that the disputed plots were not grazing pastures (see paragraph 15 above). As to the question whether the applicants had actually made continuous use of the land at issue, the evidence shows that the Tribunal had established in its first judgment that, although the land had not been cultivated for a certain amount of time, that was because it had been used to raise cattle (see paragraph 11 above). Moreover, during the second stage of the proceedings, the experts and witnesses had confirmed that the applicants had possessed the land in question continuously and no factual evidence suggesting that they had abandoned it had been identified (see paragraph 13 above).

37. Consequently, in the Court's view, prior to the enactment of the impugned law, the applicants could claim to have satisfied all the requirements to enable them to be recognised as owners of the real estate that they or the vendors thereof had possessed for a lengthy period of time. They had therefore had at least a "legitimate expectation" that their claim would be successful, that is to say, that they would obtain the effective enjoyment of a property right. The Court finds that their claim to recognition as owners of the land in question had a sufficient basis in national law to qualify as an "asset" and therefore as a "possession" protected by Article 1 of Protocol No. 1 (see, in particular, *Matos e Silva, Lda., and Others v. Portugal*, 16 September 1996, § 75, *Reports of Judgments and Decisions* 1996-IV, *İpseftel*, cited above, §§ 56-57; and, *mutatis mutandis, Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35 and 52, ECHR 2004-IX; *Maurice v. France* [GC], no. 11810/03, § 70, ECHR 2005-IX; *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı*, cited above, § 50; and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 143-44, 20 March 2018).

(b) The nature of the interference

38. In the Court's view, there are similarities between the present case and that of *İpseftel* (cited above), which concerned the applicant's inability to obtain proof of title to real estate despite the fact that the donor of the property had satisfied the requirement of peaceful and continuous possession for more than twenty years. In that case the Court found that the court decisions dismissing the applicant's claims to ownership constituted a "deprivation of possessions" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (ibid., § 62).

39. Moreover, the Court points out that, in the *Maurice* case (cited above), which concerned a law that had retrospectively negated a substantial part of the claims for compensation which the applicants could legitimately have expected to have been awarded, it held that the law complained of had entailed interference with the exercise of the right to compensation which

could have been asserted under the domestic law applicable until then, and consequently with the applicants' right to peaceful enjoyment of their possessions. It therefore concluded that such interference had amounted to a "deprivation of possessions" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (ibid., §§ 79-80).

40. In the present case, the Court considers it appropriate to follow its above-mentioned case-law. In that regard, it observes that on 14 July 2004 section 11 of Law no. 2863 was amended in such a way as to extend its scope to include natural sites. It finds that that legislative amendment deprived the applicants of the ability to obtain the registration of the land in question, whereas, as explained above (see paragraph 37), they could legitimately have expected that they had satisfied all the requirements to enable them to be recognised as owners of the real estate which they or the vendors of the land had possessed for a lengthy period of time. The Court therefore concludes that the law complained of entailed interference with the exercise of the property rights which could have been asserted under the domestic law applicable until then, and consequently with the applicants' right to peaceful enjoyment of their possessions.

41. That being so, it must therefore be concluded that the court decisions dismissing the applicants' property claims constituted a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (see *İpseftel,* cited above, § 62, and *Maurice*, cited above, § 80; see also, *mutatis mutandis*, *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 34, series A no. 332, and *Valle Pierimpiè Società Agricola S.P.A. v. Italy*, no. 6154/11, § 63, 23 September 2014).

(c) Whether the interference was proportionate and justified

42. The first and most important requirement of Article 1 of Protocol No. 1 to the Convention 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 States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III, and *Iatridis*, cited above, § 58).

43. The Court notes that the interference consisted in the legislation which entered into force in 2004 and its application in the present case. It is therefore satisfied that the interference complied with the requirement of lawfulness contained in the above provision.

44. The Court would further point out that the national authorities enjoy a certain margin of appreciation in determining what is "in the public interest",

because under the Convention system it is for them to make the initial assessment both of the existence of a problem of public concern warranting measures of deprivation of property and of the remedial action to be taken (see *Pressos Compania Naviera S.A. and Others*, cited above, § 37). In the present case, it observes that in its judgment of 9 June 2005 the Tribunal had held that, by way of derogation from the principle of non-retrospective legislation, which normally prohibits the application of a new statute to events which occurred prior to its entry into force, the new legislative amendment should be applied to the proceedings in that case on public policy grounds (see paragraph 15 above).

