CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION[1]

CASE OF TAŞKIN AND OTHERS v. TURKEY

(Application no. 46117/99)

JUDGMENT

STRASBOURG

10 November 2004

FINAL

30/03/2005

[1] In its composition prior to 1 November 2004

In the case of Taşkın and Others v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 3 June and 21 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 46117/99) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") on 25 September 1998 under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Turkish nationals, Mr Sefa Taşkın, Mr Hasan Geniş, Mr Tahsin Sezer, Mr Ali Karacaoğlu, Mr Muhterem Doğrul, Mr İzzet Öçkan, Mr İbrahim Dağ, Mr Ali Duran, Mr Sezer Umaç and Mrs Günseli Karacaoğlu ("the applicants").

2. By a letter of 27 April 2004, the Registry was informed of the death of Mr İzzet Öçkan on 13 January 2004. His wife, Mrs Ayşe Öçkan, declared her intention to pursue the application.

3. The applicants were represented by Mr M.N. Terzi, Mr S. Özay, Ms E.İ. Günay, Mr M. Özsüer, Mr Y. Özsüer, Mr E. Avşar, Mr N. Özkan, Mr İ. Arzuk, Mr A. Okyay, Mr U. Kalelioğlu, Mr O.K. Cengiz, Mr Ş. Şensoy, Mr İ. Toktamış, Mr A. Tansu, Mr O. Yıldırım and Mr A. Eren, of the İzmir Bar. The Turkish Government ("the Government") were represented by their Agent, Mr M. Özmen.

4. The applicants alleged that the operating permits issued for a gold mine and the related decision-making process had violated Articles 2 and 8 of the Convention. In addition, they claimed that they had been denied effective judicial protection, in breach of Article 6 § 1 and Article 13 of the Convention.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that

would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

7. By a decision of 29 January 2004, the Chamber declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from the Normandy Madencilik A.Ş. company, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to those comments (Rule 44 § 5).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 June 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr M. ÖZMEN, *Agent*,
Mr D. ORHON,
Mr M. ÇOLAKOĞLU, *Counsel*,
Ms B. ARI,
Ms D. KİLİSLİOĞLU,
Ms H.D. AKAL,
Ms S. ŞAFAK,
Ms J. KALAY, *Advisers*;

(b) *for the applicants*

Mr M.N. TERZİ,
Mr N. ÖZKAN, *Counsel*,
Mr İ. ARZUK,
Mr S. CENGİZ,
Mr U. KALELİOĞLU, *Advisers*.

The Court first watched visual presentations submitted by the parties and then heard addresses by Mr Terzi, Mr Özmen, Mr Orhon and Mr Özkan.

10. By letters of 3 September and 20 October 2004, the Government informed the Court of developments subsequent to the hearing (see paragraphs 77-81 below). In their letter of 3 September, they also invited the Court to adjourn its examination of the case pending the outcome of the proceedings before the Supreme Administrative Court (see paragraph 78 below). On 30 September 2004 the Court rejected this request.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The case concerns the granting of permits to operate a gold mine in Ovacık, in the district of Bergama (İzmir) The applicants live in Bergama and the surrounding villages.

12. Mr Sefa Taşkın, born in 1950, was formerly the mayor of Bergama. He now lives in Dikili, ten kilometres away from the Ovacık gold mine.

Mr Tahsin Sezer, born in 1952, lives with his family in the village of Çamköy, which is 300 metres from the mine. He is a farmer and owns land in the surrounding area.

Mr Ali Karacaoğlu, born in 1950, lives with his family in the village of Çamköy. He owns land adjacent to the mine, on which he grows tobacco and olive trees.

Mrs Günseli Karacaoğlu, born in 1976, is the wife of the *muhtar* (elected local official) of the village of Çamköy. She is a livestock farmer.

Mr Muhterem Doğrul, born in 1949, lives in Çamköy. He is a livestock farmer. He and his family own an olive grove adjacent to the mine.

Mr İbrahim Dağ, born in 1951, lives in Çamköy. He is a livestock farmer and owns agricultural land near the mine, on some of which olive trees have been planted.

Mr Ali Duran, born in 1976, lives with his family in Çamköy. He is a livestock farmer.

Mr Sezer Umaç, born in 1978, used to live in the village of Süleymanlı, which is 900 metres from the mine. He asserts that he left the village recently on account of damage to the environment.

Mrs Ayşe Öçkan is the widow of Mr İzzet Öçkan, who died on 13 January 2004. She lives in the Bergama area and owns land near the mine.

Mr Hasan Geniş, born in 1968, lives in the village of Süleymanlı. He is a driver.

13. The applicants alleged that, as a result of the Ovacık gold mine's development and operation, they had suffered and continued to suffer the effects of environmental damage; specifically, these include the movement of people and noise pollution caused by the use of machinery and explosives.

A. The process of issuing the permits and the environmental impact assessment procedure

14. On 16 August 1989 the public limited company E.M. Eurogold Madencilik ("the company"), subsequently renamed Normandy Madencilik A.Ş., received authorisation to begin prospecting for gold.

15. On 4 July and 12 August 1991 the Directorate of Mines at the Ministry of Mines and the Ministry for Forests issued the two required permits to the company.

16. On 14 January 1992 the İzmir Directorate of Public Works sent a letter to the Ministry of the Environment requesting its opinion on the Ovacık gold mine.

17 On 12 February 1992 the Ministry of Energy and Natural Resources issued the company with an operating permit for the Ovacık gold mine. This permit was valid for ten years and authorised the use of cyanide leaching in the gold extraction process.

18. On 22 June 1992 the company began felling trees in part of the forestry area granted to it. The rest of the forest was left untouched in order to form a protection zone.

19. In accordance with section 10 of the Environment Act (Law no. 2872 – see paragraph 91 below), the procedure for an environmental impact report was launched on the Ministry of the Environment's initiative.

20. On 26 October 1992 a public meeting was held as part of the preparations for the impact report. During that meeting, the public criticised, *inter alia*, the tree felling and the use of explosives and sodium cyanide; they also expressed their concerns about the seepage of waste into underground water supplies. The experts attending the meeting were asked a number of questions about the waste-retaining dam, the risks in the event of an earthquake and the state in which the gold mine would be left after its closure. In particular, there were calls for a referendum and for the necessary measures to be taken.

