



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

SECOND SECTION

CASE OF TIĞRAK v. TURKEY

(Application no. 70306/10)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Quashing a final judgment by way of rectification-of-error-proceedings, in the absence of substantial and compelling circumstances, an infringement of the principle of legal certainty

STRASBOURG

6 July 2021

FINAL

06/10/2021

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

In the case of Tığrak v. Turkey,

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

Jon Fridrik Kjølbro, *President*,
Carlo Ranzoni,
Aleš Pejchal,
Egidijus Kūris,
Pauliine Koskelo,
Marko Bošnjak,
Saadet Yüksel, *judges*,
and Stanley Naismith, *Section Registrar*,

Having regard to:

the application (no. 70306/10) 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, Ms Muhsine Rengin Tığrak (“the applicant”), on 2 November 2010;

the decision to give notice to the Turkish Government (“the Government”) of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 6 July 2021,

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

INTRODUCTION

1. The present case concerns an alleged breach of the principle of legal certainty and of the applicant’s right to the peaceful enjoyment of her possessions, on account of the quashing of a final judgment by way of rectification-of-error proceedings.

THE FACTS

I. BACKGROUND TO THE CASE

2. The applicant was born in 1961 and lives in Istanbul. She was represented by Mr S. Etlik, a lawyer practising in Istanbul. The Government were represented by their co-Agents, Ms Çağla Pınar Tansu Seçkin, Deputy to the Permanent Representative of the Republic of Turkey to the Council of Europe and Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Turkey.

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

4. Between 10 March 1982 and 15 July 1988, the applicant worked at Türkiye Emlak Bankası (“the Emlak Bank”), as an employee under the now defunct Labour Code (Law no. 1475) (“the first period of service”).

5. Between 15 July 1988 and 1 February 2002, the applicant worked in the same bank under an employment contract in accordance with Legislative Decree no. 399 on contractual personnel (“the second period of service”), which specified that the provisions of the Civil Servants Act were to be applied to staff working in State-controlled entities, that is to say, entities including the Emlak Bank.

6. In 2000, the then Government established a plan to restructure public financial institutions. For that purpose, on 15 November 2000 the Parliament passed Law no. 4603 on the restructuring of three public banks, namely Türkiye Cumhuriyeti Ziraat Bankası, Türkiye Halk Bankası and the Emlak Bank, with a view to preparing the first and the second banks for privatisation and the third for liquidation.

7. On 30 January 2001 Law no. 4603 was amended to provide that as of 31 December 2002 the banks concerned could only employ staff under employment contracts subject to private law. It also provided that officials working in those institutions who did not agree to enter into a private contract would be assigned to other posts in the public service (see paragraph 37 below).

8. On 1 February 2002 the applicant, having opted for the first option, entered into a standard employment contract (*tip sözleşme* – “the employment contract”) with Türkiye Cumhuriyeti Ziraat Bankası (“the Ziraat Bank”), where she then worked until 15 April 2005 (“the third period of service”).

9. On 15 April 2005 the applicant took voluntary retirement. In accordance with Article 5 of the employment contract, the Ziraat Bank undertook to pay the severance pay for retirement, taking into account the applicant’s overall employment period at the Ziraat Bank and at other public institutions, that is to say, at the Emlak Bank.

10. On an unspecified date the applicant was paid 25,436.85 Turkish liras (TRY) (approximately 14,657 euros (EUR) at the date of her retirement) in respect of severance pay. For each of the legal employment regimes under which the applicant had worked, the Ziraat Bank calculated the amount of severance pay on the basis of the general and special upper limits prescribed in section 14 of Law no. 1475. In respect of her first and third periods of service as an employee under private law, the severance pay was calculated taking into account the general upper limit provided for in section 14 of Law no. 1475. As for the second period of service, during which the applicant had worked as an employee under the provisions of Legislative Decree no. 399 and subject to the Law on the Retirement Fund, the severance pay was calculated on the basis of the special upper limit

provided for in section 14(6) of Law no. 1475 (see paragraphs 33 and 36 below).

11. On 18 April 2005 the applicant signed a release form (*ibraname*), discharging the Ziraat Bank from all financial liabilities to her, including severance pay.