45. In the Court's view, a mere reference to public policy in the judgment of the first-instance tribunal is not sufficient to justify the retrospective application of a law. The Court is prepared to admit that the aim of the legislative amendment was to protect the environment (see, *mutatis mutandis, Hamer v. Belgium*, no. 21861/03, § 79, ECHR 2007-V (extracts), and *Valle Pierimpiè Società Agricola S.P.A.*, cited above, § 67), which in its view would surely constitute a legitimate aim, consistent with the general interest. However, it is obliged to note that on 22 May 2007, that is to say after less than three years, that law was again amended such that all land classified as a natural site – the classification of the land at issue – was excluded from its scope (see, *mutatis mutandis*, *Agrati and Others v. Italy,* nos. 43549/08 and 2 others, § 63, 7 June 2011). From that time forward, as had already been the case at the time when the applications were lodged, land within a natural site could be acquired by adverse possession (see paragraph 21 above). Consequently, in the Court's view, given the absence of information of any kind whatsoever concerning the scope of the relevant legislative amendment's retrospective application, it would be difficult to conclude that there was a practical correlation between the retrospective application of the legislation at issue, which remained in force less than three years, and the protection of the environment in general.

46. In addition, the Court reiterates that there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures depriving a person of his or her possessions (see *Pressos Compania Naviera S.A. and Others*, cited above, § 38, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 93, ECHR 2006-V). Compensation terms under the relevant legislation are material to assessing whether the contested measure strikes the requisite fair balance, and in particular to ensure that it does not impose a disproportionate burden on the applicant. While Article 1 of Protocol No. 1 to the Convention does not guarantee a right to full compensation in all circumstances (see *James and Others v. United Kingdom*, 21 February 1986, § 54, series A no. 98, and *Broniowski v. Poland* [GC], no. 31443/96, § 182, ECHR 2004-V), the taking of property without payment of an amount reasonably related to its value would normally constitute a

disproportionate interference (see *Valle Pierimpiè Società Agricola S.P.A.*, cited above, § 71).

47. The Court observes that, having regard to the fact that it has already been established that the interference in question satisfied the requirement of lawfulness, less than full compensation would not make the taking of the applicants' property wrongful in itself. However, as in the case of *İpseftel* (cited above, § 67), it finds that the applicants did not receive any compensation in respect of the interference with the enjoyment of their possessions. It notes that the Government did not rely on any exceptional circumstance to justify the total absence of any award.

48. The Court therefore finds that, even assuming that the interference complained of aimed to protect the environment, such an interference with the applicants' rights was inconsistent with preserving a fair balance between the interests at stake (see, *mutatis mutandis, Pressos Compania Naviera S.A. and Others*, cited above, § 43) and there was no reasonable relationship of proportionality between the means employed and the aim pursued. It concludes that, notwithstanding the State's margin of appreciation in such cases, the applicants were made to bear an individual and excessive burden, entailing a breach of their rights under Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

49. The applicants in applications nos. 51103/06 and 18809/07 complained about the length of the proceedings and alleged that the court decisions contained insufficient reasoning. They relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ... "

A. Admissibility

1. The complaint concerning the lack of reasoning

50. The Court reiterates that Article 6 § 1 of the Convention requires courts to state the reasons on which their decisions are based, but that it does not go so far as to require a detailed answer to every argument put forward (see *Kok v. Netherlands* (dec.), no. 43149/98, ECHR 2000-VI). Having regard to the evidence, it finds that sufficient reasons were given in the impugned judgments of the national courts. It follows that this complaint is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

2. *The complaint concerning the length of the proceedings*

51. The Government submitted that the applicants had failed to exhaust domestic remedies. They argued that the applicants could have lodged a claim for compensation against the authorities with the administrative courts on grounds of negligence attributable to the public administration.

52. The Court observes at the outset that it has previously concluded that there was no domestic remedy available at the material time by which an applicant could have enforced his or her right to have his or her case heard within a reasonable time within the meaning of Article 6 § 1 of the Convention (see *Daneshpayeh v. Turkey*, no. 21086/04, § 37, 16 July 2009, and *Ümmühan Kaplan v. Turkey*, no. 24240/07, § 58, 20 March 2012). It has also previously, in circumstances similar to those of the present case, dismissed an objection identical to the one raised by the Government alleging a failure to exhaust domestic remedies (see *Aydan v. Turkey*, no. 16281/10, § 122, 12 March 2013). Turning back to the present case, it sees no reason to depart from that case-law.