The experts described other countries' experiences in this area. Mr İpekoğlu explained that this type of activity always carried a certain risk, which had to be managed correctly. Mr Erdem criticised the way in which the impact study was being prepared and recommended that a new procedure be started.

The mayor, Mr Taşkın, explained that the municipal council had given considerable thought to the disputed gold mine and its impact on the environment. He stated that he was not against its operation; however, he did ask that the necessary measures be taken, particularly with regard to the waste-retaining dam and the introduction of a rigorous monitoring system. Finally, he pointed out that an earthquake had occurred in the region in 1938.

21. After twenty-seven months of preparation, the impact report was submitted to the Ministry of the Environment. On 19 October 1994, basing its decision largely on the conclusions of that report, the Ministry decided to issue an operating permit for the Ovacık gold mine.

22. The mine was ready to start operating as of November 1997, when the other administrative procedures had been completed and, according to the Government, all necessary measures had been taken in order to comply with national and international standards.

B. The applicants' application for judicial review of the Ministry of the Environment's decision of 19 October 1994 to issue a permit

23. On 8 November 1994 some of the residents of Bergama and the neighbouring villages, including the applicants, applied to the İzmir Administrative Court requesting judicial review of the Ministry of the Environment's decision to issue a permit. They based their arguments, *inter alia*, on the dangers inherent in the company's use of cyanide to extract the gold, and especially the risks of contamination of the groundwater and destruction of the local flora and fauna. They also criticised the risk posed to human health and safety by that extraction method.

24. On 2 July 1996 the Administrative Court dismissed the applicants' request. It held that the gold mine fulfilled the criteria set out in the environmental impact report and that the decision in issue had been adopted in accordance with the authorisation procedure for environmentally sensitive projects.

25. On 25 April 1997, with a view to protecting public order and preventing disturbances and in view of the numerous protests which had followed the delivery of the Administrative Court's judgment, the İzmir provincial governor ordered that the mine's operation be suspended for one month.

26. On 13 May 1997 the Supreme Administrative Court, to which the applicants had appealed, overturned the lower court's judgment. It assessed the physical, ecological, aesthetic, social and cultural effects of the mining activity in question as described in the environmental impact survey and the various expert reports which had been submitted to it. It held that those reports demonstrated the risk posed to the local ecosystem and to human health and safety by sodium cyanide use; it concluded that the operating permit in issue did not serve the public interest and that the safety measures which the company had undertaken to implement did not suffice to eliminate the risks involved in such an activity.

The relevant passages of the Supreme Administrative Court's judgment read as follows:

> "The environmental impact report and expert reports examined the impact of cyanide use on the atmosphere, underground water sources, flora and fauna, the

disturbance linked to noise and vibrations, and regional planning issues. [It is noted that] the potential for soil erosion in the region through the effects of water (flooding) and wind is relatively high and the level of erosion of forestry land falls into Categories 2 and 3 and, in certain areas, Category 1 ... The soil is permeable; the area forms part of the [high-risk zone] for earthquakes. Rainfall in the area in question will result in flooding in summer and spring on account of its distribution and force; flooding occurs in these seasons in the [proposed] tailings area. The region's inhabitants use the groundwater; in the event of seepage, it could become polluted by toxic waste. Cyanide has a high pH value, which is influenced by rainfall: when the pH level falls, the cyanide may transform into hydrogen cyanide (HCN). HCN, a gas with a relatively low boiling point (25.7°), is likely to enter the atmosphere ... [In addition,] the risk of seepage of materials into the groundwater may last twenty to fifty years ... [and,] in the event of seepage into the atmosphere or soil, there may be adverse consequences for the environment and for the flora and fauna. [However, the above-mentioned reports note that guarantees such as] the operating company's good faith, scrupulous observance of the conditions set out in the operating contract, and trust in the monitoring and supervision to be carried out by the central and local authorities led to the conclusion that the decision in question served the public interest ...

It appears from the above-mentioned reports that cyanide use in gold mining and the other heavy elements which are subsequently released constitute a potential risk which would endanger the environment and human health; in particular, when cyanide, an extremely toxic substance, mixes with soil, water and air, it becomes harmful to all living beings. Consequently, it is possible that waste material containing cyanide, after pumping to the retaining dams, could seep into and pollute water sources and other sites [where water is used] ... The region's flora and fauna are also threatened. [Accordingly], it must be borne in mind that cyanide use poses a considerable risk to human health and the environment ...

In the light of the technical and legal conclusions and bearing in mind the State's obligation to protect the right to life [and] to a healthy environment ..., it is appropriate to overturn the judgment appealed against, given that the gold mine's disputed operational methods entail the risks set out in the environmental impact report and the expert reports and that, should those risks be realised, human health would be clearly affected, directly or indirectly, through environmental damage ..."

27. On 15 October 1997, in compliance with the Supreme Administrative Court's judgment, the Administrative Court annulled the Ministry of the Environment's decision to issue a permit.

28. On 1 April 1998 the Supreme Administrative Court upheld the Administrative Court's judgment.

C. Enforcement of the Supreme Administrative Court's judgment of 13 May 1997

29. By virtue of section 52(4) of Law no. 2577 on administrative procedure ("Law no. 2577"), the Supreme Administrative Court's judgment of 13 May 1997 entailed *ipso facto* a stay of execution of the Ministry of the Environment's decision to issue a permit (see paragraph 97 below).

30. In a letter of 26 June 1997, the İzmir Bar Association asked the İzmir provincial governor's office to ensure that the Supreme Administrative Court's judgment was enforced and, accordingly, to order that all operations be halted at the mine.

31. On 27 June 1997 the İzmir provincial governor's office replied that there had been no final judgment and that the Ministry of Energy and Natural Resources had expressed its support for the continuing operation of the mine.

32. On 20 October 1997 the Ministry of the Environment was served with the Supreme Administrative Court's judgment. On 23 October 1997 the Ministry invited the relevant authorities to reconsider the conditions attached to the operating permits in issue in view of the Supreme Administrative Court's judgment.

33. On 24 December 1997 the applicants sent letters containing enforcement notices to the Minister of the Environment, the Minister of Energy and Natural Resources and the Minister for Forests, as well as to the İzmir provincial governor, requesting enforcement of the administrative courts' decisions.