II. PROCEEDINGS BEFORE THE DOMESTIC COURTS

12. On 10 November 2005 the applicant brought an action against the Ziraat Bank and claimed TRY 12,648.16 (approximatively EUR 7,940), alleging that the amount paid to her in respect of severance pay was insufficient.

She argued in principle that the special upper limit provided for in section 14(6) of Law no. 1475 should not have been applied for the second period of service, since her entire professional career at the Emlak Bank and at the Ziraat Bank had to be considered as a whole, in accordance with Article 5 of the employment contract.

13. The action, which was heard by the Kartal Labour Court (“the Labour Court”), succeeded on 31 May 2006 on the basis of an expert report of 17 April 2006 (“the expert report”) in which the total amount of severance pay had been calculated taking into account the general upper limit provided for in section 14 of Law no. 1475.

14. On 14 July 2006 the Ziraat Bank appealed against the judgment of the first-instance court, arguing that the expert report was incorrect. It alleged that the special upper limit provided for in section 14(6) of Law no. 1475 had to apply to the second period of service, during which the applicant had worked under Legislative Decree no. 399. It contended that for the second period of service during which the applicant had worked as an employee under that Legislative Decree, between 15 July 1988 and 1 February 2002, the multipliers for the calculation of the amount of severance pay prescribed in Law no. 5434 on the Retirement Fund had to apply. The Ziraat Bank also asserted that Article 5 of the employment contract referred to the retirement bonus and severance pay that the Ziraat Bank had to pay to the applicant taking into account the social security regime to which she had been subject during her employment period at both the Emlak Bank and the Ziraat Bank.

15. On 12 April 2007 the Court of Cassation quashed the first-instance court’s judgment on the ground that the release form submitted by the Ziraat Bank had not been assessed by the Labour Court.

16. On 11 September 2007 the Labour Court complied with the quashing decision and dismissed the applicant’s case, finding that the applicant had released the Ziraat Bank from all financial liabilities to her by signing the release form in question.

17. On 27 February 2008 the Court of Cassation once again quashed the Labour Court's judgment, finding that the release form had concerned only the third period of service but not the previous ones.

18. On 3 June 2008 the Labour Court, complying with the decision of the Court of Cassation, ordered the Ziraat Bank to pay with interest the amount specified in the expert report of 18 April 2006 (see paragraph 13 above).

19. On 26 December 2008 the Court of Cassation upheld that ruling. Thus, the judgment of the Labour Court of 3 June 2008 became final and enforceable as the decision of the Court of Cassation was not amenable to rectification, pursuant to the provisions of section 8 of the Labour Courts Act ("Law no. 5521") as in force at the material time (see paragraph 31 below).

20. On 24 February 2009 the applicant was paid the amount awarded in full.

III. RECTIFICATION OF ERROR PROCEEDINGS

21. On 18 February 2009 the Ziraat Bank lodged an application with the Court of Cassation, requesting the latter to review its decision of 26 December 2008 by way of rectification of the decision.

In its application the Ziraat Bank alleged that the Court of Cassation had failed to take into account the special upper limit provided for in section 14(6) of Law no. 1475.

22. On 27 February 2009 the Ziraat Bank lodged a second application with the Court of Cassation, requesting rectification of the decision on account of factual errors made by the expert in the calculation of the amount of severance pay.

23. On 6 March 2009 the applicant lodged an application with the Court of Cassation in which she indicated that she had incidentally become aware of the applications lodged by the Ziraat Bank requesting rectification of the decision given in her favour.

She argued in her application that it was not possible to apply for rectification of a decision of the Court of Cassation, pursuant to the last subsection of section 8 of Law no. 5521, and that the intention of the Ziraat Bank in lodging such an application was to prevent that final judgment becoming a precedent for other persons who were in the same situation as her.

24. On 19 March 2009 the Ziraat Bank lodged a third application with the Court of Cassation, requesting it once more to rectify its decision owing to factual errors. The Ziraat Bank argued that the Court of Cassation had wrongly considered that the applicant had worked at the Emlak Bank only under an employment regime which was subject to private law. It emphasised that, between 15 July 1988 and 1 February 2002, the applicant

had worked at the Emlak Bank as an employee under Legislative Decree no. 399. It also argued that following the decision of the Court of Cassation upholding the ruling of the Labour Court, which set a precedent in the relevant subject matter, approximately 10,000 employees who were in the same situation as the applicant were about to initiate proceedings against the Ziraat Bank. It warned the Court of Cassation that the judicial authorities could be confronted with a flood of applications if the Court of Cassation did not re-examine its decision with the requisite diligence.