53. The Court does recognise that a new remedy for compensation claims was introduced in Turkey – designed in particular for applications relating to the length of proceedings – following the application of the pilot-judgment procedure in the case of *Ümmühan Kaplan* (cited above). In its *Turgut and Others* decision (cited above) it declared an application inadmissible as the applicants had failed to avail themselves of all domestic remedies, in particular that new procedure. To that end, it notably found that the new remedy was, *prima facie*, accessible and capable of providing reasonable prospects of redress in the case of complaints relating to the length of proceedings.

54. The Court would further point out that, in that same *Ümmühan Kaplan* pilot judgment (cited above, § 77), it specified, among other things, that it would be able to continue examining, by way of the normal procedure, applications of that type of which the Government had already been given notice. It notes that, in the present case, the Government did not raise any objection concerning this new remedy. In the light of the foregoing, the Court decides to continue examining the present application (see *Rifat Demir v. Turkey* (dec.), no. 24267/07, §§ 34 and 35, 4 June 2013).

55. It follows that the Government's objection cannot be accepted. The Court therefore notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

56. The Court notes that the period to be taken into consideration commenced on 10 June 1996 when the application was lodged with the Tribunal and that it ended on 6 June 2006 when the Court of Cassation

dismissed the judgment rectification request. The proceedings therefore lasted approximately ten years.

57. The Court reiterates that the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria laid down in its case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 209, 27 June 2017).

58. In the light of its case-law on the subject and having regard in particular to the time that elapsed after the first-instance judgment was quashed by the Court of Cassation, the Court finds that the length of the impugned proceedings as a whole failed to meet the “reasonable time” requirement.

59. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Pecuniary damage

1. The parties’ submissions

61. The applicants (applications nos. 51103/06 and 18809/07) sought the restitution of the possessions in question or, in the alternative, payment of the total sum of 2,485,115 euros (EUR), after conversion by them based on the rate applicable in April 2011. In support of their claims, they referred to two expert reports drawn up on 5 April 2011 by Gökçeada Emlak, a real estate agency located in Gökçeada, which concluded that, in 2011, the value of the land claimed by the applicant in application no. 51103/06 was 640,605 Turkish liras (TRY) and that of the land claimed by the applicant in application no. 18809/07 was TRY 4,275,000.

62. As to the applicant in application no. 21104/06, he claimed EUR 5,750,000 in respect of the pecuniary damage he alleged to have sustained, without producing any supporting documents.

63. The Government contested those claims. As a principal argument, they submitted that there was no causal link between the damage alleged and the violation of the Convention since, according to them, the applicants, who

had no proof of title, had been mere claimants. In the alternative, the Government submitted that the amounts claimed were manifestly excessive, ill-founded, and wholly disconnected from prevailing socioeconomic conditions in Turkey. They pointed out that the expert reports produced by some of the applicants had not been drawn up following adversarial proceedings and submitted that the assessment of pecuniary damage could be objective only if it had been established by court-appointed experts in the context of adversarial proceedings.

2. The Court's assessment

64. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to it and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, § 35, 12 December 2017). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (*Brumarescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2000-I, and *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009).

65. The Court refers to its finding above that the interference complained of satisfied the requirement of lawfulness (see paragraph 43 above). There has been a violation of Article 1 of Protocol No. 1 to the Convention owing to the fact that the applicants received no compensation in respect of the interference with their possessions and that, as a result, they were made to bear an individual and excessive burden. Consequently, the act of the respondent State that the Court has found to be in breach of the Convention was, in the present case, a deprivation of possessions that would have been legitimate had appropriate compensation been paid (contrast *Guiso-Gallisay*, cited above, § 91). There is therefore a clear causal link between the pecuniary damage alleged by the applicants and the violation of the Convention.

66. The Court further takes the view that, in the present case, the nature of the violation does not allow of *restitutio in integrum* (see *Scordino (n^{o} 1)*, cited above, § 249, and *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 81, 19 February 2009), contrary to the *Guiso-Gallisay* case cited above, where what had been at issue was a case of unlawful dispossession. That being said,

the Government are of course free to decide spontaneously on the restitution of all or part of the land to the applicants.

67. As to the compensation to be determined in the present case, in accordance with the Court's well-established case-law in that area (see *Scordino (no. 1),* cited above, § 255), it will not have to reflect the idea of a total elimination of the consequences of the impugned interference. In the present case it is the lack of adequate compensation and not the inherent unlawfulness of the taking of the land that was at the origin of the violation found under Article 1 of Protocol No. 1 to the Convention. Accordingly, the Court finds that the adequate compensation in the present case is that which corresponds to the market value of the property at the time of the relevant deprivation of possessions (ibid., § 257) – an amount which will have to be adjusted to make up for the effects of inflation – and not to the current market value of those possessions. Consequently, in the Court's view, the method of calculation developed in the above-mentioned *Scordino (no. 1)* case applies *mutatis mutandis* to the present case (ibid., § 258).

