



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

FORMER SECOND SECTION

CASE OF TURGUT AND OTHERS v. TURKEY

(Application no. 1411/03)

JUDGMENT
(merits)
[Extracts]

This version was rectified on 22 September 2009 in accordance with Rule 81 of the Rules of Court

STRASBOURG

8 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Turgut and Others v. Turkey,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Rıza Türmen,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 22 April 2008 and 17 June 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 1411/03) 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 seven Turkish nationals, Ms Nihal Ayser Turgut, Ms Nermin Solmaz Güneş, Ms Ayşe Ayata, Mr Tevfik Güneş, Mr Turgay Güneş, Mr Saffet Güneş and Mr Hurşit Güneş (“the applicants”), on 25 October 2002.

2. The applicants were represented by Mr Ş. Çizmeli and Mr Ö. Çelik, lawyers practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants complained of a violation of Article 1 of Protocol No. 1.

4. On 22 November 2005 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and the merits of the case at the same time (Article 29 § 3 of the Convention).

5. In a letter of 21 June 2006, the registry was informed of the death of Saffet Güneş on 28 January 2003. His heirs, Ms Şerifnaz Bilgin and Ms Tülin Güneş, stated that they intended to pursue the application and to be represented by the same lawyers. For practical reasons, Saffet Güneş will continue to be called “the applicant” in this judgment although his heirs are now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI, and *Çakar v. Turkey*, no. 42741/98, § 2, 23 October 2003).

6. The applicants and the Government each filed further written observations (Rule 59 § 1 of the Rules of Court).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 2008 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr A.M. Özmen,	<i>co-Agent,</i>
Mr H.T. Ceyhan,	
Mr A. Demir,	
Ms E. Demir,	
Ms A. Emüler,	
Ms V. Sirmen,	
Ms Ş. Pala,	
Ms E. Esin,	
Ms Ö. Gazialem,	
Ms H. Ardor,	<i>Advisers;</i>

(b) *for the applicants*

Mr Ş. Çizmeli,	<i>Counsel,</i>
Ms Z. Ayata,	<i>Adviser,</i>
Ms A. Ayata,	<i>Applicant.</i>

The Court heard addresses by Mr Özmen and Mr Çizmeli.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1926, 1923, 1924, 1930, 1935, 1912 and 1957 respectively. They live in Istanbul and Ankara.

9. According to information in the case file, a plot of land measuring 45,000 sq. m (45 *dönüm*)¹ in the village of Kefken, Kandıra, close to the forest and the Black Sea, was registered in the land register (plot no. 135) in August 1911 in the name of Tevfik Beyzade Hurşit Bey, an ascendant of the applicants.

10. On 9 July 1960 a plot of land measuring 102 500 sq. m, in the village of Kefken, Kandıra, close to the forest and the Black Sea, was

1. Rectified on 22 September 2009: “102,500 sq. m” was deleted and replaced by “45,000 sq. m (45 *dönüm*)”.

registered in the land register (plot no. 135) by the cadastral commission¹ in the names of Tasfire Güneş, Reşat Güneş, Saffet Güneş and Turan Güneş, the heirs of Tevfik Beyzade Hurşit Bey. Following the death of Reşat Güneş in 1977, of Tasfire Güneş in 1978 and of Turan Güneş in 1982, the respective shares were transferred to their successors and registered in the land register: Nihal Ayser Turgut, Tevfik Güneş and Turgay Güneş are the heirs of Reşat Güneş; Nermin Solmaz Güneş and Ayşe Ayata are the heirs of Turan Güneş. Hurşit Güneş had inherited shares from Turan Güneş and Tasfire Güneş as the son of the former and husband of the latter.

A. Proceedings concerning the annulment of the title to the applicants' land and its entry in the land register as property belonging to the Treasury

11. On 3 January 1962 the Ministry of Forestry brought proceedings before the Kandıra Cadastral Court ("the court") to have the cadastral commission's assessment of the applicants' title to the land² declared void on the ground that the land was part of the public forest estate.

12. On 5 January 1962 the Treasury in turn brought proceedings of the same kind³ before the court and sought registration of the land as property belonging to the Treasury.

13. On 23 May 1965 the court declined jurisdiction under section 28 of the Land Registry Act (Law no. 509) and referred the matter to the Land Registry Directorate ("the Directorate"). On an unspecified date in 1966 the Directorate referred the matter back to the court.