25. On 21 April 2009 the Court of Cassation ordered the first-instance court to provide it with the applicant's administrative file and relevant documents showing the social security institution to which the applicant had been affiliated between 15 July 1988 and 1 February 2002 – the second period of service during which she had worked as an employee under Legislative Decree no. 399.

26. On 23 June 2009 the applicant lodged another application with the Court of Cassation in reply to the Ziraat Bank's request for rectification of the decision. Firstly, she argued that her right to a fair hearing had been violated on account of the fact that none of the opposing party's applications had been served on her. She reiterated that the rectification of the Court of Cassation's decisions could not be requested as such recourse was explicitly ruled out by section 8 of Law no. 5521. The applicant also argued that the first-instance court had not made a factual error in its judgment but had made a legal assessment on the merits of the case (*hukuki niteleme*) by calculating the amount of severance pay on the basis of the general upper limit provided for in section 14 of Law no. 1475, which had also been the agreement between the parties in the employment contract. As to the Court of Cassation's request for the applicant's administrative file and other relevant documents regarding the social security institution to which the applicant had been affiliated during her second period of service, the applicant specified that those pieces of information were already present in the file and that reassessment of them would result in the re-examination of the merits of the final judgment.

27. On 6 October 2009 the Court of Cassation revoked its decision of 26 December 2008 and quashed the final judgment of the first-instance court on account of a factual error.

It referred to a precedent of 27 March 2006 in case no. 2005/29328 E., 2006/7379 K., in which it had been determined that the special upper limit provided for in section 14 of Law no. 1475 was related to public order, and that regulations and contracts making contrary provisions would not prevent its application.

The Court of Cassation also referred to a decision of the Joint Civil Chambers of the Court of Cassation (*Yargıtay Hukuk Genel Kurulu*), which stated that the quashing or upholding of a judgment that was based on a

factual error did not constitute an acquired procedural right for the opposing party.

Consequently, the Court of Cassation considered that it had made a factual error as it had failed to take into account the special upper limit for the calculation of the amount of severance pay in respect of the second period of service.

28. On 31 March 2010 the Labour Court dismissed the applicant's case, in accordance with the decision of the Court of Cassation. On 1 June 2010 the Court of Cassation upheld that judgment.

IV. ENFORCEMENT PROCEEDINGS INITIATED AGAINST THE APPLICANT

29. On 15 October 2010 the Ziraat Bank initiated enforcement proceedings (*icra takibi*) against the applicant by means of a payment order issued by the bailiff's office, with a view to recovering the sum paid to the applicant on 24 February 2009 on account of insufficient severance pay. On 22 December 2011 the Enforcement Court terminated the enforcement proceedings on the ground that the payment order had not been duly served on the applicant. On 22 November 2012 the Court of Cassation upheld that judgment. Thus, the applicant was not required to reimburse the amount she had received on 24 February 2009.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Code of Obligations

30. In accordance with Article 82 of the Code of Obligations (Law no. 6098), a claim for unjust enrichment becomes time-barred ten years after the date on which it first arose.

B. The Code of Civil Procedure (as in force at the material time)

31. In accordance with Article 440 of the Code of Civil Procedure (Law no. 1086), as in force at the material time, the parties could lodge a request for the rectification of a decision (*karar düzeltme*) given on appeal by the Court of Cassation within fifteen days from the notification of the decision. The rectification of the decision, as provided for by Article 440, was an ordinary remedy and was aimed at revising the appeal decision in question on account of an error on the part of the Court of Cassation. If the rectification request was granted, the Court of Cassation would proceed with a second examination of the same case without taking new facts or

findings into consideration (see also *Hülya Ebru Demirel v. Turkey*, no. 30733/08, § 49, 19 June 2018, concerning the same procedure in administrative proceedings). The ordinary remedy of rectification of a decision is prohibited for disputes before labour courts (see paragraph 33 below).

