



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

SECOND SECTION

CASE OF TOKEL v. TURKEY

(Application no. 23662/08)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Use of the applicant's patented invention by a State-owned enterprise an unlawful interference with his property rights • Court's case-law under Art 1 P1 regarding debts also applicable to other acts and omissions of State-owned companies including the use of patented inventions • Absence of a legal basis in domestic law at the material time for restricting a patent holder's rights on account of prior use by a third party • Subsequent legislation regulating such a right with no retrospective effect

STRASBOURG

9 February 2021

FINAL

31/05/2021

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

In the case of Tokel v. Turkey,

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

Jon Fridrik Kjølbro, *President*,

Marko Bošnjak,

Aleš Pejchal,

Valeriu Grițco,

Carlo Ranzoni,

Pauliine Koskelo,

Saadet Yüksel, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application 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 a Turkish national, Mr Mustafa Tokel (“the applicant”), on 6 May 2008;

the decision to give notice to the Turkish Government (“the Government”) of the complaint concerning Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 15 January 2021,

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

INTRODUCTION

1. The present application concerns the allegedly unauthorised use of the applicant’s patented invention – namely a conveyor-belt system for drying tea – by a State-owned enterprise and the domestic courts’ conclusion that use constituted prior use, which was protected under the relevant legislation and provided an exception in respect of the rights conferred on the applicant by the relevant patent. The applicant complained of a violation of his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1940 and lives in Trabzon. He was represented by Ms D. Cansever, a lawyer practising in Istanbul.

3. The Government were represented by their Agent.

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

A. The background to the case

5. In 1988 the applicant started installing an automatic conveyor-belt system for drying tea leaves, which he was working on at the time, in a private tea factory. On 8 July 1991 he filed an application for a certificate of invention (*ihтира beratı*), the equivalent of a patent under Turkish law at the time. On 26 August 1992 he obtained the certificate of invention from the Ministry of Industry and Commerce, on the basis of a report drawn up by experts from the Middle Eastern Technical University, confirming that the invention was new. The certificate of invention was awarded for a period of fifteen years, starting on 8 July 1991, under the Law on Certificates of Invention of 1879, which was in force at the time (*İhtira Beratı Kanunu*).

6. In the meantime, in 1990 the Directorate General of Tea Enterprises (*Çay İşletmeleri Genel Müdürlüğü* – hereinafter “Çaykur”), a public economic institution (*kamu iktisadi kuruluşu*) - a type of State-owned enterprise (*kamu iktisadi teşekkülü*) - specialising in the production of tea, had started making certain purchases of technology required for the installation of the system. In May 1991 Çaykur had installed the system and started using it in one of its factories, namely its factory in Pazarköy.

7. In June 1991 Çaykur had prepared a feasibility report, setting forth the possible advantages of an automated tea-drying system which was being tested at its Pazarköy factory. The report noted in particular that the system would substantially reduce the cost of the end product – dry tea leaves – and provide Çaykur with an opportunity to be more competitive in both the national and international markets. The report proposed that investment in the system begin in 1992 and go on until 1996, during which time the system would be installed in five of Çaykur’s factories each year.

8. On 19 June 1991, in line with the proposal made in the feasibility report, Çaykur’s board of directors had devised a five-year investment plan, which included the installation of the tea-drying system in twenty-five of its factories. On 11 October 1991 the Council of Ministers approved that plan.

9. In 1994 Çaykur was classified as a State economic undertaking (*iktisadi devlet teşekkülü*), another type of State-owned enterprise under Turkish law.

10. Following Turkey’s signing of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) in 1995 and the resulting changes made to the relevant legislation the same year (see paragraphs 39 and 42 below), the applicant’s certificate of invention was registered as a patent and the protection provided to his invention was extended to twenty years.

B. Proceedings brought against the applicant

11. On 11 March 1993 Çaykur brought an action in the Trabzon Civil Court of General Jurisdiction requesting the annulment of the applicant's certificate of invention. It argued that it had started working on an automated tea-drying system in 1988 and had speeded up the work on that project in 1990, during which time the applicant had taken copies of Çaykur's project, exploiting his contacts among Çaykur's staff. Çaykur alleged that the applicant had unlawfully obtained the certificate of invention on 8 July 1991, whereas it had developed the system and put it to use long before that date.

12. The applicant argued that the tea-drying system that he had invented was a fully automated conveyor, which had been imitated and was being used by Çaykur unlawfully, without his consent. He stated that had the system been produced in any other part of the world, no certificate of invention would have been given to him.

13. On 16 May 1994, relying on two expert reports, the Trabzon Civil Court of General Jurisdiction dismissed Çaykur's action, finding that the invention in respect of which the certificate had been issued had been devised by the applicant. Following a further appeal by Çaykur, on 29 January 1995 the Court of Cassation quashed that judgment, holding that the first-instance court should obtain another expert report establishing whether the invention satisfied the novelty requirement.

14. The expert reports submitted to the first-instance court confirmed that the applicant's patent complied with the conditions for an invention to be considered "new" under the Law on Certificates of Invention, as in force when he had filed his application. The reports stated that both the novelty examination report issued by the Middle Eastern Technical University in 1991 and a report prepared by the Russian Patent Office on 31 May 1999 had confirmed the patentability of the applicant's invention.

15. On 12 March 2001 the Trabzon Civil Court once again dismissed Çaykur's action. Referring to one of the expert reports, which had been drawn up by experts at the suggestion of the Turkish Patent Institute, the court concluded that the applicant's invention had been new and had not formed part of the relevant prior art.