68. The Court observes that the applicants submitted claims in respect of pecuniary damage which corresponded, according to them, to the market value of the possessions in dispute, and that they further produced various documents in support of their claims.

69. The Government submitted that the Court could not use an estimate of the value of the possessions by real estate agencies as a method for determining just satisfaction. In their view, instead of using reports drawn up by a real estate agency, it was necessary to base the assessment on what they viewed as more objective evidence to determine just satisfaction in the present case.

70. The Court observes not only that there is a dispute as to the manner in which pecuniary damage was assessed but also that it is genuinely difficult for it to determine the applicants' pecuniary loss in the light of the criteria set forth above (see paragraph 67 above).

71. The Court notes that the Government have recently brought to its attention that Presidential Ordinance no. 809 came into force on 8 March 2019. That provision expands the jurisdiction of the Compensation Commission created in January 2013 and lays down the principles and procedures to be followed in connection with compensation in cases where the Court has found a violation of Article 1 of Protocol No. 1 to the Convention but has not ruled on the claims for just satisfaction under Article 41 of the Convention or has decided to reserve the question of the application of that Article. The Court observes that the present case falls within the first class of cases, namely those where it has found a violation of Article 1 of Protocol No. 1 to the Convention and has not ruled on the claims for just satisfaction under Article 41 of the Convention.

72. Moreover, in the *Turgut and Others* (decision cited above) and *Demiroğlu v. Turkey* ((dec.), no. 56125/10, 4 June 2013) cases, the Court

conducted a detailed examination of the functioning of the Compensation Commission. It took the view in those cases that the applicants should apply first to that body in so far as it represented a new domestic remedy that was accessible and capable of affording redress for their complaints (see also *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, 27 May 2014; *Bozkurt v. Turkey* (dec.), no. 38674/07, 10 March 2015; *Çelik v. Turkey* (dec.), no. 23772/13, 16 June 2015; and *Özbil v. Turkey* (dec.), no. 45601/09, 29 September 2015). The Court further observes that the Compensation Commission is empowered to award compensation to all individuals in line with the Court's practice (see *Turgut and Others* and *Demiroğlu*, cited above). Compensation awarded by the Compensation Commission is paid by the Ministry of Justice within three months from the date on which the decision becomes final and is exempt from any tax or charges. In addition, an appeal may be lodged against the Compensation Commission's decision with the administrative courts, which should decide on the case within three months. The applicant may also bring an individual application to the Constitutional Court against the decision of the administrative courts (see *Ahmet Erol v. Turkey* (dec.), no. 73290/13, 6 May 2014, and *Sayan v. Turkey* (dec.), no. 49460/11, § 19, 14 June 2016).

73. The Court takes note of this initiative on the part of the Turkish Government and observes that this development strengthens the subsidiary character of the Convention system of human rights protection and facilitates the performance of the respective tasks of the Court and the Committee of Ministers under Articles 41 and 46 of the Convention (see *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 36, ECHR 2005-IX).

74. That being the case, the Court takes the view that an application to the Compensation Commission within one month from the date of notification of its final judgment can potentially give rise to compensation by the administration and that this remedy represents an appropriate form of redress for the violation found under Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003 and, more recently, *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, §§ 48-50, 11 July 2017; see also, *mutatis mutandis*, *Gümrükçüler and Others v. Turkey* (just satisfaction), no. 9580/03, § 34, 7 February 2017, and *Keçecioğlu and Others v. Turkey* (just satisfaction), no. 37546/02, § 18, 20 July 2010).

75. That being noted, the Court reiterates that it is entitled to examine whether the application lends itself to the application of Article 37 of the Convention (see *Gümrükçüler and Others*, cited above, § 37). It may thus decide to strike an application out of its list under Article 37 § 1 (c) of the Convention when it has been established that there is a concrete possibility that the applicants will be afforded redress at the national level, where the appropriate authorities, who are present on the ground and have access to the property, registers and archives, as well as all other practical resources, are

certainly better placed to decide on complex questions of ownership and assessment and to determine compensation (ibid., § 29).

76. The Court takes the view that the national authorities are without doubt in the best position to assess the damage sustained and have the appropriate legal and technical means to put an end to a breach of the Convention and to make reparation for its consequences, in particular when, as in the present case, it is a matter of determining the value of real estate in a Contracting State on a given date. For the Court, as it has found in numerous cases against Turkey in connection with the right to peaceful enjoyment of possessions, such an assessment is almost objectively impossible in so far as it is closely bound up with the national, even local context, and the domestic experts and courts are in the best position to carry it out (see, for example, *Keçecioğlu and Others,* cited above, § 18).