32. Pursuant to Article 459 of the Code of Civil Procedure (Law no. 1086), errors in the name, title and final claims of the parties, as well as calculation errors, could subsequently be corrected. That procedure, which is different from the rectification of a decision, is called the rectification of errors (*hükmün tashihi; maddi hatanın düzeltilmesi*). Similarly, in accordance with Article 304 of the new Code of Civil Procedure (Law no. 6100), spelling and accounting errors, and similar obvious errors in the decision, may be corrected by the court of its own motion, or at the request of one of the parties at any time.

C. Law no. 5521 (the Labour Courts Act)

33. The relevant part of section 8 of Law no. 5521 reads as follows:

“The judgments [on the merits] of the labour courts may be appealed against within eight days from the date of delivery.

...

Rectification of the decisions of the Court of Cassation may not be requested.”

D. Law no. 1475 (the Labour Code)

34. On 10 June 2003 the new Labour Code (Law no. 4857) was published; it entered into force on the same day. However, section 14 of Law no. 1475, containing provisions on severance pay, remained in force.

35. Section 14(6) of Law no. 1475 relating to the special upper limit reads as follow:

“...

(However, the amount to be paid for the part of the severance pay relating to the working period which is subject to the Retirement Fund cannot be more than the amount envisaged for the retirement grant on the starting date of the old-age pension or disability pension on the basis of the provisions of the Law on the Retirement Fund which are in force.)”

36. The relevant part of section 14 of Law no. 1475 concerning the general upper limit reads as follow:

“...

The annual amount of severance pay determined by collective agreements and employment contracts cannot exceed the retirement grant to be paid for one year's service to the most senior civil servant who is subject to the Civil Servants Act, in accordance with the provisions of Law no. 5434 on the Retirement Fund.”

E. Law no. 4603 on the restructuring of three public banks

37. The relevant provisions of Law no. 4603 read as follows:

Section 1

“1. The purpose of this Law is to restructure the banks ... and prepare them for privatisation and the implementation of the regulations on share sales, and the sale of all of the shares to natural persons and legal entities subject to the provisions of private law.

2. The banks shall have the status of joint-stock companies. In addition to the provisions of this Law, they shall be subject to the general provisions of the Banks Act (no. 4389).

...

5. ... and Legislative Decree no. 399 ... shall not apply to the banks.”

Section 2

“As of the date of entry into force of this law, the legislation to which current bank staff are subject in terms of monthly, personal and pension benefits shall continue to apply. Those deemed appropriate may, at their request, be employed in accordance with the provisions of private law, by keeping their current retirement status ... The number, title, salary and other financial rights of the staff to be employed in accordance with the provisions of private law shall be determined by the general assemblies of the banks ...”

II. RELEVANT DOMESTIC CASE-LAW

38. The Government made reference to a number of domestic case-law decisions but submitted only a decision of the Joint Civil Chambers of the Court of Cassation of 2 July 2003 (case no. E. 2003/21-425, K. 2003/441) with a view to showing that rectification of decisions of the Court of Cassation would be possible if there was a manifest factual error. In that decision, the court had noted that the quashing of decisions which were based on a factual error would not run counter to the principle of acquired rights (*kazanılmış hak*) pursuant to a final decision. It had considered that the fact that judgments delivered by labour courts were not subject to rectification would not prevent the rectification of decisions which were based on a factual error. The court had concluded that acquiring a right erroneously would be contrary to the fundamental principles of universal law and that material facts (*maddi gerçek*) should always prevail over legal facts (*hukuki gerçek*).

39. The Government submitted another example from case-law with a view to demonstrating that the reasoning put forward by the Court of Cassation when it had quashed the first-instance court judgment in the present case had been maintained in subsequent decisions of the domestic courts. In the example submitted, the subject matter of which was identical

to the present case, the Joint Civil Chambers of the Court of Cassation had been requested to examine a decision of a first-instance court which had challenged the quashing decision of the Court of Cassation, on the ground that the special upper limit could not apply for the calculation of the amount of severance pay. By a decision of 25 January 2017, the Joint Civil Chambers of the Court of Cassation had concluded that the special upper limit provided for in section 14(6) of Law no. 1475 should be taken into account in the calculation of the amount of severance pay for the periods during which the plaintiff had worked under Legislative Decree no. 399 (case no. E.2014/9-2515, K. 2017/156).

III. RELEVANT EUROPEAN TEXTS

40. The European Commission for Democracy through Law (“the Venice Commission”) adopted a report on the independence of the judicial system at its 82nd Plenary Session (12-13 March 2010).