16. On 6 November 2001 the Court of Cassation upheld that decision on appeal. On 22 March 2002 it rejected a request lodged by Çaykur for the rectification of that decision.

C. Proceedings brought by the applicant against Çaykur

1. The first set of proceedings

17. On 16 November 1993 the applicant brought an action against Çaykur, requesting the suspension of the alleged unfair competition

resulting from the latter's use of his invention in its factory in Sürmene, and claiming compensation.

18. On 18 February 2003 the Rize Civil Court of General Jurisdiction concurred with the applicant's arguments and ordered that Çaykur stop using the system in its factory in Sürmene. In so doing, the domestic court took account of the outcome of the proceedings pertaining to the annulment of the applicant's certificate of invention, as well as of an expert report drawn up following an on-site inspection at the factory concerned.

19. On 17 February 2004 the Court of Cassation quashed that judgment on appeal, finding that although Çaykur had argued that it had had the right to prior use of the system at issue under Article 77 of Legislative Decree no. 551 on the Protection of Patent Rights, the Rize Civil Court had failed to establish whether that had actually been the case and had delivered its judgment solely on the basis of the outcome of the proceedings concerning the applicant's certificate of invention. The case was accordingly remitted to the Rize Civil Court.

20. On 3 February 2005 the Rize Civil Court decided that it lacked jurisdiction to examine the case, as under the relevant legislation cases concerning intellectual property rights had to be examined by courts that specialised in such matters. The court held that the case should be referred to the relevant court.

21. In the absence of any documents or information regarding the case, that set of proceedings appears not to have been concluded.

2. The second set of proceedings

22. On various dates in 2002 the applicant sought to obtain declaratory judgments from local civil courts establishing that Çaykur had used his patented invention in its factories without his permission. In five of those sets of proceedings, the expert reports submitted to the courts stated that the system used in the factories concerned constituted the subject matter of the applicant's patent. The parties did not submit the final decisions regarding those proceedings.

23. In the meantime, on 3 July 2002 and 24 July 2002 the applicant obtained decisions from the Trabzon Commercial Court ordering Çaykur, as a precautionary measure, to suspend the use of the patented system in two of its factories. The records regarding the execution of the precautionary measures stated that the measures could not be executed due to the aggression manifested by the factories' staff.

24. Subsequently, on 8 August 2002 the applicant brought an action in the Trabzon Civil Court claiming compensation in the amount of 100 billion former Turkish liras and requesting the suspension of Çaykur's use of his invention in eight of its factories, which according to him constituted unfair competition. He argued that despite the final judgment in the proceedings brought by Çaykur for the annulment of his certificate of invention, which

had established that his invention had been new and that his certificate had been valid, Çaykur had gone on to use his patented invention unlawfully, without making any payment to him. In that connection, the applicant noted the expert reports submitted during the proceedings brought by him seeking a declaratory judgment and the court decisions ordering Çaykur to suspend its use of the system at issue. Referring to the feasibility report prepared by Çaykur in 1991, he argued that the latter had been using his patented system in its factories for more than ten years and had gained substantial financial advantages over the years. The applicant therefore concluded that Çaykur had not been acting in good faith and had been breaching his rights arising from the patent by its continued use of the invention at issue.

25. In response to the applicant's arguments, Çaykur submitted that it had already started to develop the project at issue in 1988 and had begun using it in May 1991 after obtaining the required authorisation. As the system had proved to be effective, it had decided to install it in its other factories. Accordingly, it argued that it had had the right to prior use of the system at issue under Article 77 of Legislative Decree no. 551. It submitted in the alternative that the tea-drying system that it used was not the same as that invented by the applicant.

26. On 13 October 2003 an expert report was submitted to the court, concluding that there was no need to examine whether the conditions for prior use had been met by Çaykur, as the tea-drying system that the applicant claimed to have invented had been known and used by others before he had obtained the patent and that accordingly his patent could not be considered valid. In that connection, the report noted that the applicant had installed and tested the system in another factory in 1988 and had shown it to other people from both the private sector and Çaykur. The latter had started using it in May 1991, two months before the applicant had filed an application for a certificate of invention.

27. On 27 September 2004 another expert report, drawn up by a professor of law and a professor of mechanical engineering, was submitted to the court. That report noted at its beginning that in view of the final judgment establishing the validity of the applicant's patent, it would assess solely whether Çaykur's use of the system at issue could be considered to constitute prior use.

28. The report listed the conditions for prior use set forth in Article 77 of Legislative Decree no. 551 and found that Çaykur satisfied them all, given the circumstances of the case. The report made the following conclusions:

(a) The person using the invention should "hold its possession" (that is to say exercise a certain degree of control over it): Çaykur had indeed held possession of the system, as it had had all the information and documents relating to its use. Moreover, there was nothing in the case file to conclude that it had obtained that information and documentation unlawfully.

(b) The person using the invention should have been using it or should have taken serious steps towards using it before the date of application or the date of priority: it was established by the documents submitted by Çaykur that it had taken all the necessary measures enabling it to begin the installation of the system in May 1991, that is to say before the applicant had filed his application for a certificate of invention on 8 July 1991.

(c) The use of or the taking of serious steps towards using the invention should have taken place in Turkey: Çaykur had started using the system in one of its factories in Turkey.

(d) The person using the invention should be acting in good faith: there was no documentation or information indicating that the information or material regarding the system tested by Çaykur had belonged to the applicant.