34. On 6 January 1998 the applicants brought an action in damages before the Ankara District Court against, among others, the Prime Minister, the ministries concerned and the İzmir provincial governor for non-enforcement of the administrative courts' decisions.

35. On 27 February 1998 the İzmir provisional governor's office ordered that the mine be closed. According to the Government, the mine carried out no mining activities until April 2001.

36. On 3 March 1998 the public prosecutor at the Bergama Police Court brought criminal proceedings against the senior managers of the mining company, alleging that the company had used cyanidation in extraction operations at the mine without prior authorisation.

37. On 27 March 1998 the İzmir gendarmerie drew up a report following inspection of the site. It noted the use of three tonnes of cyanide, which had facilitated the extraction of a nugget of mixed gold and silver weighing 932 grams. This report also indicated that eighteen tonnes of cyanide were still stocked at the site.

38. On 25 November 1999 the Ankara District Court dismissed the applicants' action in damages.

39. On 25 September 2001 the Court of Cassation overturned the judgment of 25 November 1999 and remitted the case to the first-instance court. It found inertia on the part of the ministers concerned, who had taken no measures to prevent extraction using the cyanidation process within the time-limit provided for in section 28(1) of Law no. 2577 (see paragraph 96 below), despite the fact that they had been notified of the Supreme Administrative Court's judgment annulling the mine's operating permit.

40. On 16 October 2002 the Ankara District Court, hearing the case on remittal, followed the Court of Cassation's judgment and allowed the applicants' claim.

41. The criminal proceedings were abandoned in February 2001.

D. Subsequent developments

42. On 12 October 1998, 28 January 1999 and 3 March 1999, the company contacted various ministries in order to obtain a permit. Specifically, it claimed to have taken additional measures to ensure better safety in the gold mine's operation and referred, *inter alia*, to a risk assessment report on this question drawn up by the British company Golder Associates Ltd.

43. The then Prime Minister intervened directly with regard to the company's request. On an application from him, the Supreme Administrative Court, in an advisory opinion of 5 December 1999, ruled that its judgment of 13 May 1997 could not be interpreted as an absolute prohibition on the use of cyanide in gold mining operations and that there were grounds for taking specific circumstances into consideration.

44. In a separate development, the Prime Minister instructed the Turkish Institute of Scientific and Technical Research ("TÜBİTAK") in March 1999 to prepare a report assessing the potential impact of cyanide use in the gold-mining operations.

In October 1999 TÜBİTAK's report was submitted. It had been prepared by ten scientists who were experts in environmental issues, environmental law, chemistry, hydrogeology, geology, engineering geology and seismology.

The report concluded that the risks to human life and the environment set out in the Supreme Administrative Court's judgment had been completely removed or reduced to a level within the acceptable limits, given that the mine was to use environmentally friendly advanced technology based on the "zero discharge" principle and that the risk of adverse impact on the ecosystem was, according to scientific criteria, much lower than the maximum acceptable level.

1. Opinions of the Prime Minister and the Ministry of the Environment and the applications for judicial review

45. On 5 January 2000 the Prime Minister submitted the TÜBİTAK report to the Ministry of the Environment, requesting its opinion on the operation of the gold mine in question.

46. On 31 January 2000 the Ministry indicated its approval of the mine's activities, in the light of the report's conclusions.

47. On 5 April 2000 the Prime Minister's Office drew up a report on the operation of the mine. The report concluded that, having regard to the

additional measures taken by the company, the conclusions of the TÜBİTAK report, the Ministry of the Environment's favourable opinion and the opinion of the President's Administration, which had emphasised the economic importance of an investment of this type, the operation of the mine could be authorised.

48. On 1 June 2001 the First Division of the İzmir Administrative Court gave judgment following an application for judicial review, brought by eighteen residents of Bergama, including Mr Sefa Taşkın, with regard to the report issued by the Prime Minister's Office on 5 April 2000. The Division decided to annul the report, which, in its opinion, constituted an enforceable administrative decision giving rise to the issuing of the requested permits. It held that, notwithstanding the measures taken by the company, it had been found in judicial decisions which had become final that the "risk and threat" in question resulted from the use of sodium cyanide in the gold mine concerned and that it was impossible to conclude that those risks could be avoided by implementing new measures. Equally, it had been established that the risk connected with the accumulation of heavy elements or cyanide could persist for twenty to fifty years and was likely to infringe the right of the area's inhabitants to a healthy environment. Accordingly, it was appropriate to conclude that the decision in issue could circumvent a final judicial decision and was incompatible with the principle of the rule of law.

49. On 26 July 2001, at the Prime Minister's request, the Supreme Administrative Court decided to suspend execution of the judgment of 1 June 2001. It found that the report of 5 April 2000 did not constitute an enforceable decision and was not open to appeal before the administrative courts. In addition, it held that only the ministries concerned, namely those of the Environment, of the Interior, of Health, of Regional Planning, of Energy and Natural Resources and for Forests were entitled to rule on this matter.

50. On 14 February 2001 the Fourth Division of the İzmir Administrative Court, on an application for judicial review brought by fourteen residents of Bergama, found that no environmental impact report had been drawn up by the Ministry of the Environment in connection with the operation of the gold mine. Consequently, it dismissed the application without examining the merits on the ground that no enforceable administrative decision had been taken. The Supreme Administrative Court upheld this judgment on 26 September 2001.

51. On 28 March 2003, on an application by a Mrs Lemke, a resident of Bergama, the First Division of the İzmir Administrative Court decided to set aside the report of 5 April 2000.

52. Proceedings are pending before the administrative courts.

2. Extension of the operating permit by the Ministry for Forests and the applications for judicial review

53. On 6 October 2000 the Directorate General of Forests adopted a decision which extended the operating permit which had been issued to the company on the basis of the TÜBİTAK report.

54. Initially, in a judgment of 21 November 2001, the Fourth Division of the İzmir Administrative Court dismissed the application for a stay of execution of the Directorate General of Forests' decision.

55. However, on 23 January 2002, the First Division of the İzmir Administrative Court, on an application from Mrs Lemke, decided to suspend execution of the decision of 6 October 2000, considering that the issuing of such a permit was incompatible with the rule of law and that irreparable damage would result from its enforcement.