14. In 1966, by judgment no. 1966/11-1967/66, the court allowed the Ministry of Forestry's application. In the reasons for its judgment, it considered essentially that the disputed land was part of the public forest estate and that therefore, pursuant to the relevant provisions of the Turkish Constitution, it could not be privately owned.

15. By a judgment of 18 June 1968 the Court of Cassation partly upheld the first-instance court's judgment in respect of Turan Güneş and Reşat Güneş and remitted the remainder of the case to the same court.

16. At a hearing before the court, Turan Güneş stated that he had, in the meantime, filed an application with the Administrative Court for the delimitation of the land at issue to be set aside and accordingly asked the

1. Rectified on 22 September 2009: "the land at issue was registered in the land register" was deleted and replaced by "a plot of land measuring 102,500 sq. m, in the village of Kefken, Kandıra, close to the forest and the Black Sea, was registered in the land register (plot no. 135) by the cadastral commission".

2. Rectified on 22 September 2009: "the applicants' title to the land" was deleted and replaced by "the cadastral commission's assessment of the applicants' title to the land".

3. Rectified on 22 September 2009: "action to have the title to the land annulled" was deleted and replaced by "proceedings of the same kind".

court to stay proceedings in the pending case until the Administrative Court had delivered a decision on the matter.

The Administrative Court subsequently dismissed the application to have the matter set aside. On 29 December 1969 the Supreme Administrative Court upheld the decision of the administrative court and on 12 January 1974 dismissed an application for rectification lodged by Turan Güneş. The judgment became final.

17. By a judgment of 29 June 1972, considering that the land at issue was part of the public forest estate, the court decided that it could not be privately owned and declared the title deed void.

18. On 4 July 1974 the Court of Cassation quashed the first-instance judgment, holding as follows:

“Following the amendment of section 1 of Law no. 6831 [the Forestry Act] by Law no. 1744, jurisdiction for dealing with issues concerning the classification of land as forest was assigned to the ordinary courts and [such measures] ceased to be administrative in nature. Having regard to its procedural nature, this provision is applicable to earlier events. Consequently, although the decision of the Ministry of Forestry was upheld by the Supreme Administrative Court, since jurisdiction in this respect has been transferred from the administrative to the ordinary courts, the judgment of the Supreme Administrative Court can no longer be applied. Furthermore, [in the instant case], the applicants relied upon the land register. This must be consulted and applied to the land at issue. In addition, since the judgment of the Court of Cassation is to be regarded as favourable to the heirs of Hurşit because they were joint owners under the ordinary regime of ownership in common, the land must be registered in the name of the defendants if it is established that it is not forest land, within the meaning of section 1 of Law no. 6831, as amended by Law no. 1744. Otherwise, since cadastral registration of State forests can only be carried out by special commissions set up for that purpose, in accordance with section 7 of Law no. 6831, and seeing that it is only possible to mark out the boundaries between State forests and private forests, it must be established whether the land at issue was returned or if it falls within the scope of restitution pursuant to Law no. 5658, after having been nationalised pursuant to Law no. 4785; in the latter case, it must be listed as private forest; otherwise, it must be classified as State forest and be excluded from cadastral registration [in the name of a private individual].”

19. On 10 November 1977, relying on the expert reports that had been prepared at its request, the court ordered the land at issue to be entered in the land register in the names of Tasfire, Saffet, Turan and Reşat Güneş.

20. On 28 March 1978, on an appeal by the Ministry of Forestry, the Court of Cassation overturned the court’s judgment. It held that the expert reports were inadequate and that the court should first of all seek the detailed opinion of the Ministry as to whether or not the land at issue was part of the public forest estate and, if required, commission fresh expert reports on the matter.

21. Various surveys ordered by the court on 23 July 1997 and 20 April 2001, based notably on aerial photographs taken in 1959, concluded that the land in question was part of the public forest estate. These surveys were

supported by further expert reports dated 21 August 1997 and 28 April 2001.