(e) The use should not exceed the level required for the reasonable needs of the enterprise in question: Çaykur was a State economic undertaking (*iktisadi devlet teşekkülü*), a form of State-owned enterprise, and such enterprises were subject to the provisions of private law, except in specific situations listed in Legislative Decree no. 233. Accordingly, it was a “merchant” (*tacir*) within the meaning of the Turkish Commercial Code – in particular, a merchant with factories that all undertook the same work, despite being located in different places. In order for a factory to be considered to constitute a commercial enterprise, the following conditions all had to be satisfied: the factory in question had to be (i) operated for financial gain, (ii) in continuous operation, (iii) independent, and (iv) realising a rate of productivity above a certain level. However, Çaykur’s factories were entities dependent on the Directorate General, and they did not have their own capital or decision-making mechanisms. While they were registered in their local trade registers, all of their activities were regulated by the Directorate General. Consequently, given the fact that all of Çaykur’s factories should be considered as collectively constituting one whole entity, its use of the system in other factories should be considered as constituting use to meet reasonable needs.

Consequently, the report concluded that Çaykur’s use of the system at issue constituted prior use and that it fell within the limits of the reasonable needs of the enterprise.

29. During the course of the proceedings, the applicant argued that even assuming that Çaykur had the right to prior use, that right could not be considered to apply to its factories except for the one in Pazarköy, which was not one of the eight factories concerned in the instant case. In that connection, he noted that the right to prior use could be relied on only when the enterprise or person who had previously taken measures enabling it to use an invention continued using it in line with those measures. In the instant case, however, Çaykur had expanded its use to a number of other factories, including factories that had not even been established in 1991. He

furthermore argued that each of Çaykur's factories was registered in the respective local trade register independently, and to deem that they all constituted one single enterprise would pave the way for the patented invention's use in all of its forty-five factories, solely on the basis of previous preparations undertaken in just one of them.

30. On 13 October 2005 the Trabzon Civil Court dismissed the applicant's action. The Civil Court established on the basis of the on-site inspection carried out during the proceedings that the tea-drying system used by Çaykur in its factories was the same as that in respect of which the applicant held a patent. It found that the conclusions of the expert report regarding the satisfaction of the conditions for prior use listed under Article 77 of Legislative Decree no. 551 were accurate and that accordingly, Çaykur had the right to prior use.

31. The applicant appealed against the judgment, arguing that the Trabzon Civil Court had relied on the findings of the expert report without providing any reasons, despite his objections to the said report. He considered that Çaykur had not satisfied the conditions for prior use listed under Article 77 of Legislative Decree no. 551. In particular, Çaykur had not used the system in good faith, as had been demonstrated by the feasibility report, which had clearly stated that it would benefit substantially from installing the tea-drying system in twenty-five of its factories. In that connection, the applicant maintained that Çaykur had not raised any arguments regarding prior use before he had lodged the present action and had only done so following the dismissal of its claim regarding the invalidity of his patent.

Lastly, the applicant argued that, assuming that the other conditions had been satisfied, the right to prior use could not be said to apply to any of the factories other than that in Pazarköy, as there had been no serious and real measures taken during the relevant period aimed at enabling Çaykur to use the tea-drying system. Accordingly, the imitation and reproduction of the tea-drying system in other factories could not be considered as a use of the invention in line with the measures taken previously, as that would involve making new investments in each factory, which would run contrary to the logic of the right to prior use.

32. On 24 May 2007 the Court of Cassation upheld the judgment of the Civil Court, finding that Çaykur had started testing the system in one of its factories before the date on which the applicant had obtained the certificate of invention and that it had also foreseen the possible use of the system in other factories in its investment plan. It went on to hold that since Çaykur was a State economic undertaking established with State capital, the investment plans of which were subject to the approval of the Council of Ministers, it could not be concluded that the use of the system would be restricted only to the factory in which it had first been tested.

33. On 14 December 2007 the Court of Cassation rejected a request lodged by the applicant for the rectification of that judgment.

3. Proceedings against private tea companies

34. In 2003 the applicant brought two separate actions against two separate private tea companies, Company S. and Company A., claiming compensation for their unlawful use of his patented invention.

35. In 2006 the Trabzon Civil Court dismissed both actions, finding that the companies concerned had already started using the tea-drying system in their factories before the applicant had filed his patent application.

36. Following an appeal by the applicant, on 6 March 2008 the Court of Cassation upheld the judgment regarding Company A. On 26 June 2008 it quashed the judgment regarding Company S., finding that the Civil Court had failed to address the applicant's arguments regarding the alleged deficiencies in the expert report. The parties did not provide the Court with any information about the outcome of that set of proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law and practice

1. Legislative Decree no. 233 on State-owned enterprises

37. The relevant provisions of Legislative Decree no. 233 in force at the time read as follows:

Article 2

“...

(1) State-owned enterprise (“enterprise”) is the common name for State economic undertakings and public economic institutions.

(2) A State economic undertaking ... is a State-owned enterprise, of which the entire capital is owned by the State and which was established to carry out commercial activities in the field of finance.

(3) A public economic institution ... is a State-owned enterprise, of which the entire capital is owned by the State and which was established to produce and market monopolised products and services in the public interest, and, on account of its public service, the products and services it produces are considered as concession.”

Article 3

“Enterprises are established by the Council of Ministers.”

Article 4

“(1) Enterprises have legal personality.

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(2) Enterprises are subject to the provisions of private law, save for matters specified in this Legislative Decree.

(3) Enterprises are not subject to the control of the Court of Audit.

(4) Enterprises' liability is limited to their capital. Enterprises' capital is determined by the Council of Coordination upon the request of the relevant ministry.