56. That judgment was upheld by the İzmir Regional Administrative Court on 20 March 2002.

57. In a judgment of 7 June 2002, the Fourth Division of the İzmir Administrative Court dismissed an application for judicial review lodged by eighteen residents of Bergama against the decision of 6 October 2000, considering that the latter had been based on the issuing of a permit dated 12 February 1992, which was valid for a ten-year period.

58. On 27 March 2003 the Supreme Administrative Court upheld the judgment of 7 June 2002.

59. In parallel, on 3 May 2002 the Directorate General of Forests gave permission, *inter alia*, for the establishment of a security area around the gold mine and for the construction of roads, a drilling zone and a waste-retaining dam.

60. On 13 November 2003 the Third Division of the İzmir Administrative Court, ruling on an application by Mrs Lemke, dismissed the application for a stay of execution of the Directorate General of Forests' decision of 3 May 2002. That refusal was confirmed on 24 December 2003 by the İzmir Regional Administrative Court.

61. Proceedings are pending before the administrative courts.

3. The provisional operating permit issued by the Ministry of Health and the applications for judicial review

62. On 22 December 2000 the Ministry of Health adopted a decision authorising continued use of the cyanidation process at the mine for an experimental one-year period. The company was notified of this authorisation by the İzmir provincial governor's office on 24 January 2001.

On 2 February 2001 a supervisory and audit committee was set up at the İzmir provincial governor's office. The company began mining operations on 13 April 2001.

63. On 24 May 2001 the application for judicial review lodged by several Bergama residents (Mrs Genç and others) was dismissed by the Third Division of the İzmir Administrative Court on the ground that the decision being challenged did not constitute an enforceable act.

64. On 24 June 2002 the Supreme Administrative Court set aside the judgment of 24 May 2001.

65. In a judgment of 10 January 2002, the İzmir Administrative Court, on an application by the İzmir Bar Association, decided to suspend execution of the provisional permit issued by the Ministry of Health, holding that the issuing of such a permit was incompatible with the rule of law.

66. That judgment was upheld by the İzmir Regional Administrative Court on 20 March 2002.

67. On 3 December 2002 the İzmir Administrative Court dismissed the application for judicial review brought by the İzmir Bar Association against the provisional permit on the ground that it did not have standing to bring the proceedings. On 12 November 2003 the Supreme Administrative Court upheld the Administrative Court's judgment.

68. On 12 February 2004 the Ministry of the Environment and Forests extended the permit concerning "the chemical processing unit and waste pond" for a period of three years.

69. In a judgment of 27 May 2004, the Third Division of the İzmir Administrative Court set aside the provisional permit issued by the Ministry of Health on 22 December 2000. In particular, it considered that the risks highlighted in the judgment of 15 October 1997 were, *inter alia*, linked to the use of sodium cyanide in the gold mine concerned and to the climatic conditions and features of the region, which was situated in an earthquake zone. It held that those risks and threats could not be eliminated by supplementary measures which continued to be based on the same leaching process. It also concluded that the issuing of the permit in issue was incompatible with the principle of the rule of law, in that that administrative decision was in reality intended to amend a judicial decision that had become final.

70. Proceedings are pending before the administrative courts.

4. The permit issued by the Ministry of the Environment and the applications for judicial review

71. On 13 January 2001 the Ministry of the Environment issued a three-year permit for the "chemical processing unit and waste pond". On 16 February 2001 it also authorised the company to import sixty tonnes of sodium cyanide.

72. On 24 May 2001 the Third Division of the İzmir Administrative Court dismissed an application for judicial review brought by fourteen

residents of Bergama against the issuing of a provisional operating permit to the company. It held that there was no enforceable administrative decision.

73. On 10 and 23 January 2002 the İzmir Administrative Court, acting on two applications for annulment of the provisional permit submitted by the İzmir Bar Association and a resident of the region, and having regard to the considerations set forth in the Supreme Administrative Court's judgment of 13 May 1997, which had become final, ordered the suspension of the permit.

74. Proceedings are pending before the administrative courts.

5. The Council of Ministers' decision

75. On 29 March 2002 the Council of Ministers adopted a "decision of principle" stating that the gold mine situated in the vicinity of Ovacık and Çamköy, in the district of Bergama (İzmir) and belonging to the company Normandy Madencilik A.Ş., could continue its activities. The decision was not made public. At the Court's request, the Government sent the Court the text of the decision, which reads as follows:

> "According to the reports drawn up hitherto, it has been established that the gold mine situated in the vicinity of Ovacık and Çamköy, in the district of Bergama (İzmir), is a mining concern which contains mineral reserves amounting to 24 tonnes of gold and 24 tonnes of silver, provides employment for 362 persons and is worth 1,200 million United States dollars [USD] in added value to our country, including USD 280 million of direct revenue.
>
> It has been established that the decision to be taken in respect of this investment is of some importance, in that it will pave the way for six other gold mines. These mines, which have been located through prospecting costing a total of USD 200 million, will, with an investment of USD 500 million, create 1,450 jobs and be worth USD 2,500 million to the economy in direct terms and USD 10,000 million indirectly.
>
> Furthermore, according to experts in this field, our country has more than 6,500 tonnes of potential gold deposits, which represents a market value of USD 70,000 million, or USD 300,000 million taking added value into account.
>
> According to the report prepared by the ten scientists from the Turkish Institute of Scientific and Technical Research in October 1999, 'the suspected risks to human health and the environment have been completely removed or reduced to levels considerably lower than the maximum acceptable limits'.
>
> Furthermore, given that the results of checks carried out during the test period permitted by the Ministry of Health were below the reference values, no negative data have been detected.
>
> The 'Chemical substances' section of the report by the United Nations World Commission on Environment and Development (1987), which presented the concept of sustainable development to international public opinion for the first time, indicates that chemical substances represent 10% of international trade and that there are 70,000 to 80,000 types of chemical substance. Toxicity data is unavailable for 80% of these.