22. On 8 May 2001 the court ruled that the land at issue was part of the public forest estate; it declared void the cadastral commission's assessment of¹ the applicants' title deeds to the land and ordered it to be entered in the land register as belonging to the Treasury. In doing so, it relied on the aforementioned expert reports, the settled case-law of the plenary Court of Cassation – to the effect that title deeds to property forming part of the public forest estate had no legal value – and on the provisions of Article 169 § 2 of the Constitution enshrining the principle of the inalienability of ownership of State forests. As regards the buildings on the land, the court declined jurisdiction *ratione materiae* in so far as they had been erected after the title to the land deeds had been issued.

As regards the status of the applicants and/or their ascendants as parties to the proceedings, the court found, firstly, that the judgment had become final in respect of Turan and Hurşit Güneş since on 18 June 1968 the Court of Cassation had upheld the first-instance judgment concerning them and secondly, that the heirs of Turan and Hurşit Güneş had been allowed to join the proceedings following the death of their ascendants.

23. On 18 November 2001 the Court of Cassation upheld the judgment of the first-instance court.

24. By a judgment of 29 April 2002, served on the applicants on 11 June 2002, the Court of Cassation dismissed an application by them for rectification of the judgment.

B. Application of section 2(B) of the Forestry Act (Law no. 6831)

25. Following the Court of Cassation's judgment of 28 March 1978, the office of the chairman of the Forestry Cadastral Commission (*Orman Kadastro Komisyon Başkanlığı*) informed the Cadastral Court on 28 March 1978 that part of the disputed land had been delimited as part of the Gökdağ State forest and that the other part of the land was subject to the application of section 2(B) of the Forestry Act (Law no. 6831) and was consequently excluded from the public forest estate and transferred to the Treasury.

26. On an unspecified date Turan Güneş lodged an application for judicial review with the District Court, which registered the case as no. 1989/90. Turan Güneş challenged the application of the aforementioned section 2(B) to the land in question.

27. On 12 April 1988 the heirs of R. Gödek applied to the court to be allowed to join the proceedings as intervening parties on the ground that they held a document of title over part of the land at issue to which

1. Rectified on 22 September 2009: "the cadastral commission's assessment of" was added.

section 2(B) of Law no. 6831 had been applied. On 24 August 1988 the court allowed their application.

28. By a judgment of 11 July 1990 the aforementioned case no. 1989/90 was joined to the main proceedings pending before the court.

29. On 5 June 1991, claiming title to the land at issue, Z.A.K. also applied to the court for leave to join the proceedings as an intervening party; the court allowed the application on 2 December 1992. Following the death of Z.A.K. during the course of the proceedings, his successors pursued the case before the court.

30. In a judgment of 8 May 2001 the court dismissed the applicants' application in the joined case no. 1989/90 and the applications by the other civil parties concerning delimitation, after having decided to declare the applicants' document of title void on the ground that the land at issue was part of the public forest estate.

31. On 3 September 2003 the Ministry of the Environment and Forestry requested the İzmit Forestry Directorate to mark the disputed area of 102,500 sq. m¹ as "forest" on the relevant maps pursuant to the judgment handed down in the matter, and to annul the decision of the cadastral commission, of which public notice had been given on 30 May 2003, excluding that land from the perimeter of the forest estate pursuant to section 2(B) of Law no. 6831.

C. The status of existing buildings on the disputed land

32. On 27 October 1967, through a notary, Tasfire, Reşat, Saffet and Turan Güneş requested a private company to cease occupying and refrain from building on the land at issue.

33. On 17 May 1990 the office of the Chief of General Staff (*Genelkurmay Başkanlığı*) decided to transform the site of the Kefken military post into a military security zone.

34. On an unspecified date Hurşit Güneş lodged a complaint with the Kandıra public prosecutor against individuals who, he alleged, had sold various plots of the disputed land to third parties while the proceedings concerning the land were pending before the Cadastral Court. He also applied for the existing buildings on the land to be demolished.

35. On 15 February 1996 the public prosecutor decided to take no further action on the ground that the land was inside the area delimited as forest land and that the criminal court of first instance had delivered judgments concerning the occupants in 1994, further to complaints by the forestry authorities. On 18 April 1996 the Sakarya Assize Court dismissed an objection by Hurşit Güneş.