Article 7

“(1) (repealed on 2 July 2018) Those who would be appointed to the board of directors should satisfy the general conditions for appointment to civil service ... and have the administrative and professional specialisation in the field of activity of the enterprise. However, one of the members appointed upon the proposal of the relevant minister need not satisfy the condition of administrative or professional specialisation.
...”

Article 29

“...

(3) (repealed on 2 July 2018) The annual investment and financing plan shall be determined by the Council of Ministers ...”

Article 32 (repealed on 2 July 2018)

“...

(3) The annual investment and financing plan shall be prepared by the State Planning Organisation, after obtaining the opinion of the Undersecretariat of Treasury and Foreign Trade.”

Article 39

“The enterprises ... are subject to continuous financial, administrative and technical supervision of the Supreme Supervision Council of the Prime Ministry.
...”

Article 40

“(1) The relevant ministry has the duty to monitor that the actions of the enterprise ... are carried out in line with laws and regulations.
...”

Article 57

“The offences committed against the property and all kinds of assets of enterprises ... would be considered to have been committed against State property...”

2. Relevant domestic legislation relating to patents

38. The Law on Certificates of Invention of 1879 provided that whoever used or produced a product or a process that was the subject matter of a

certificate of invention would be charged with the crime of counterfeiting. Anyone found guilty would be subject to a monetary fine.

39. Following the entry into force of the TRIPS agreement, Turkey enacted a number of legislative decrees regulating various aspects of intellectual property law. Legislative Decree no. 551 on the Protection of Patents entered into force on 27 June 1995. It was replaced by the Intellectual Property Act (Law no. 6769) of 22 December 2016. The relevant provisions of the Legislative Decree read as follows:

Article 72

Term of the patent

“The term of a patent granted after examination shall be a non-renewable period of twenty years, calculated from the date of the filing of the patent application.

...”

Article 73

Scope of the right conferred by a patent

“...

A patent holder has the right to prevent third persons from undertaking the acts [listed] below without consent.

(a) Producing, selling, using, or importing patented products or possessing them for purposes other than personal needs;

(b) Using a process that is the subject matter of a patent;

...”

Article 77

Right to prior use

“A patent holder shall not have the right to prevent a person or persons who, in good faith, between the date of the patent application and the date of the priority right used the invention within the country or took serious and real measures [enabling it to use it], from using the subject matter of the patent in the same manner or beginning to use it in line with the measures that they have taken. However, third persons may continue using the subject matter of the patent or start using it in line with the measures they have taken only to the extent required for meeting the reasonable needs of their enterprise.

...”

Article 136

“The acts listed below shall be considered as constituting a breach of the rights arising from a patent:

(a) Imitating the product that is the subject matter of a patent by manufacturing all or part of the said product without the consent of the patent holder;

(b) Selling, distributing or marketing products, or importing them for such purposes, or possessing them for commercial purposes, when it is known, or should be known, that the said products are complete or partial imitations;

(c) Using a process that is the subject matter of a patent or using the products obtained directly by the process that is the subject matter of a patent, by means of selling, distributing ... those goods.

... ”

Article 137

“A patent holder whose right arising from the patent is breached may request from a court in particular [the measures] listed below:

...

(a) A request for the suspension of the acts breaching rights arising from the patent,

(b) A request for the prevention of the breach and compensation for pecuniary and non-pecuniary damage,

...”

Provisional Article 1

Application of previous provisions

“For patent applications made before the entry into force of the present Legislative Decree, the legal provisions in force at the date of the application shall be applied.

Without prejudice to the vested rights arising from acts of transfer, inheritance and licensing concluded before the entry into force of the present Legislative Decree, the provisions of the present Legislative Decree shall be applied to all further changes in such acts.”

3. The Compensation Commission

40. The Compensation Commission was set up by Law no. 6384 in order to provide for the settlement, by means of compensation, of applications lodged with the Court concerning the length of judicial proceedings and the non-enforcement or delayed enforcement of judicial decisions. A full description of the relevant domestic law may be found in *Turgut and Others v. Turkey* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013).

41. The Compensation Commission’s authority was extended by Presidential Decree no. 809 of 7 March 2019, published in the Official Gazette on 8 March 2019, under which the Compensation Commission was given the authority to examine and award compensation to applicants in cases where the Court has found a violation of Article 1 of Protocol No. 1 without giving a decision on compensation or in cases where it has reserved the question under Article 41 of the Convention, provided that an application was lodged with the Compensation Commission within one month of the notification of the Court’s final judgment (see *Kaynar and Others v. Turkey*, nos. 21104/06 and 2 others, § 24, 7 May 2019).

B. International Law and Practice

42. The relevant provisions of the TRIPS agreement, which came into effect on 1 January 1995 and to which Turkey is a party, read as follows:

Article 28 Rights Conferred

“1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner’s consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner’s consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

...”

Article 30 Exceptions to Rights Conferred

“Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.”

43. The Paris Convention for the Protection of Industrial Property, dated 20 March 1883 (“the Paris Convention”), which was ratified by Turkey in 1925, sets forth in the relevant part of Article 4 that the rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, §§ 28-29, ECHR 2007-I).

THE LAW

I. PRELIMINARY ISSUES

A. The applicant’s request to hold an oral hearing

44. The applicant requested an oral hearing. The Court decides that it is not necessary to hold a hearing before adopting the present judgment (Rule 59 § 3 *in fine* of the Rules of Court).

B. The Government's preliminary objection

45. The Government argued that the application was not in compliance with Rule 47 of the Rules of Court, pointing out that although the applicant's signature appeared on the authority form submitted to the Court, the representative's did not.

46. The applicant considered that the objection was not relevant as he had submitted the authority form in accordance with the relevant procedure.