77. In the light of the above, concerning the pecuniary damage alleged, the Court finds that national law henceforth affords the opportunity to make reparation for the consequences of the violation found in the present case and accordingly takes the view that it is not necessary to rule on the claims submitted by the applicants in that regard. It therefore finds that it is no longer justified to continue the examination of the application (Article 37 § 1 (c) of the Convention). It is further of the opinion that there are no special circumstances regarding respect for human rights as defined in the Convention and its Protocols that would require it to continue the examination of this part of the application (Article 37 § 1 *in fine*). Moreover, in reaching this conclusion, it has taken account of its power under Article 37 § 2 of the Convention to restore the application to its list should the circumstances justify such a course (see *Gümrükçüler and Others*, § 42).

78. In conclusion, it is appropriate to strike out of the list the part of the case relating to the question of Article 41 of the Convention with regard to the claim in respect of pecuniary damage resulting from the violation of Article 1 of Protocol No. 1 to the Convention.

B. Non-pecuniary damage

79. The applicants in applications nos. 51103/06 and 18809/07 each sought EUR 5,000 in respect of the non-pecuniary damage they claimed to have sustained owing to the excessive length of the proceedings and to an unjustified infringement of their right to peaceful enjoyment of their possessions.

The applicant in application no. 21104/06 sought EUR 250,000 in respect of the non-pecuniary damage he claimed to have sustained owing to an unjustified interference with his right to peaceful enjoyment of his possessions.

80. The Government contested those amounts.

81. As to the claims of the applicants in applications nos. 51103/06 and 18809/07, the Court points out that it has found above not only a violation of Article 1 of Protocol No. 1 to the Convention, but also a violation of Article 6 of the Convention on account of the excessive length of the proceedings in which those applicants were involved. Consequently, it decides to award EUR 5,000 to each of them in respect of the non-pecuniary damage resulting from excessively lengthy proceedings.

82. As to the non-pecuniary damage resulting from the unjustified infringement of the applicants' right to peaceful enjoyment of their possessions, the Court observes that, in accordance with the Presidential Ordinance mentioned above, the Compensation Commission has jurisdiction to examine and rule on claims in respect of non-pecuniary damage as well. Consequently, in the light of its findings in respect of pecuniary damage, it is equally appropriate to strike out of its list the part of the case relating to the question of Article 41 of the Convention with regard to the claims in respect of non-pecuniary damage resulting from the violation of Article 1 of Protocol No. 1 to the Convention.

C. Costs and expenses

83. The applicants in applications nos. 51103/06 and 18809/07 jointly claimed EUR 2,270 for the costs and expenses they had incurred in the proceedings before the Court. According to them, that sum corresponded to the hours worked by their lawyer and to document copying and translation expenses. As to the applicant in application no. 21104/06, he sought an appropriate sum to cover costs and expenses purportedly incurred, without specifying the amount.

84. The Government contested those claims.

85. In the present case, having regard to the documents before it and to its case-law, the Court considers the sum of EUR 2,270 in costs and expenses requested by the applicants in applications nos. 51103/06 and 18809/07 to be reasonable and awards it to them jointly.

As to the claim of the applicant in application no. 21104/06, according to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to its case-law, and in the absence of specific claims in respect of costs and expenses and of any invoices submitted as evidence, the Court decides not to award the applicant any sum in that regard.

D. Default interest

86. 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 join the applications;

2. *Declares* the applications admissible as regards the complaints under Article 6 of the Convention concerning the length of proceedings and under Article 1 of Protocol No. 1 to the Convention, and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings in the domestic courts;

5. *Decides* to strike out of its list the part of the case relating to the question of Article 41 of the Convention with regard to the claims in respect of pecuniary and non-pecuniary damage resulting from the violation of Article 1 of Protocol No. 1 to the Convention;

6. *Holds*
   (a) that the respondent State is to pay Ms Boztepe and Ms Kuşman (applications nos. 51103/06 and 18809/07), 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:
      (i) EUR 5,000 (five thousand euros), to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage resulting from the excessive length of the proceedings,
      (ii) EUR 2,270 (two thousand two hundred and seventy euros), jointly, plus any tax that may be chargeable to the applicants on that amount, in respect of costs and expenses;
   (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;

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

Done in French, and notified in writing on 7 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President