1. Rectified on 22 September 2009: "120,500 sq. m" was deleted and replaced by "102,500 sq. m".

36. On 7 March 1996 an expert report was issued by two experts at the request of the Kandira district governor's office. The report noted the presence of approximately fifty private housing units and a military holiday camp belonging to the Ministry of Defence, comprising, *inter alia*, several houses, a tennis court, a picnic area, a kitchen and various storerooms, built between 1970 and 1995. The report was forwarded to Hurşit Güneş on 22 March 1996.

37. On 10 December 1997, in an additional report, the three experts noted that part of the disputed land, measuring 28,875 sq. m, had ceased to have certain characteristics of forest land prior to 31 December 1981, since it had first been used as agricultural land and had subsequently been used as residential land on which fifty-two reinforced concrete buildings of various kinds had been built.

38. On 18 May 1998 an agricultural engineer noted in a report submitted to the Cadastral Court that the land at issue could not be considered forest land and that it had features of third-class dry agricultural land but was used as building land (*arsa*).

39. On 9 June 1998 the technical expert added his report to the case file. A sketch of the relevant land showed the presence of the buildings and the military zone.

40. On 17 September 2002 approximately forty occupants/residents of the disputed land filed a petition with the Ministry of Forestry. They asked that the land at issue, on which there were, according to them, some one hundred and fifty individual dwellings, be excluded from the forest estate and registered as belonging to the Treasury. They expressed their desire to purchase the parts of the land corresponding to their housing plots.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

41. Article 74 of the Turkish Constitution of 1924 reads as follows:

“No one shall be deprived of his possessions save in the public interest as established by a procedure provided for by law and subject to prior compensation.

The methods for the assessment and payment of compensation for the expropriation of land and forests, for the purposes of enabling farmers to own land and of nationalising forests, shall be determined by special statutes.”

42. The relevant provisions of the Turkish Constitution of 1982 read as follows:

XII. Property rights

Article 35

“Everyone has the right to own and inherit property. These rights may be limited by law only in the public interest. The exercise of the right to own property shall not be in contravention of the public interest.

...”

D. Expropriation

Article 46 [as amended by Law no. 4709 of 3 October 2001]

“The State and public corporations shall be entitled, where the public interest so requires, to expropriate privately owned real estate wholly or in part or to impose public easements on it, in accordance with the rules and procedures prescribed by law, provided that the actual compensation is paid in advance.

Compensation for expropriation and for increased value, determined by a final judgment, shall be paid in cash and in advance. However, the procedure to be applied for compensation for the expropriation of land in order to carry out land reform, major energy and irrigation projects, housing and resettlement schemes and afforestation, and to protect the coasts and to build tourist facilities, shall be regulated by law. In such cases, the law may allow payment in instalments, but the payment period shall not exceed five years; any such payments shall be made in equal instalments.

Compensation for land expropriated from small farmers who cultivate their own land shall in all cases be paid in advance.

Interest equivalent to the highest applicable rate of interest on public debts shall be payable on the instalments referred to in the second paragraph above.”

E. Nationalisation and privatisation

Article 47 [as amended by Law no. 4446 of 13 August 1999]

“Private enterprises performing public services may be nationalised when this is required by the public interest.

Nationalisation shall be carried out on the basis of actual value. The methods and procedures for calculating actual value shall be prescribed by law.

The rules and procedures concerning the privatisation of enterprises and assets owned by the State, State economic enterprises and other public corporate bodies shall be prescribed by law.

Those investments and services carried out by the State, State economic enterprises and other public corporate bodies which may be performed by or delegated to private

individuals or corporate bodies through private-law contracts shall be determined by law.

...”

IV. Forests and the inhabitants of forest regions

A. Protection and development of forests

Article 169

“The State shall enact the necessary legislation and take the necessary measures for the protection and extension of forest areas. Forest areas destroyed by fire shall be reafforested; other agricultural and livestock-breeding activities shall not be allowed in such areas. All forests shall be under the care of the State.

Ownership of State forests shall not be transferred to others. State forests shall be managed and exploited by the State in accordance with the law. Ownership of such forests cannot be acquired through adverse possession, nor may they be subject to any easements other than in the public interest.

Acts and actions which might damage forests shall not be permitted. No political propaganda which might lead to the destruction of forests shall be carried out; nor shall any amnesties or pardons be specifically granted for offences against forests. Offences committed with the intention of burning or destroying forests or reducing forest areas shall not be included within the scope of any general or specific amnesty laws.