47. The Court notes that the version of Rule 47 of the Rules of Court in force at the time of the application did not make any reference to the format of the authority form and that the authority form provided by the Court at the time required solely the signature of the applicant. It observes that the initial authority form provided by the applicant complied with that requirement. Moreover, following a change of representative, the applicant provided the Court with an authority form signed by both the representative and himself.

48. The Court furthermore notes that the matter raised by the Government is not one of the grounds for inadmissibility set out in Article 35 of the Convention. Accordingly, the Government's preliminary objection should be dismissed, as the application cannot be rejected for failure to comply with the procedural rules of the Court (see *Gözümlü v. Turkey*, no. 4789/10, § 31, 20 January 2015, and *Knick v. Turkey*, no. 53138/09, § 36, 7 June 2016).

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

49. The applicant complained that the unauthorised use of his patented invention by a State-owned enterprise had violated his right to the peaceful enjoyment of his possessions, as provided by Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

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

A. Admissibility

1. *The parties' submissions*

(a) The Government

50. The Government argued that the applicant could not be considered to be a victim and that the case was incompatible *ratione personae*, as his patent, which had been due to expire in 2011, had actually expired in 2008, owing to his failure to pay the required patent fee. They contended that, alternatively, the application was incompatible *ratione materiae* with Article 1 of Protocol No. 1 to the Convention as the applicant had not had a legitimate expectation that his claim for compensation would succeed. In that connection they argued that although the applicant's patent rights had been established during the proceedings initiated by Çaykur, as a result of the action for compensation brought by the applicant it had also been established that Çaykur had the right to prior use in respect of the patent at issue.

51. As regards the application's incompatibility *ratione materiae*, the Government also submitted that although Çaykur was a State economic undertaking, it was subject to the provisions of private law and operated autonomously in accordance with commercial rules, without enjoying any monopoly. Moreover, its liability was limited to its capital. They accordingly considered that Çaykur did not differ from the tea firms in the private sector which carry out the same commercial activity, namely, production and marketing of tea. They also argued that in the present case the domestic courts had assessed whether Çaykur had the right to prior use on the basis of the relevant provisions of Legislative Decree no. 551, without taking account of Çaykur's status as a State economic undertaking.

The Government concluded that the present application concerned a dispute between private parties, which did not fall within the scope of Article 1 of Protocol No. 1, as Çaykur had not exercised any public authority in its acts which constituted the subject-matter of the impugned proceedings.

52. Lastly, they argued that in the absence of any arbitrariness in the domestic courts' assessment of the applicant's case and in view of the sufficient legal mechanisms provided by the State (whereby the applicant had been able to submit his arguments) the application was manifestly ill-founded.

(b) The applicant

53. The applicant contested the Government's arguments regarding the incompatibility *ratione personae* of the application, stating that his inability to pay the required fees and the resulting early expiration of his patent in 2008 did not have a bearing on his victim status, as that situation had

resulted from the very interference that he complained of and the financial difficulties that he had endured as a result.

54. As regards the Government's objection regarding incompatibility *ratione materiae*, the applicant maintained that the Government's contention regarding his alleged lack of any legitimate expectation of obtaining compensation was not relevant, as his application concerned an unlawful interference with his property on account of Çaykur's use of his invention for which he had held a registered patent. In so far as the Government argued that the case concerned a dispute between private parties in the light of Çaykur's specific legal status, the applicant pointed to the decision of the Court of Cassation dated 24 May 2007, wherein the appellate court had described Çaykur as a State economic undertaking the investment plans of which were subject to the approval of the Council of Ministers (see paragraph 32 above). He stated that the interference had been the result of a use of public authority, as it had stemmed from the Council of Ministers' decision approving Çaykur's use and installation of his patented system in its factories. Lastly, the applicant contended that the domestic decisions had lacked adequate reasoning and had been delivered arbitrarily.

2. The Court's assessment

55. The Court cannot give weight to the Government's arguments regarding the applicant's victim status and the absence of a legitimate expectation. In that connection, it notes first of all that the applicant held a valid patent for the tea-drying system at issue until 2008, when it was annulled on account of his failure to pay the required fees. Taking account of the applicant's submissions in that regard, it considers that the eventual annulment of his patent after the dismissal of his action for compensation against Çaykur does not affect his victim status, as the present application concerns Çaykur's use without any authorisation of his patented invention, which conferred on him the right to request the prevention of that use and to claim compensation under Legislative Decree no. 551 (see paragraph 39 above), during its validity. In that connection, the Court notes that the applicant asked the domestic courts to protect his already established patent rights by awarding him compensation, he did not ask them to establish his property right in respect of such compensation. He had, in the Court's opinion, a right recognised by law and by a previous final judgment, and not merely a legitimate expectation of obtaining a property right (see *Balan v. Moldova*, no. 19247/03, § 34, 29 January 2008).

56. The Court reiterates that Article 1 of Protocol No. 1 is applicable to intellectual property as such (see *Anheuser-Busch Inc.*, cited above, § 72). In the present case, the applicant had the patent to his invention, which was initially registered by a certificate of invention under the legislation in force at the time. In that connection, the Court notes that the Convention organs have already found that a patent constitutes a "possession" for the purposes

of Article 1 of Protocol No. 1 (see *Smith Kline and French Laboratories Ltd v. the Netherlands*, no. 12633/87, Commission decision of 4 October 1990, Decisions and Reports 66, p. 79, and *Lenzing AG v. the United Kingdom*, no. 38817/97, Commission decision of 9 September 1998, unreported).