41. In section III (9), entitled “Final character of judicial decisions”, the report refers to Principle I(2)(a)(i) of Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges, which states:

“decisions of judges should not be the subject of any revision outside the appeals procedures as provided by law”.

The relevant part of the report continues:

“It should be understood that this principle does not preclude the reopening of procedures in exceptional cases on the basis of new facts or on other grounds as provided for by law.

...

67. The Venice Commission underlines the principle that judicial decisions should not be subject to any revision outside the appeals process ...”

THE LAW

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

42. The applicant complained that a final and binding decision in her favour had been quashed following rectification-of-error proceedings, in violation of the principle of legal certainty as provided in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“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

43. The Government maintained that the complaint under Article 6 § 1 was manifestly ill-founded as the Court of Cassation had reviewed its decision of 26 December 2008 and had quashed the first-instance court's judgment to correct a manifest factual error. The Government argued that such intervention on the part of the Court of Cassation had been necessary as the matter concerned public order.

44. The applicant replied that the quashing of a final judgment in her favour constituted a violation of Article 6 of the Convention.

45. In the Court's view, the Government's preliminary objection essentially relates to the merits of the case. The Court further finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. In the applicant's view, the Court of Cassation's decision to set aside a final judgment had given rise to a situation of legal uncertainty. The applicant argued that the Court of Cassation had quashed the final judgment of 3 June 2008 in breach of the provisions of section 8 of Law no. 5521, which provided that the remedy of rectification of decisions could not be used against decisions of the labour courts. She alleged that in its decision the Court of Cassation had not corrected a procedural error but had re-examined the merits of the case. She argued that in so doing, the Court of Cassation had reassessed the legal characterisation made by the first-instance court and by the Court of Cassation itself, and had thus re-examined the merits of the case by means of a disguised appeal. She also argued that the Court of Cassation had revoked its decision and quashed the first-instance court's judgment with the intention of restricting the number of potential cases concerning the same matter.

47. The Government submitted that the Court of Cassation's decision to quash the final judgment given in the applicant's favour had been justified in the interests of public order and the proper administration of justice, in order to remedy a manifest error which was linked to the factual aspects of the case. The Government argued that the revocation of a decision on account of a factual error was a very exceptional procedure, as had been acknowledged in the case-law and practice of the Court of Cassation. The Court of Cassation had revoked its decision with the purpose of ensuring the proper administration of justice, avoiding legal uncertainty, and ascertaining the material facts by means of the rectification of a factual error. The Government contended that there was a compelling and justified reason for

the revocation of a decision in the event of a factual error of a substantial character, such as the failure to apply the provisions of section 14(6) of Law no. 1475, which concerned public order. The final decision given against the applicant had been in line with the decisions of the Court of Cassation delivered after the date of submission of the present application.

2. *The Court's assessment*

(a) **General principles**

48. The Court observes that the relevant Convention principles have been summarised as follows in *Brumărescu v. Romania* ([GC], no. 28342/95, §§ 61-62, ECHR 1999-VII) and *COMPCAR, s.r.o. v. Slovakia* (no. 25132/13, §§ 63-64, 9 June 2015):

- The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question.

- That principle does not allow a party to seek the reopening of proceedings merely for the purpose of a rehearing and a fresh decision on the case. The mere possibility of there being two views on the subject is not a ground for re-examination.

- Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character. Higher courts' powers to quash or alter binding and enforceable judicial decisions should be exercised for the purpose of correcting fundamental defects. That power must be exercised so as to strike, to the maximum extent possible, a fair balance between the interest of an individual and the need to ensure the effectiveness of the system of justice.

- The relevant considerations to be taken into account in this connection include, in particular, the effect of the reopening and any subsequent proceedings on the applicant's individual situation, whether the reopening resulted from the applicant's individual situation, and whether the reopening resulted from the applicant's own request; the grounds on which the domestic authorities overturned the judgment in the applicant's case; the compliance of the procedure at issue with the requirements of domestic law; the existence and operation of procedural safeguards in the domestic legal system capable of preventing abuses of that procedure by the domestic authorities; and other pertinent circumstances of the case.