The reduction of forest boundaries shall be prohibited, except in respect of areas whose preservation as forests is considered to have no theoretical or practical scientific purpose, but whose conversion into agricultural land has been found to be indisputably advantageous, and in respect of land which, from a theoretical and practical scientific perspective, ceased to have any characteristics of forest land prior to 31 December 1981 and whose use for various agricultural purposes, for example as fields, vineyards, orchards or olive groves or for livestock breeding, has been found to be advantageous, and in respect of built-up areas within cities, towns or villages.”

B. The Civil Code

43. The relevant principles of the Turkish Civil Code read as follows:

Article 683 § 1

“Everyone has the right to own, use, manage and dispose of his property as he wishes, within the limits of the legal system.”

Article 705 § 1

“Real property is acquired through registration.”

Article 1007 § 1

“The State is liable for any damage resulting from the keeping of land registry records.”

C. Forestry laws

44. Until 1937, forests were not subject to any special regulations. Between 3 February 1937 and 31 August 1956, five main laws concerning forest property were enacted: Laws nos. 3116, (1937), 4785 (1945), 5653 (1950), 5658 (1950) and 6831 (1956).

1. Law no. 3116 of 8 February 1937

45. Section 1 of this Law defines the concept of “forest”. Section 3 provides that there are four types of forest: State forests, forests belonging to local authorities, forests belonging to foundations and private forests. The latter belong to the State but are used by individuals who pay a tax on their use.

2. Law no. 4785 of 9 July 1945

46. Section 1 of this Law reads as follows:

“All forests which belong to natural or legal persons, individuals, foundations, villages, municipalities, administrative authorities or public corporate bodies on the date of entry into force of this Law shall be nationalised in accordance with this Law. These forests shall be transferred to the State without the need for any notification or procedure.”

47. Section 4 of this Law provides for exceptions to nationalisation, notably as regards forests containing certain types of tree planted by individuals.

48. Section 7 of this Law makes provision for compensation in the event of nationalisation.

3. Law no. 5653 of 24 March 1950

49. Law no. 5653 redefines forest land. By section 1 (c), scrubland is no longer considered to be forest unless the land it covers is protected or produces a harvest, in accordance with the conditions defined by this Law.

50. Section 1 further provides that, as of 3 April 1950, areas that have ceased to have the characteristics of forests will no longer be treated as such.

51. This Law distinguishes between three kinds of forest land: State forests, forests belonging to legal entities (such as villages and municipalities) and private forests.

4. *Law no. 5658 of 24 March 1950*

52. Section 1 of Law no. 5658 provides for nationalised land to be returned in certain conditions:

“Of those forests nationalised by Law no. 4785 of 9 July 1945, forests which are not situated within State forests and which are surrounded by agricultural land such as fields, vineyards, gardens, places such as private forests, cities, towns or village grazing land, and forests belonging to villages, municipal authorities or individuals which are surrounded by land not classified as forest land under section 1 of the Forestry Act, provided they are entirely separate from State forests, shall be returned upon request to their owners or to the heirs thereof.”

5. *Law no. 6831 of 31 August 1956*

53. Section 1 of this Law defines the concept of “forest” and the exceptions thereto.

54. Section 2(B) (as amended on 5 June 1986 by Law no. 3302) provides:

“Places that scientifically and technically ceased to be forest land before 31 December 1981 shall be excluded from the boundaries of the forest, firstly if it has been determined that such places are suitable for various agricultural purposes as farmland, vineyards, gardens, olive groves, fruit, hazelnut or pistachio (or pine nut) orchards, or for livestock purposes, and secondly, in the case of built-up areas within cities, towns or villages.

The places excluded from the forest boundaries shall be transferred to the Treasury if they already belonged to the State, or to public legal entities if they already belonged to them, or to their owners if the areas in question were private forests. The necessary rectifications and entries shall be made permanently in the land register when the procedure [for exclusion from forest boundaries] becomes final.

No reduction to forest areas may be made other than in the specified places ...”

55. Section 4 states that, from the point of view of ownership and administration, there are three types of forest: State forests (sections 7 to 44), forests belonging to public legal entities (sections 45 to 49) and private forests (sections 50 to 55).