57. In view of the above, the Court concludes that the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention.

58. As regards the Government’s contention that the present case concerned a dispute between private persons and therefore did not fall within the scope of Article 1 of Protocol No. 1, the Court observes that Çaykur’s legal status was defined under Turkish law as a State-owned enterprise. The Court reiterates that a State may be responsible for debts of a State-owned company, even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention (see, among many other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 114, ECHR 2014; *Mykhaylenko and Others v. Ukraine*, nos. 35091/02 and 9 others, § 43-46, ECHR 2004-XII; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, no. 39745/02, §§ 17-19, 3 April 2007; and *Yershova v. Russia*, no. 1387/04, §§ 54-63, 8 April 2010). The key criteria used in the above-mentioned cases to determine whether the State was indeed responsible for such debts were as follows: the company’s legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control) (see *Ališić and Others*, cited above, § 114). While the cases cited above mainly refer to States’ liability for the debts of State-owned companies, the Court considers that the case-law developed in relation to debts also applies to other acts and omissions of these companies, such as the use of the patented invention at issue in the present case.

59. The Court notes that Çaykur, as a State-owned enterprise, is a legal entity subject to provisions of private law, the liability of which is limited to its capital. It operates in the tea market together with private tea companies, without any monopoly, and is subject to the jurisdiction of the ordinary courts.

60. The Court notes nevertheless that it is undisputed that Çaykur’s entire capital has always been owned by the State. It also notes that in 1991, at the time when Çaykur first used the tea-drying system at issue, despite the fact that it did not enjoy any monopoly, it was categorised as a public economic institution, a type of State-owned enterprise which, by definition, carried out public services and benefited from concession for the products it

produced (see paragraph 37 above). In 1994 Çaykur was categorised as a State economic undertaking, which placed it on an equal footing with private companies in the sector in terms of the commercial interest pursued. The Court considers that notwithstanding its formal classification under domestic law, in view of the legislation in force at the material time, Çaykur's independence was limited by the existence of strong institutional and operational links with the State: it was established by the Council of Ministers (Article 3 of Legislative Decree no. 233); members of its board of directors were elected among people who satisfied the conditions for appointment to the civil service (Article 7); its annual investment plans were prepared by the State Planning Organisation, taking account of the opinion of the Undersecretariat of Treasury and Foreign Trade, and finalised by the Council of Ministers (Articles 29 and 32); it was supervised both by the Supreme Supervision Council of the Prime Ministry and the ministry it was attached to (Articles 39 and 40); and lastly, its property received the same protection as State property (Article 57).

61. Besides the foregoing elements, the Court also takes account of the overall procedural and substantive context of the application (see, *mutatis mutandis*, *Transpetrol A.S. v. Slovakia* (dec.), no. 28502/08, 15 November 2011). It considers that the State authorities' above-mentioned supervision and control over the investment plans of State-owned enterprises is a decisive consideration in the present case, as the subject matter of the domestic action lodged by the applicant against Çaykur, namely the latter's use of his patented tea-drying system in eight of its factories, resulted from an investment plan which had foreseen the installation of the said system in other factories. In that connection, the Court also takes account of the assessment made by the Court of Cassation as to whether Çaykur's use constituted prior use, restricting the exclusive rights of the applicant as the patent holder. It observes that in its decision dated 24 May 2007 the Court of Cassation clearly made reference to Çaykur's investment plan, as a result of which the tea-drying system at issue had been installed in several other factories. The appellate court went on to find that as Çaykur's investment plans were subject to the approval of the Council of Ministers, the use of the system could not be restricted only to the factory in which it had first been tested (see paragraph 32 above). The Court, therefore, cannot give weight to the Government's contention that the domestic courts did not take account of Çaykur's status as a State-owned enterprise and assessed whether it had the right to prior use solely on the basis of the criteria set forth in Legislative Decree no. 551.

62. In view of the above, the Court considers that Çaykur did not enjoy sufficient institutional and operational independence from the State to be considered a private person for the purposes of Article 1 of Protocol No. 1 and to absolve the latter from responsibility under the Convention for its

acts and omissions (see, among other authorities, *Mykhaylenky and Others*, cited above, § 44).

63. Consequently, the Government's objections regarding the incompatibility *ratione personae* and *materiae* of the present application should be dismissed.

64. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

65. The applicant stated that Çaykur's unauthorised use of his patented invention and the domestic court's conclusion that that use had been justified by Çaykur's right to prior use had constituted an interference with his patent rights. He contended that the interference had not been prescribed by law. In that connection, he noted that there had been no legislation regulating prior use in 1991, when he had obtained his patent. He submitted that the concept of prior use had been introduced into the Turkish legal system in 1995 with the entry into force of Legislative Decree no. 551, and had been applied retroactively to his case, which concerned events that had taken place in 1991. In that respect, he argued that in their observations the Government had neglected to refer to the law in force at the time, namely the Law on Certificates of Invention, which had not provided any such right.

66. The applicant furthermore submitted that the conditions for the application of prior use had not been satisfied in his case and that the Trabzon Civil Court had delivered an arbitrary and unreasonable decision. According to him, Çaykur had not acted in good faith. Its use of the system had not been restricted to the preparations that it had made previously, as the purchases that it had made for its Pazarköy factory (before he had obtained his certificate of invention) had only been sufficient for that factory. Accordingly, he contended that Çaykur's use of the system had exceeded the reasonable needs of the enterprise, as it had expanded its use to all of its factories, which, according to him, should be considered as separate enterprises.