> We note that the toxicity data for cyanide are known and that the cyanide leaching process, in development for over a century, is now at the leading edge of technology and can be applied without damage to human health provided that the necessary precautions are taken.
>
> In examining the progress made by the Bergama/Ovacık gold mine over the past twelve years, it is appropriate to note that the cyanide leaching process described in the 1991 environmental impact report – that is, carried out without filtering, based solely on clay pressure and subject to natural decomposition in the waste pond – has been discontinued. Advanced technology is now in place: the base of the waste pond is lined with clay and a high-density polyethylene geomembrane, and a cyanide filtering unit, a heavy-metals purification system [*duraylama*], an inspection shaft and various measuring tools are also used.
>
> For the above reasons, and bearing in mind their contribution to the country's economy, it is considered advisable that the gold and silver mining concerns in the vicinity of Ovacık and Çamköy, in the district of Bergama (İzmir), operated by the company Normandy Madencilik A.Ş. under permit no. IR3549 of 12 February 1992, should continue their activities."

76. On 30 July 2002 the Eighth Division of the Supreme Administrative Court declared inadmissible an application for judicial review brought by the İzmir Bar Association seeking annulment of the Council of Ministers' decision of 29 March 2002 on the ground of procedural irregularity.

77. On 7 March 2004 the Supreme Administrative Court, sitting as a full court, set aside the judgment of 30 July 2002. In particular, it held that the Council of Ministers' decision had not been published in the Official Gazette and had not been made public, although it was clear that the resumption of the gold mine's activities had been based on it. The Supreme Administrative Court held that, in view of the appellant's inability to obtain a copy of the disputed decision, the court ought to have obtained one of its own motion with a view to ensuring effective exercise of the judicial appeal.

78. On 23 June 2004 the Sixth Division of the Supreme Administrative Court ordered a stay of execution of the Council of Ministers' decision. It noted, *inter alia*:

> "After the judgment which cancelled the Ministry of the Environment's authorisation, it is clear that this Ministry did not decide to commission a new environmental impact report which would have enabled the operating company to demonstrate that it had taken measures to reduce or completely remove the adverse effects of the activity in question, as highlighted in the previously cited judgments ... Consequently, the Council of Ministers' decision to authorise the activities of the gold mine in question was unlawful, given that the decision to issue a permit, based on the environmental impact report, had been overturned by the courts and that no other decision had been adopted pursuant to the Environment Act and the related regulations ..."

79. The application for judicial review of the Council of Ministers' decision is still pending before the Supreme Administrative Court.

80. On 18 August 2004 the İzmir provincial governor's office, referring to the judgment of 23 June 2004, ordered that production at the mine be halted.

81. In a letter of 27 August 2004, the Ministry of the Environment and Forests informed the Normandy Madencilik A.Ş. company that it was issuing a favourable opinion on the final environmental impact report submitted by the company.

E. The third party intervener

82. The Normandy Madencilik A.Ş. company explained that, once the required permits had been issued in 1994, 1996 and November 1997, the gold mine was ready to start production. From 20 to 23 February 1998 production took place on an experimental basis. These activities were intended to provide an opportunity to check that the equipment was operating correctly, and were not geared towards commercial production. During this experimental period, 150 tonnes of ore were processed, producing 0.932 kg of gold, whereas the mine's daily operational capacity was 1,000 tonnes of ore.

83. On 19 February 1998 the İzmir provincial governor's office was informed of the experimental production. On 27 February 1998 it ordered the closure of the mine (see paragraph 35 above). In addition, it instituted criminal proceedings, abandoned in February 2001, against the company and its managers.

84. The rate of cyanide concentration in the tailings pond was measured until 27 February 1998. Those measurements show that the concentration rate was considerably lower than the internationally accepted norm. Furthermore, there was no seepage from the tailings pond into the surrounding environment.

85. The company pointed to the fact that there had been no activity at the gold mine after the administrative courts had ruled on the applications for judicial review. Subsequently, draconian new measures, which exceeded international standards, had been taken to ensure compliance with the specifications set out in the judicial decisions.

In addition, two reports on the risks connected to the tailings pond and the use of sodium cyanide had been drawn up. Both concluded that those risks were negligible.

86. In 1999, on the basis of the risk assessment reports, the company reapplied for an operating permit for the gold mine in question.

87. Following the TÜBİTAK report, drawn up at the Prime Minister's request, the company obtained the necessary permits and began production at the mine in April 2001. It is still operating at present.

88. Since the resumption of production at the mine, several studies to assess the risks or operating conditions have been carried out by Golder

Associates Ltd, by a monitoring and auditing committee set up by the İzmir provincial governor's office and by the ministries concerned.

89. In addition, the company disseminates a monthly report entitled "The Ovacık Gold Mine's Monthly Environmental Report" to the public, non-governmental organisations and universities.

II. RELEVANT LAW

A. Domestic law

1. The Constitution

90. Article 56 of the Constitution provides:

> "Everyone has the right to live in a healthy, balanced environment. It shall be the duty of the State and the citizens to improve and preserve the environment and to prevent environmental pollution. ... The State shall perform this task by utilising and supervising health and social-welfare institutions in both the public and private sectors. ..."

2. Environmental law

91. Section 10 of the Environment Act (Law no. 2872), published in the Official Gazette on 11 August 1983, provides:

> "Establishments and concerns which propose to carry out activities which might cause environmental problems shall draw up an environmental impact report. This report shall concern, *inter alia*, the measures proposed to reduce the detrimental effects of waste materials and the necessary precautions to this end.
>
> The types of project for which such a report shall be required, its content and the principles governing its approval by the relevant authorities shall be determined by regulations."

92. Section 28 of Law no. 2872 states:

> "Whether or not negligence has occurred, a person who pollutes and harms the environment shall be responsible for the damage resulting from that pollution or the deterioration of the environment.
>
> This liability is without prejudice to any liability which may arise under general provisions."

93. Under section 13 of the Administrative Procedure Act (Law no. 2577), anyone who sustains damage as a result of an act by the authorities may, within one year of the commission of the alleged act, claim compensation from them. Should all or part of the claim be dismissed, or if no reply is received within sixty days, the victim may bring administrative proceedings.

Furthermore, under the Code of Obligations, anyone who suffers damage as a result of an illegal or tortious act may bring an action for damages for pecuniary loss (Articles 41-46) and non-pecuniary loss (Article 47). The civil courts are not bound by either the findings or the verdict of the criminal courts as to a defendant's guilt (Article 53).