56. Section 7 of this Law provides that the nature of an area – State forest or private forest – is defined by the cadastral commissions. Furthermore, sections 7 to 12 of the Law govern the way in which the cadastral commissions operate.

57. State forests are under the protection of the State. Any act altering their forest character is prohibited (sections 14 to 19 in particular) and constitutes an offence. Sections 79 to 90 set out the procedures applicable to the prosecution of unlawful acts. The criminal penalties for unlawful acts are set out in sections 91 to 114. The penalties for certain offences may be reduced if the perpetrator of the act constituting the offence is the owner of the area in question (see, for example, section 91(6)).

58. Private forests are subject to inspection and supervision by the State. Their owners have a limited right to make use of them. Furthermore, they are entitled, *inter alia*, to build on an area not exceeding 6% of the total surface area of the land (section 52(2)) if the private forest concerned is located in a built-up area (village, town or city).

59. Law no. 6831 has been amended on various occasions, by Laws nos. 1744 (1973), 2896 (1983), 3302 (1986), 3373 (1987), 3493 (1988), 4079 (1995), 114 (1995), 4570 (2000), 4999 (2003), 5177 (2004), 5192 (2004) and 5728 (2008).

D. Domestic case-law

60. On 23 June 1964, the Constitutional Court abrogated sections 3 and 4 of the Forestry Act (Law no. 4785) since they were inconsistent with Article 38 of the Constitution as in force at the material time, which took the actual value of the property as the basis for any compensation payable in the event of expropriation. Section 3 indicated that the value of a nationalised forest was assessed on the basis of the tax return. Section 4 defined the criteria for the purchase of buildings located in a nationalised forest. On the issue of whether the abrogation of the provisions concerned would create a legal vacuum in this sphere, the Constitutional Court held as follows:

“... when the provisions at issue are abrogated, the general provisions of the Expropriation Act will be applied to the expropriation of forests.”

61. On 28 March 1995 the Court of Cassation found that under Article 917 of the old Civil Code, the Treasury was responsible for the proper keeping of land registers. In its judgment it set forth the criteria under which the Treasury could be held liable: damage, an unlawful act by a civil servant and a causal link between the damage and the act. It also pointed out that the damage must have been permanent and the application must have been made within one year from the actual occurrence of the damage and, whatever the circumstances, within a general limitation period of ten years.

62. In a judgment of 26 April 1999 the Court of Cassation repeated that under Article 917 of the old Civil Code, the Treasury was responsible for the proper keeping of land registers. In that particular case, the party concerned was unable to have certain interim measures applied to the property of the person indebted to him because the land registers had not been kept in accordance with the regulations.

63. On 7 May 2002, the general assembly of the plenary Supreme Administrative Court (*Danıştay Dava Daireleri Genel Kurulu*) found that the ordinary courts had jurisdiction where a document of title had been declared void by the Cadastral Court on the ground that the land at issue had been part of the public forest estate (the area was subsequently excluded

from the public forest estate as it had ceased to have the characteristics of forest land). In that case, the administrative courts had dismissed a claim for compensation, relying on the judgment of the Cadastral Court in which the interested party's document of title had been declared void. They had considered that that judgment was in accordance with the law.

64. In its judgment of 7 May 2002 the First Division of the Court of Cassation quashed the judgment of the lower court that had dismissed the interested party's application and held that the State should be found strictly liable for the acts of civil servants of the cadastral commission, who had concluded in error that the land at issue was not part of the public forest estate. Because of that act, no reference had been made in the land register as regards the forest status of the land, which had been sold to third parties who had relied upon the registers. In that particular case, the land at issue had been registered in the names of third parties following the conclusions of the cadastral commission in 1959 and a deed of title had initially been issued in their name. The plaintiff had acquired the land in 1994 on the basis of information appearing in the land register, which made no reference to its being forest land. Between 1977 and 1982 the cadastral commission carried out further surveys and concluded that the land at issue was no longer part of the forest estate as it had ceased to have the characteristics of a forest. It decided to exclude it from the forest estate. A note to this effect was added to the land register in 1995.