(b) The Government

67. The Government argued that there had been no interference with the applicant's possessions, as the case concerned the findings of the first-instance court regarding Çaykur's right to prior use, a conclusion reached at the end of proceedings that had provided the applicant with adequate

procedural guarantees. In that connection they maintained that the first-instance court had not delivered a judgment regarding the applicant's patent rights, but held that Çaykur had had the right to prior use, making an assessment of the two conflicting interests at stake. Even assuming that there had been interference, the finding regarding Çaykur's right to prior use had been in accordance with law, as it had been based on Article 77 of Legislative Decree no. 551, which according to the Government had been both accessible and foreseeable. They maintained that in another action lodged by the applicant against a private tea company, the domestic courts had held that the said company had the right to prior use. In so doing, the courts had relied on the same provision, which aimed to protect the vested rights of persons who had started making use of an invention in good faith before the date on which the patent holder lodged his or her application, regardless of whether they were public legal persons or private persons. The Government submitted that the right to prior use was a right regulated by international agreements and incorporated into various countries' legal systems, which restricted the exclusive powers of patent holders and pursued the general interest of ensuring the continuation of technological progress and financial development.

68. The Government furthermore argued that Çaykur, which had held a monopoly over the tea market until 1984 and accordingly had the necessary know-how and technology, had started developing the system at issue as early as 1987 and had started implementing it in its factory in Pazarköy in May 1991 – before the applicant had applied for a patent registration. They maintained that under Turkish law, the right to prior use was applied on the basis of objective criteria, as was demonstrated by the fact that a private tea company had also been found to have had a right to prior use in respect of the patented system at issue. They also pointed out that that right could only be exercised within the boundaries of “reasonable needs of an enterprise” and that the use of the system at issue by Çaykur in several factories had not affected the proportionality of the interference, as enterprises that have multiple production facilities were considered to constitute single enterprises under the Turkish Commercial Code. They therefore concluded that the interference at issue had been prescribed by law, had pursued the general interest and had not imposed an excessive burden on the applicant.

2. The Court's assessment

(a) Whether there has been interference

69. The Court considers that despite the Government's contention that there had been no interference with the applicant's right to property as Çaykur's use of the applicant's patented invention had been based on its right to prior use, the interference at issue in the present case was Çaykur's use of the system *per se*, notwithstanding whether it had been justified by

prior use or not. That use started shortly before the applicant had a patent registered for the invention and continued for an extended period of time, expanding to Çaykur's other factories, until the applicant's patent expired in 2008. In that connection, the Court observes that there is no dispute regarding the validity of the applicant's patent between 1991 and 2008, during which time Çaykur used the patented invention at issue without any authorisation.

70. The Court accordingly finds that Çaykur's use of the subject matter of the applicant's patent constituted an interference with his property rights within the meaning of Article 1 of Protocol No. 1. Having said that, it will confine its examination regarding the compliance of that interference with the conditions set out by Article 1 of Protocol No. 1 to Çaykur's use in the eight factories concerned by the proceedings at issue, until the expiry of the applicant's patent in 2008.

71. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to the peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Ališić and Others*, cited above, § 98, and the cases cited therein).

72. The Court observes that the interference at issue in the present case cannot be classified in a precise category. The case should therefore more appropriately be examined in the light of the general rule laid down in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Beyeler v. Italy* [GC], no. 33202/96, § 106, ECHR 2000-I).

(b) Lawfulness of the interference

73. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law", and the second paragraph recognises that 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 *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V).

74. The principle of lawfulness also presupposes a certain quality of the applicable provisions of domestic law. In this regard, it should be pointed out that when speaking of “law”, Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term (see, for example, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012). It follows that the legal principles upon which the interference is based should be sufficiently accessible, precise and foreseeable in their application (see, among many other authorities, *Beyeler*, cited above, §§ 109-10). In particular, a legal rule is “foreseeable” when it affords a measure of protection against arbitrary interferences by the public authorities (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 143, ECHR 2012).

75. Turning to the facts of the present case, the Court observes that the Trabzon Civil Court refused the applicant’s request for the prevention of Çaykur’s interference with his patent rights and his claim for compensation, finding that the impugned interference had been based on Çaykur’s right to prior use, as set out in Article 77 of Legislative Decree no. 551 on the Protection of Patents. As noted above, Legislative Decree no. 551 was a piece of legislation adopted in 1995 within the context of Turkey’s incorporation of the TRIPS agreement into national law. The right to prior use was regulated by that Legislative Decree, in line with the relevant provisions of the TRIPS agreement and the Paris Convention, which, respectively, allowed member States to provide exceptions to the exclusive rights conferred by a patent and to protect the rights acquired by third parties before the date of the first application for a patent. However, while such a right was foreseen by the Paris Convention, which had been ratified by Turkey as early as 1925, the rights of third parties who used or made preparations to use an invention before the registration of its patent were not regulated by the Law on Certificates of Invention of 1879, which was in force in 1991, when Çaykur started using the system in its factory in Pazarköy and the applicant obtained his certificate of invention.

76. The Court reiterates that the legislature is not precluded in respect of civil matters from adopting new retrospective provisions to regulate rights arising under existing laws (see *Saliba v. Malta*, no. 4251/02, § 39, 8 November 2005). It notes, however, that Legislative Decree no. 551 did not enter into force with retrospective effect, as Provisional Article 1 clearly set forth that patent applications made before its entry into force would be governed by the provisions in force at the time of the application in question (see paragraph 39 above). Accordingly, in May 1991, that is to say, when Çaykur started installing the tea-drying system in its factory in Pazarköy shortly before the applicant’s patent application, there was no statutory basis which provided an exception to the patent holder’s exclusive rights on account of prior use by a third party. The Court also notes in this context that the domestic courts did not rely on, nor has the Government put

forward, any case-law to the effect that a right to prior use could have been held to exist under the domestic legal order at the relevant time. The Court further observes that in June 1991 Çaykur's board of directors adopted an investment plan for the installation of the tea-drying system, which formed the subject matter of the patent application, and suggested its installation in twenty-five other factories over a five-year period on account of the financial benefits that it would generate. That plan was approved by the Council of Ministers in October 1991, when the applicant already held a valid patent for the invention (see paragraphs 6 to 8 above).