- In a number of cases the Court, while addressing the notion of "a fundamental defect", has stressed that merely considering that the investigation in the applicant's case was "incomplete and one-sided" or led

to an “erroneous” acquittal cannot itself, in the absence of jurisdictional errors or serious breaches of court procedure, abuses of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice, indicate the presence of a fundamental defect in the previous proceedings.

49. On the same matter, the Court has also held that the review of a final and binding decision should not be treated as an appeal in disguise, and that the principle of legal certainty may be set aside in order to ensure a correction of fundamental defects or miscarriage of justice (see, for example, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX) and to rectify “an error of fundamental importance to the judicial system”, but not for the sake of legal purism (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009).

(b) Application of these principles in the present case

50. The Court observes that the final judgment of 3 June 2008 in the applicant’s favour was set aside by the Court of Cassation’s decision of 6 October 2009. The Court finds it significant that the Court of Cassation quashed the judgment by which the applicant’s action had succeeded with final and binding effect. It acknowledges that the success of that action had the force of *res judicata* and that, as such, it was quashed following the rectification-of-error proceedings.

51. The Court notes on this point that the remedy of the rectification of a decision was not available to the parties to a case before the labour courts (see paragraphs 31 and 33 above). In addition, the Court also notes that the Code of Civil Procedure as in force at the material time allowed the courts to correct only errors in the name, title and final claims of the parties, as well as calculation errors.

52. The Court observes that the Government sought to justify the review by the Court of Cassation of a final judgment in the applicant’s favour by asserting that it had committed a “manifest factual error”. In this connection, the Court refers to the Government’s submissions that only errors that were related to the factual points of a case could be characterised as factual errors and corrected.

The Court therefore considers that it must first be determined whether the Court of Cassation intervened in a final judgment with a view to correcting a manifest factual error as asserted by the Government.

53. The Court notes at the outset that the Court of Cassation based its reasons for quashing the judgment of 3 June 2008 on a factual error. In particular, the latter consisted in omitting to apply, in the calculation of the amount of severance pay, the special upper limit provided for in section 14(6) of Law no. 1475, which related to public order.

54. In that connection, the Court finds it important to note that from the very beginning of the proceedings before the domestic courts, the main

dispute between the parties related to whether the special or the general upper limit provided for in section 14 of Law no. 1475 should be applied in the calculation of the amount of severance pay for the applicant's second period of service. Before the domestic courts the applicant relied on the employment contract and argued that the general upper limit had to apply, whereas the Ziraat Bank asserted that the special upper limit had to be taken into account.

From that perspective, the Court observes that the arguments put forward by the Ziraat Bank in its applications for the rectification of the decision were exactly the same as those that it had submitted before the first-instance court and in the ordinary appeal proceedings before the Court of Cassation. In so far as these arguments were examined and rejected on several occasions by the first-instance court and the Court of Cassation, the Court observes that the applications lodged by the Ziraat Bank for the rectification of the decision were, in essence, an attempt to reargue the case on the same points.

55. The Court finds that by means of the rectification-of-error proceedings, the Court of Cassation, after concluding that it had committed a factual error in its previous decision, re-examined the case on the merits and decided to quash the Labour Court's judgment.

Contrary to the Government's contention that the Court of Cassation had intervened in the final judgment with the aim of correcting a manifest error that related to factual points of the case but not to its legal assessment, the Court considers that the Court of Cassation, after carrying out a fresh examination of the case, concluded that it had omitted to take into account the provisions of section 14(6) of Law no. 1475.

56. In that regard, although the Court does not call into question the power granted to the Court of Cassation to correct a factual error through rectification-of-error proceedings, it is not convinced, in the particular circumstances of the present case, that the review of the final and binding judgment in question was closely related to factual points and consisted only in correcting a manifest factual error. On the contrary, the Court finds that the Court of Cassation's quashing of the final judgment in the present case concerned the law applicable to the facts, which, from the very beginning of the proceedings, constituted a disagreement between the parties to the case. In fact, the only dispute between the parties had been whether the general or the special upper limit in Law no. 1475 was applicable to the calculation of the severance pay due to the applicant.

57. It therefore remains to be ascertained whether the interference with the completed proceedings in relation to the applicant's action was compatible with the guarantees of Article 6 of the Convention, in particular with the principles of the rule of law and legal certainty inherent in that provision. The Court reiterates that the principle of legal certainty does not allow a party to seek the reopening of proceedings merely for the purpose of

a rehearing and a fresh decision on the case. The mere possibility of there being two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see paragraphs 48 and 49 above).