65. On 30 October 2006 the Third Division of the Court of Cassation upheld the District Court's judgment of 12 June 2006, which had found that the administrative courts had jurisdiction to deal with disputes concerning claims for compensation in connection with land registration following surveys carried out by the cadastral commission. In that particular case, the land had been acquired by the interested party in 1953. It had then been registered in his name following a cadastral commission survey. Later, the document of title issued to the party concerned was declared void by the court on the ground that the land was part of the forest estate. The court dismissed the application, holding as follows:

"The claimant is seeking compensation on the basis of two administrative measures: the issuing of the document of title and its invalidation as a result of the delimitation of the forest boundary. The claimant submits in addition that the administrative authority committed an error in so far as he, as the holder of the document of title, was not notified of the result of the delimitation following the survey. A claim for compensation for damage caused by an administrative measure may only be brought before the administrative court by way of an action for damages."

On 30 January 2008, in response to an application of 5 December 2007 by Mr M. Öztok, the claimant's representative in the above-mentioned case (and also the representative of the applicant in the case of *Köktepe v. Turkey*, no. 35785/03), the Presidential Council of the Court of Cassation (*Yargıtay Birinci Başkanlık Kurulu*) stated that there was no contradiction

between the two earlier judgments and that accordingly, it was not necessary to resort to the case-law harmonisation procedure.

66. By a judgment of 19 April 2006 the general assembly of the Court of Cassation upheld the judgment of the lower court, which had held the State strictly liable for the acts of civil servants of the Land Registry Directorate. In that particular case, a third party had sold land to the claimant in 1976 on the basis of a false court decision, despite the fact that in 1954, the land in question had been classified by the cadastral commission as grazing land (*mera*) and therefore State property. The lower court had partly allowed the claim and had awarded compensation for the house that the claimant had built and the trees he had planted on the land at issue. The Court of Cassation held that the fact that the claimant could take action against the third party did not exempt the administration from strict liability. Even in the absence of fault, the State was liable as long as three conditions were met: there had been a wrongful act, damage had been caused and there was a causal link between the wrongful act and the damage. Furthermore, the Court of Cassation made reference to the provisions of the Civil Code protecting the good faith of a person who had relied on the land register.

67. On 26 June 2006 the Bursa Administrative Court dismissed a claim for compensation for damage allegedly suffered by the claimant as a result of having his document of title declared void because his land was part of the forest estate. The claimant applied to the Administrative Court after having referred the matter to the ordinary courts, which had declined jurisdiction *ratione materiae*. According to the Administrative Court, the claim was out of time as the claimant should have brought it within sixty days from the date on which the judgment annulling his document of title became final.

THE LAW

68. The applicants submitted that the annulment of their document of title and its re-registration in the name of the Treasury, without payment of compensation, constituted disproportionate interference with their right to the peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1.

...

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

83. The applicants submitted that the annulment of their document of title and its re-registration in the name of the Treasury, without payment of compensation, constituted disproportionate interference with their right to

the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1, 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. The parties’ submissions

1. The applicants

84. The applicants stated that the domestic courts had decided to register land for which they had held a document of title for at least three generations as belonging to the Treasury. They pointed out that the land had been purchased in 1913 by Hurşit Güneş, to whom the competent authorities had issued a document of title in due form; their ascendants had then inherited the land, which on 9 July 1960 had been registered in their names in the land registers. Furthermore, they submitted that the surveys classifying the land as part of the forest estate did not reflect reality, since a military holiday camp, comprising, *inter alia*, houses, a tennis court, a picnic area, a kitchen, various storerooms and accommodation for private use, had been built there in the 1970s even though the applicants had not transferred the land to third parties and had not been notified of any expropriation or other measure depriving them of their property in the public interest.

In the applicants’ submission, the annulment of their document of title and the registration of the land as belonging to the Treasury, without payment of any compensation, constituted disproportionate interference with their right to the peaceful enjoyment of their possessions.

2. The Government

85. The Government maintained that the applicants and/or their ascendants had held a document of title over land which was part of the public forest estate, whereas according to the provisions of the Constitution, land of this kind could not be privately owned. They pointed out that Article 1 of Protocol No. 1 allowed the State to limit the right of property in the public interest.

In this context, the State could also permanently and fully deprive a person of title in the context of nationalisation or expropriation.

In this particular case, since plot no. 135 was located within the public forest estate, pursuant to the provisions of the Constitution, the property at issue could not be privately owned. The applicants' document of title had therefore had no legal value, all the more so as they could not have had any legitimate expectations. Furthermore, the State could legitimately intervene to protect the environment and forest land and, in this regard, it had a wide margin of appreciation.