77. The Court does not consider the Government's arguments regarding the outcome of the actions brought by the applicant against private tea companies relevant for the purposes of the present case. Nor can it take account of their submissions challenging the novelty of the applicant's invention, which was an issue resolved by a final judicial decision in the applicant's favour at the end of the proceedings initiated by Çaykur for the annulment of his patent.

78. In view of the above, the Court finds that the interference with the applicant's right to peaceful enjoyment of his possessions cannot be considered lawful within the meaning of Article 1 of Protocol No. 1.

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

80. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

I. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 23,000,000 euros (EUR) in respect of pecuniary damage. In support of his claim he submitted a report drawn up by an accountant, which specified that if Çaykur paid 50,000 Turkish liras (TRY) for installing the applicant's patented system in each of its factories, by 2016, it would (allowing for inflation) have paid him a total of EUR 20,175,450, plus interest. In that connection, he also referred to a licensing agreement made with a private tea company in 2002, under which the latter would pay him TRY 60,000 for using the tea-drying system at

issue in two of its factories. The applicant also claimed just satisfaction in respect of non-pecuniary damage, without specifying an amount.

83. The Government contested the applicants' claims, finding them unsubstantiated and excessive.

84. The Court refers to its established case-law regarding general principles in respect of such matters (see *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009).

85. It reiterates that in the present case it has found a violation of Article 1 of Protocol No. 1 to the Convention on account of Çaykur's use of his patented invention in eight of its factories between 1991 and 2008. Although the applicant provided documentary evidence regarding the payment of TRY 60,000 made to him in 2002 for the use of his patented tea-drying system by a private tea company, in view of the differing periods and the extent of the use concerned, the Court considers that it does not have sufficient information to objectively determine the applicants' pecuniary loss in the present case.

86. The Court notes that by virtue of Presidential Decree no. 809, the Compensation Commission now has authority to examine just satisfaction claims in applications where the Court has found a violation of Article of Protocol No. 1 but has not ruled on the applicants' claims for just satisfaction under Article 41 of the Convention or has decided to reserve the question (see paragraph 41 above). It furthermore notes that in the recent case of *Kaynar and Others* (nos. 21104/06 and 2 others, May 2019), where it found a violation of Article 1 of Protocol No. 1, it decided to strike out the part of the application relating to Article 41 of the Convention on the basis that the Compensation Commission could decide the question in a better-informed manner (*ibid.*, §§ 76-78).

87. The Court notes that it has taken the same approach in similar cases where the complexities flowing from the difficulty of calculating the pecuniary damage led it to strike out the question of just satisfaction by referring the question to the Compensation Commission (see *Gümrükçüler and Others v. Turkey* (just satisfaction), no. 9580/03, §§ 36-43, 7 February 2017; *Silahyürekli v. Turkey* (just satisfaction), no. 16150/06, §§ 16-20, 29 October 2019; and *Dürri Mazhar Çevik and Münire Asuman Çevik Dağdelen v. Turkey* (just satisfaction), no. 2705/05, §§ 14-19, 29 October 2019).

88. In view of the above, the Court concludes that the aforementioned remedy is capable of providing redress in respect of the violation found under Article 1 of Protocol No. 1. Having regard to the difficulty it faces in determining the amount of pecuniary loss suffered by the applicant in the present case, it sees no reason to depart from the conclusion reached in *Kaynar and Others* (cited above) and considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c) of the Convention). Moreover, in the light of the above considerations, the

Court is satisfied that respect for human rights, as defined in the Convention and the Protocols thereto, does not require it to continue the examination the application (Article 37 § 1 *in fine*). In that connection, it emphasises that, should the circumstances so justify, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Gümrükçüler and Others*, cited above, § 42, and *Cingilli Holding A.Ş. and Cingilloğlu v. Turkey* (just satisfaction), nos. 31833/06 and 37538/06, § 47, 28 January 2020).

89. Consequently, the part of the case regarding the applicants' claim in respect of pecuniary damage under Article 41 of the Convention should be struck out of the list of cases (see *Kaynar and Others*, cited above, § 78).

90. The Court furthermore observes that, in line with the aforementioned presidential decree, the Compensation Commission also has authority to examine and rule on claims in respect of non-pecuniary damage. Accordingly, in the light of its conclusions with regard to pecuniary damage, the part of the case relating to the applicants' claim in respect of non-pecuniary damage should also be struck out of the list (*ibid.*, § 82).

B. Costs and expenses

91. The applicant also claimed TRY 13,500 for the costs and expenses incurred before the domestic courts and those incurred before the Court. In support of his claim he submitted a contract signed with his lawyer on 3 January 2016, under which he was to pay TRY 10,000 and had undertaken to pay 15% of any just satisfaction awarded by the Court.

92. The Government contested those claims.

93. 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 the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

94. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Decides* to strike the application out of its list of cases in so far as it relates to the claims in respect of pecuniary and non-pecuniary damage under Article 41 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 2,000, plus any tax that may be chargeable to the applicant, to be converted into Turkish liras at the rate applicable at the date of settlement, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Jon Fridrik Kjølbro
President