58. The Government asserted that, in the instant case, there had existed a compelling and justified reason to review the final judgment because, on the one hand, the provisions of section 14(6) of Law no. 1475 were linked to public order and could not therefore be disregarded and, on the other, it was necessary to ensure consistency between judicial decisions.

The Court will examine those arguments in turn in order to determine whether those grounds constituted “circumstances of a substantial and compelling character” for the purposes of Article 6 § 1 of the Convention such as to allow a departure from the principle of respect for the finality of judgments.

59. The Court reiterates that the fact that there has been an error in the application of mandatory legal provisions or provisions relating to public order is not a sufficient ground to derogate from the principle of legal certainty. Pursuant to the Court’s case-law, it must be demonstrated that an error of law, if not corrected through extraordinary proceedings, would have resulted in a denial of justice going beyond the possibility of there being two different views on a subject (see paragraph 48 above). In the present case, the Court finds it useful to note that the issue continues to be the subject of different legal assessments before the national judicial authorities. In this connection, the Court refers to the example from case-law submitted by the Government in which a first-instance court challenged the decision of the Court of Cassation, contending that the special upper limit should not apply in the subject matter in question (see paragraph 39 above).

In such circumstances it cannot be said that the misapplication of a public order provision constituted substantial and compelling grounds within the meaning of the Court’s case-law for quashing a final judgment.

60. With regard to the Government’s argument that the rectification of an error was necessary to ensure the proper administration of justice and to avoid legal uncertainty, which may be caused by persistently divergent court decisions, the Court reiterates that by virtue of Article 1 of the Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities (see *Kudla v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). In this connection, it is the State’s responsibility to organise the legal system in such a way as to avoid the adoption of discordant judgments in parallel proceedings and to uphold the principle of legal certainty of final judgments, which was impaired by the use of the rectification-of-error proceedings in the instant case (see, *mutatis mutandis*, *Vrioni and Others v. Albania*, no. 2141/03,

§ 58, 24 March 2009, and *Driza v. Albania*, no. 33771/02, § 69, ECHR 2007-V (extracts)).

61. The Court notes, in the light of the parties' submissions, that the decision handed down by the national courts on the applicant's legal action was the first decision to have become final at domestic level in the disputes concerning former employees of Ziraat Bank. It cannot therefore be argued that at the time there was divergent or conflicting case-law such as to justify a disregard for respect for the finality of judgments. The Court reiterates in that connection that case-law development is not, in itself, contrary to the proper administration of justice. The Court has observed that achieving consistency of the law may take time, and that periods of conflicting case-law may therefore be tolerated without undermining legal certainty (see, among other authorities, *Dimech v. Malta*, no. 34373/13, § 60, 2 April 2015).

In addition, the Court would add that there is nothing in the case file demonstrating that the final judgment in favour of the applicant could have become the source of profound and long-standing divergence in the case-law unless it was quashed by the Court of Cassation through rectification-of-error proceedings (for general principles established by the Court on case-law consistency, see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-58, 20 October 2011).

62. In that connection, referring to the case-law cited above (see paragraphs 48 and 49 above), the Court is unconvinced that the error imputed to the national courts constituted "circumstances of a substantial and compelling character", or a "fundamental defect or miscarriage of justice" going beyond the "mere possibility of there being two views on the subject" and "an appeal in disguise".

63. The Court concludes that, by granting the Ziraat Bank's rectification claim, the Court of Cassation conducted a re-examination of the question whether the special upper limit had to be applied, despite the existence of the final judgment on the matter. The Court finds therefore that the decision of the Court of Cassation of 6 October 2009 set at naught an entire judicial process which had ended in a judicial decision that was not amenable to further review or appeal, and thus *res judicata*, and which moreover had been enforced.

In view of the above considerations, there is nothing to suggest that there were any circumstances of a substantial and compelling character justifying the re-examination of a matter which had been determined in a final and binding judicial decision. In view of the foregoing, the Court concludes that, by accepting the rectification request lodged by the Ziraat Bank and subsequently quashing a final judgment in the applicant's favour, the judicial authorities infringed the principle of legal certainty.