B. The Court's assessment

86. The Court observes that according to its case-law, Article 1 of Protocol No. 1, which in substance guarantees the right of property, comprises three distinct rules (see, in particular, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98): 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 deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *Bruncrona v. Finland*, no. 41673/98, §§ 65-69, 16 November 2004, and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

87. In determining whether there has been a deprivation of possessions within the second rule of Article 1 of Protocol No. 1, it is necessary not only to consider whether there has been a formal taking or expropriation of property but to look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are "practical and effective", it has to be ascertained whether the situation amounted to a *de facto* expropriation (see *Brumărescu v. Romania* [GC], no. 28342/95, § 76, ECHR 1999-VII; *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 63 and 69-74, Series A no. 52; *Vasilescu v. Romania*, 22 May 1998, §§ 39-41, *Reports of Judgments and Decisions* 1998-III; and *N.A. and Others v. Turkey*, no. 37451/97, §§ 37 and 39, ECHR 2005-X).

88. The Court notes that in the present case there has been interference with the applicants' right to the peaceful enjoyment of their possessions, which amounts to a "deprivation" of property within the meaning of the first paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Brumărescu*, cited above, § 77).

89. The Court notes firstly that the applicants' good faith in taking possession of the property, as regards the part acquired in 1911, is not contested.¹ It is not in dispute that until their document of title was declared void and ownership was transferred to the Treasury, the applicants had been the rightful owners of the property, with all the attendant consequences under domestic law, and that they had further enjoyed "legal certainty" as to the validity of the title entered in the land register, which constitutes undisputable evidence of ownership.

90. The Court further observes that the applicants were deprived of their property by a court decision. Despite the applicants' objections as to the nature of the land, the domestic courts eventually declared their document of title void pursuant to the provisions of the Constitution, relying on surveys which included the land as part of the forest estate. Having regard to the reasons given by the domestic courts, the Court considers that the purpose of depriving the applicants of their property, namely to protect nature and forests, falls within the scope of public interest within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Lazaridi v. Greece*, no. 31282/04, § 34, 13 July 2006, and *Ansay v. Turkey* (dec.), no. 49908/99, 2 March 2006). It notes in this regard that while none of the Articles of the Convention is specifically designed to provide general protection of the environment as such (see *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI), in today's society the protection of the environment is an increasingly important consideration (see *Fredin v. Sweden* (no. 1), 18 February 1991, § 48, Series A no. 192). The Court notes that it has on various occasions dealt with questions relating to environmental protection and stressed the importance of this issue (see, for example, *Taşkın and Others v. Turkey*, no. 46117/99, ECHR 2004-X; *Moreno Gómez v. Spain*, no. 4143/02, ECHR 2004-X; *Fadeyeva v. Russia*, no. 55723/00, ECHR 2005-IV; and *Giacomelli v. Italy*, no. 59909/00, ECHR 2006-XII). The protection of nature and forests, and, more generally, the environment, is a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities. Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the State has legislated in this regard (see *Hamer v. Belgium*, no. 21861/03, § 79, ECHR 2007-V).

91. However, in the case of deprivation of property, compensation terms under the relevant domestic legislation are material to the assessment of whether the contested measure observes the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the

1. Rectified on 22 September 2009: "at issue" was deleted and replaced by "as regards the part acquired in 1911".

applicants. The Court has already held in this connection that the taking of property without payment of an amount reasonably related to its value normally constitutes a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *Nastou v. Greece (no. 2)*, no. 16163/02, § 33, 15 July 2005; *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 111, ECHR 2005-VI; *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A; and *N.A. and Others v. Turkey*, cited above, § 41). In the instant case, the applicants received no compensation for the transfer of their property to the Treasury pursuant to Article 169 § 2 of the Constitution. The Court notes that the Government have not relied on any exceptional circumstance in order to justify the total lack of compensation.

92. Consequently, the Court considers that the failure to award the applicants any compensation upsets, to their detriment, the fair balance that should be struck between the demands of the general interest of the community and the requirement of the protection of individual rights.

93. There has therefore been a violation of Article 1 of Protocol No. 1.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

...

Done in French, and notified in writing on 8 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President