However, under section 13 of the Civil Servants Act (Law no. 657), anyone who has sustained loss as a result of an act carried out in the performance of duties governed by public law may, in theory, only bring an action against the public authority by which the civil servant concerned is employed and not directly against the civil servant (Article 129 § 5 of the Constitution and Articles 55 and 100 of the Code of Obligations). That is not, however, an absolute rule. Where the act in question is found to be illegal or tortious and, consequently, is no longer an "administrative" act or deed, the civil courts may allow a claim for damages to be made against the official concerned, without prejudice to the victim's right to bring an action against the authority on the basis of its joint liability as the official's employer (Article 50 of the Code of Obligations).

94. The regulations on environmental impact were first adopted by the Ministry of the Environment on 7 February 1993. A second set of regulations followed on 27 June 1997. New regulations were adopted and published in the Official Gazette on 6 June 2002. The regulations currently in force are those which were published in the Official Gazette on 16 December 2003.

Under paragraph 7 of and Appendix I to those regulations, impact studies must be carried out on mining projects where the area of the site concerned is greater than twenty-five hectares. The procedure for preparing a report is launched following a request by the prospective developer to the Ministry of the Environment. An evaluation committee made up of experts and representatives from the relevant entities and from the prospective developer is set up (paragraph 8). This committee specifies how the public inquiry will be conducted (paragraph 9) and subsequently identifies the arrangements for and content of the impact report, which must be drawn up at the latest within one year following the decision on the report's structure (paragraph 10). The ensuing report is made available to the public and examined by the committee, which determines whether it complies with the specifications and may ask for additional reports (paragraph 12). Finally, having regard to all the elements submitted for its consideration, the Ministry of the Environment decides whether or not to issue authorisation. The relevant provincial governor's office informs the public of the Ministry's decision through the appropriate channels. Where their requests for authorisation are refused, prospective developers may submit a new request, provided that all the circumstances which gave rise to the refusal have been removed (paragraph 14). In addition, whatever the Ministry's

decision, an application for judicial review may be made to the administrative courts.

Paragraph 6 of the regulations reads as follows:

> "Where natural persons and legal entities plan to carry out a project that comes within the scope of these regulations, they must draw up an environmental impact report [*Çevresel etki değerlendirme raporu* – 'impact report' or 'IR'], submit it to the relevant authorities and implement the project in accordance with the decision taken ...
>
> Where no decision has been taken to authorise the project submitted for an impact report, or where no decision has been taken confirming that no such authorisation is necessary, no approval, authorisation or building permit may be issued in respect of those projects, and investment in connection with the project cannot take effect."

3. Enforcement of court decisions by the authorities

95. Article 138 § 4 of the Constitution provides:

> "The bodies of executive and legislative power and the authorities must comply with court decisions; they cannot in any circumstances modify court decisions or defer enforcement thereof."

96. The relevant parts of section 28 of the Administrative Procedure Act (Law no. 2577) provide as follows:

> "(1) The authorities shall be obliged to adopt a decision without delay or to take action in accordance with the decisions on the merits or a request for a stay of execution issued by the Supreme Administrative Court, the ordinary or regional administrative courts or the courts dealing with tax disputes. Under no circumstances may the time taken to act exceed thirty days following service of the decision on the authorities.
>
> ...
>
> (3) Where the authorities do not adopt a decision or do not act in accordance with a decision by the Supreme Administrative Court, the ordinary or regional administrative courts or the tax courts, a claim for compensation for pecuniary or non-pecuniary damage may be brought before the Supreme Administrative Court and the relevant courts against the authorities.
>
> (4) In the event of deliberate failure on the part of civil servants to enforce judicial decisions within the thirty days [following the decision], compensation proceedings may be brought both against the authorities and against the civil servant who refuses to enforce the decision in question."

97. Section 52(4) of Law no. 2577 provides:

> "The setting aside of a judgment gives rise *ipso facto* to a stay of execution of the decision."

B. Relevant international texts on the right to a healthy environment

98. In June 1992 the United Nations Conference on Environment and Development, meeting in Rio de Janeiro (Brazil), adopted a Declaration ("the Rio Declaration on Environment and Development", A/CONF.151/26 (Vol. 1)) intended to advance the concept of States' rights and responsibilities with regard to the environment. "Principle 10" of this Declaration provides:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

99. The Aarhus Convention ("Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters", ECE/CEP/43) was adopted on 25 June 1998 by the United Nations Economic Commission for Europe in application of Principle 10 of the Rio Declaration, and came into force on 30 October 2001. To date, thirty countries have ratified it. Turkey has not signed the Aarhus Convention and has not acceded to it.

The Aarhus Convention may be broken down into the following areas:

– Developing public access to information held by the public authorities, in particular by providing for transparent and accessible dissemination of basic information.

– Promoting public participation in decision-making concerning issues with an environmental impact. In particular, provision is made for encouraging public participation from the beginning of the procedure for a proposed development, "when all options are open and effective public participation can take place". Due account is to be taken of the outcome of the public participation in reaching the final decision, which must also be made public.

– Extending conditions for access to the courts in connection with environmental legislation and access to information.

100. On 27 June 2003 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1614 (2003) on environment and human rights. The relevant part of this recommendation states:

> "9. The Assembly recommends that the Governments of member States:
>
> i. ensure appropriate protection of the life, health, family and private life, physical integrity and private property of persons in accordance with Articles 2, 3 and 8 of the

European Convention on Human Rights and by Article 1 of its Additional Protocol, by also taking particular account of the need for environmental protection;

ii. recognise a human right to a healthy, viable and decent environment which includes the objective obligation for states to protect the environment, in national laws, preferably at constitutional level;

iii. safeguard the individual procedural rights to access to information, public participation in decision making and access to justice in environmental matters set out in the Aarhus Convention;

..."

THE LAW

I. PRELIMINARY OBSERVATIONS

101. The Court notes that Mr İzzet Öçkan, one of the applicants, died on 13 January 2004 and that his widow, Mrs Ayşe Öçkan, expressed a wish to continue the proceedings.

102. In view of the circumstances (see paragraph 12 above), the Court considers that Mrs Öçkan may claim to have a legitimate interest in obtaining a ruling that the issuing of the permit to the gold mine near Bergama constituted a breach of the rights guaranteed in Articles 2, 6 § 1, 8 and 13 of the Convention, on which Mr Öçkan had relied before the Convention institutions (see, *mutatis mutandis*, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI).