64. There has accordingly been a violation of Article 6 § 1 of the Convention in this respect.

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

65. The applicant contended that the quashing of the final decision in her case by means of rectification-of-error proceedings had violated her right to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

66. The Government argued that the applicant could not claim to be a victim as she had signed a release form discharging the Ziraat Bank from all financial liabilities to her. They maintained that an act of the national courts based on a manifest factual error would not afford a right under Article 1 of Protocol No. 1.

They also argued that, in any event, the complaint should be declared inadmissible as being manifestly ill-founded.

67. The applicant contested the Government's preliminary objections and maintained that her right to the peaceful enjoyment of her possession had been violated because the final judgment in her favour had been quashed.

68. The Court finds that it is not necessary to examine the Government's objections, in view of the following considerations.

69. The Court reiterates that a judgment debt may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 and that setting such a judgment aside in violation of Article 6 may also constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of his or her possessions (see *Ryabykh*, cited above, § 61). Nevertheless, the Court observes that although the quashing of a final and enforceable decision in the applicant's favour may affect the right to the peaceful enjoyment of his or her possessions, it does not automatically lead to a violation of Article 1 of Protocol No. 1 (see, generally, *Industrial Financial Consortium Investment Metallurgical Union v. Ukraine*, no. 10640/05, §§ 168 and 200, 26 June 2018).

70. Turning to the present case, the judgment of the Labour Court of 3 June 2008 as upheld by the Court of Cassation on 26 December 2008 became final and provided the applicant with an enforceable claim to 12,648.16 Turkish liras on account of insufficient severance pay. On 24 February 2009 the applicant received the awarded amount in full from the opposing party. As a consequence of the decision of 6 October 2009, the final judgment, which had been enforced against the opposing party, was quashed and subsequently the Labour Court dismissed the applicant's claims. Then the opposing party brought enforcement proceedings against the applicant with the purpose of clawing back the amount paid to her on 24 February 2009. The Court notes that those proceedings have been terminated by the Enforcement Court.

71. The Court observes that in her observations the applicant confirmed that the judgment of the Enforcement Court rejecting the Ziraat Bank's claims had become final and that she had not returned the amounts obtained on 24 February 2009 on account of insufficient severance pay. The Court further notes that the applicant appears to be no longer under an obligation to return that amount as the ten-year statutory time-limit provided for in Article 82 of the Code of Obligations to bring an action for unjust enrichment has elapsed (see paragraph 30 above).

In the light of the applicant's submissions, the Court therefore considers that she cannot claim to be the victim of a violation of Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Țuluș and Others v. Romania*, no. 40892/04, §§ 26-28, 26 January 2010, and compare *Pravednaya v. Russia*, no. 69529/01, § 39, 18 November 2004).

72. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government contested that claim as being excessive.

76. The Court is of the view that the applicant must have suffered non-pecuniary damage for which the finding of a violation of the Convention in the present judgment does not constitute sufficient redress. Ruling on an equitable basis, it awards the applicant EUR 2,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicant also claimed EUR 1,844.47 for the costs and expenses incurred before the domestic courts during the proceedings of rectification-of-error and the enforcement proceedings initiated by the Ziraat Bank. She also claimed EUR 1,200.04 for the costs and expenses incurred before the Court. In support of her claims, she submitted an agreement concluded with her lawyer. The Court observes, however, that the said agreement relates only to the legal services provided by her lawyer during the first set of

proceedings, that is to say the action brought by the applicant against the Ziraat Bank, for which no explicit claim has been made.

78. The Government submitted that the sums in question were excessive and unfounded.

79. 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, the Court observes that the applicant did not submit any invoices, payment orders or receipts in support of the costs and expenses incurred during the impugned proceedings and before the Court. It also notes that the agreement concluded between herself and her lawyer covers only the proceedings initiated by the applicant against the Ziraat Bank, which does not relate to the impugned proceedings or the violation found. However, it finds it equitable that the costs and expenses incurred before the domestic courts after the quashing of the final judgment in her favour should be awarded. Regard being had to the documents in its possession, in particular domestic court decisions ordering the applicant to reimburse court and lawyers' fees incurred by the opposing party in the proceedings subsequent to the quashing of the final judgment, the Court considers it reasonable to award the sum of EUR 650 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

80. 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 complaint under Article 6 § 1 admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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;
4. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President