Consequently, the Court holds that Mrs Öçkan has standing to continue the present proceedings in the applicant's stead.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

103. The applicants alleged that both the national authorities' decision to issue a permit to use a cyanidation operating process in a gold mine and the related decision-making process had given rise to a violation of their rights guaranteed by Article 8 of the Convention, which provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicants

104. The applicants complained, firstly, about the national authorities' decision to issue a permit to operate a gold mine using the cyanidation process. Furthermore, the existence of a risk to their right to life and to respect for their private and family life had been established by judicial decisions. In that regard, they referred to the judgment delivered on 1 June 2001 by the İzmir Administrative Court, which held, in particular, that "the risk connected with the accumulation of heavy elements or cyanide could persist for twenty to fifty years and [was] likely to infringe the right of the area's inhabitants to a healthy environment" (see paragraph 48 above).

105. The applicants also emphasised that several tonnes of explosives had been used in the course of the gold mine's operation, and that this had resulted in considerable noise pollution.

106. In addition, the applicants alleged that the long legal dispute between the authorities and the region's population, triggered by the State authorities' deliberate defiance of final judicial decisions, had made their private lives unbearable.

2. The Government

107. The Government contested, firstly, the applicability of Article 8 to the present case. In their opinion, the risk referred to by the applicants was hypothetical, since it might materialise only in twenty to fifty years. This was not a serious and imminent risk. In addition, the applicants could not point to any specific fact concerning an incident directly caused by the gold mine in question.

108. Furthermore, given that no leak or concentrated build-up of sodium cyanide had occurred in the region and that there was no measurable risk related to the discharge of waste products containing sodium cyanide, the latter's use had had no effect on the applicants' rights. According to the Court's established case-law, Article 8 could only apply if the use of sodium cyanide had had a direct effect on the applicants' right to respect for their private and family life, which was not the case.

109. The gold mine had been carrying out its activities on an experimental basis since April 2001, in accordance with the opinion of the Ministry of the Environment recognising that the company which owned the mine had taken new measures and met its undertakings. The Government argued that the gold mine's operation did not present any danger for the

health of the local population, for the olive trees or for agricultural land. In the light of the foregoing, they argued, as their principal submission, that Article 8 was not applicable in the present case.

110. In the alternative, the Government denied that there had been any violation of the Convention in the present case. They submitted that the authorities had duly observed the court decisions, given that all the permits had been revoked following those decisions and that the Ovacık gold mine had never operated prior to April 2001. In their opinion, the permits issued in 2000 and 2001 had been based on several reports which confirmed that there was no risk. In any event, appeals in relation to those permits were still pending before the courts.

B. The Court's assessment

1. Applicability of Article 8

111. The Court notes, firstly, that the applicants live in Dikili and in the villages of Çamköy and Süleymanlı, localities situated near the Ovacık gold mine, where gold is extracted by sodium cyanide leaching (see paragraph 12 above).

112. Several reports have highlighted the risks posed by the gold mine. On the basis of those reports, the Supreme Administrative Court concluded on 13 May 1997 that the decision to issue a permit had not been compatible with the public interest. It found that, given the gold mine's geographical location and the geological features of the region, the use of sodium cyanide in the mine represented a threat to the environment and the right to life of the neighbouring population, and that the safety measures which the company had undertaken to implement did not suffice to eliminate the risks involved in such an activity (see paragraph 26 above).

113. The Court points out that Article 8 applies to severe environmental pollution which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (see *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, pp. 54-55, § 51).

The same is true where the dangerous effects of an activity to which the individuals concerned are likely to be exposed have been determined as part of an environmental impact assessment procedure in such a way as to establish a sufficiently close link with private and family life for the purposes of Article 8 of the Convention. If this were not the case, the positive obligation on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 would be set at naught.

114. In view of the Supreme Administrative Court's finding in its judgment of 13 May 1997, the Court concludes that Article 8 is applicable.

2. Compliance with Article 8

115. The Court points out that in a case involving State decisions affecting environmental issues there are two aspects to the inquiry which it may carry out. Firstly, the Court may assess the substantive merits of the national authorities' decision to ensure that it is compatible with Article 8. Secondly, it may scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97,§ 99, ECHR 2003-VIII).

(a) The substantive aspect

116. The Court has repeatedly stated that in cases raising environmental issues the State must be allowed a wide margin of appreciation (see *Hatton and Others*, cited above, § 100, and *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1291-93, §§ 74-77).

117. In the instant case, the Court notes that the authorities' decision to issue an operating permit for the Ovacık gold mine was annulled by the Supreme Administrative Court (see paragraph 26 above). After weighing the competing interests in the present case against each other, the latter based its decision on the applicants' effective enjoyment of the right to life and the right to a healthy environment and concluded that the permit did not serve the public interest (ibid.). In view of that conclusion, no other examination of the material aspect of the case with regard to the margin of appreciation generally allowed to the national authorities in this area is necessary. Consequently, it remains for the Court to verify whether, taken as a whole, the decision-making process was conducted in a manner which complied with the procedural guarantees in Article 8.

(b) The procedural aspect

118. The Court reiterates that, according to its settled case-law, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect for the interests of the individual as safeguarded by Article 8 (see, *mutatis mutandis*, *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 55, § 87). It is therefore necessary to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available (see *Hatton and Others*, cited above,

§ 104). However, this does not mean that decisions can only be taken if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.

119. Where a State must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals' rights and to enable them to strike a fair balance between the various conflicting interests at stake (see *Hatton and Others*, cited above, § 128). The importance of public access to the conclusions of such studies and to information which would enable members of the public to assess the danger to which they are exposed is beyond question (see, *mutatis mutandis*, *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p. 228, § 60, and *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1362, § 97). Lastly, the individuals concerned must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process (see, *mutatis mutandis*, *Hatton and Others*, cited above, § 127).

120. In the instant case, the decision to issue a permit to the Ovacık gold mine, taken on 19 October 1994 by the Ministry of the Environment, was preceded by a series of investigations and studies carried out over a long period. An impact report was drawn up in accordance with section 10 of the Environment Act (see paragraph 21 above). On 26 October 1992 a public information meeting was held for the region's inhabitants. During that meeting, the impact study was brought to the public's attention and participants had an opportunity to present their comments (see paragraph 20 above). The applicants and the inhabitants of the region had access to all the relevant documents, including the report in question.

121. When, on 13 May 1997, the Supreme Administrative Court, acting on an application for judicial review, annulled the decision of 19 October 1994, it cited the State's positive obligation concerning the right to life and the right to a healthy environment. Referring to the conclusions of the impact study and the other reports, it held that, due to the gold mine's geographical location and the geological features of the region, the operating permit did not serve the general interest; those studies had outlined the danger of the use of sodium cyanide for the local ecosystem, and human health and safety (see paragraph 26 above).

122. The judgment of 13 May 1997 became enforceable at the latest after being served on 20 October 1997 (see paragraphs 29 and 32 above). However, the Ovacık gold mine was not ordered to close until 27 February 1998, that is, ten months after the delivery of that judgment and four months after it had been served on the authorities (see paragraph 35 above).

123. As to the Government's argument that the authorities had fully complied with judicial decisions after 1 April 1998, it does not stand up to scrutiny. Firstly, the long dispute concerning the lawfulness of the permits issued by various ministries following the Prime Minister's intervention on 1 April 2000 was caused solely by the authorities' refusal to comply with the courts' decisions and with the domestic legislation. In fact, in the light of paragraph 6 of the regulations on impact studies (see paragraph 94 above), those permits could have no legal basis in the absence of a decision, based on an impact report, to issue authorisation. Furthermore, no mention is made of any new decision that would replace the decision set aside by the courts (see paragraph 50 above).

Moreover, this argument by the Government has never been accepted by those domestic courts which have been called upon to rule on the lawfulness of subsequent decisions (see paragraphs 45-79 above).

124. The Court would emphasise that the administrative authorities form one element of a State subject to the rule of law, and that their interests coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see, *mutatis mutandis*, *Hornsby v. Greece,* judgment of 19 March 1997, *Reports* 1997-II, p.511, § 41).

125. This finding appears all the more necessary in that the circumstances of the case clearly demonstrate that, notwithstanding the procedural guarantees afforded by Turkish legislation and the implementation of those guarantees by judicial decisions, the Council of Ministers, by a decision of 29 March 2002 which was not made public, authorised the continuation of production at the gold mine, which had already begun to operate in April 2001 (see paragraph 75 above). In so doing, the authorities deprived the procedural guarantees available to the applicants of any useful effect.

(c) Conclusion

126. The Court finds, therefore, that the respondent State did not fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8 of the Convention.

There has consequently been a violation of that provision.

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

127. The applicants alleged that the authorities' refusal to comply with the administrative courts' decisions had infringed their right to effective judicial protection in the determination of their civil rights. They relied on

Article 6 § 1 of the Convention, the relevant part of which reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

A. Applicability of Article 6 § 1

128. The Government argued that Article 6 § 1 did not apply in the instant case, given that the applicants based their allegations only on a probable and hypothetical risk which, in particular, was not at all imminent. Consequently, the applicants' complaints did not concern "civil rights and obligations" within the meaning of this provision.

129. The applicants argued that Turkish legislation entitled them to request compensation for infringement of their right to a healthy environment. They were also entitled to apply for compensation for failure to enforce a judgment, which they had indeed done (see paragraphs 34 and 38-40 above). Consequently, their economic interests were directly at stake in the proceedings in issue, which therefore clearly fell within the scope of Article 6 § 1.

130. The Court points out that, for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question; tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, among many other examples, *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports* 1997-IV, p. 1357, § 32, and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV).

131. The Court notes, firstly, that the application of 8 November 1994 shows that the applicants opposed the Ministry of the Environment's decision to issue a permit on grounds of the risks which, according to the impact report, the Ovacık gold mine posed for the environment and for the life and health of the neighbouring population, of which they were part (see paragraph 23 above). The right relied on in substance before the administrative courts by the applicants was the right to obtain adequate protection of their physical integrity against the risks entailed by production at the Ovacık gold mine.

132. The Court considers that such a right is recognised in Turkish law, as is clear, in particular, from the right to live in a healthy and balanced environment (Article 56 of the Constitution– see paragraph 90 above) to

which the Supreme Administrative Court specifically referred (see paragraph 26 above). Accordingly, the applicants could arguably maintain that they were entitled under Turkish law to protection against damage to the environment caused by the activities of the mine in question. Without any doubt, there existed a genuine and serious "dispute".

133. As to whether the right in issue was a civil right, the Court notes that the scale of the risk presented by production at the Ovacık gold mine, through the cyanidation leaching process, had been established by the Supreme Administrative Court on the basis of the previous reports. That finding enables the Court to conclude that the applicants' right to protection of their physical integrity was directly at stake. Similarly, in bringing an application for judicial review, the applicants had used the single means available to them for complaining of infringement of their right to live in a healthy and balanced environment and of interference with their lifestyle (see, *mutatis mutandis*, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, §§ 46-47, ECHR 2004-III). At the same time, it is undeniable that, once the Supreme Administrative Court had given its judgment cancelling the permit, any administrative decision taken to circumvent it opened the way to compensation (paragraphs 93 and 96 above). Consequently, the outcome of the proceedings before the administrative courts, taken as a whole, may be considered to relate to the applicants' civil rights.

134. Consequently, Article 6 of the Convention is applicable in the case.

B. Compliance with Article 6 § 1

135. The Court notes that the Supreme Administrative Court's judgment of 13 May 1997 had suspensive effect even before it became final on 1 April 1998 (see paragraph 29 above). However, as the Turkish courts noted (see paragraph 39 above), that decision was not enforced within the prescribed time-limits.

136. As to the resumption of production at the Ovacık gold mine on an experimental basis on 13 April 2001, on the basis of ministerial permits issued as a direct result of the Prime Minister's intervention, it had no legal basis and, as the administrative courts emphasised (see paragraphs 48, 65, 66, 69, 73 and 78 above), was tantamount to circumventing a judicial decision. Such a situation adversely affects the principle of a law-based State, founded on the rule of law and the principle of legal certainty.

137. In the light of the above considerations, the Court considers that the national authorities failed to comply in practice and within a reasonable time with the judgment given by the İzmir Administrative Court on 15 October 1997 and subsequently upheld by the Supreme Administrative Court on 1 April 1998, thus depriving Article 6 § 1 of any useful effect.

138. There has therefore been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 2 AND 13 OF THE CONVENTION

139. The applicants submitted that the administrative authorities' decision to issue a permit authorising a gold mine to use the cyanidation process and these authorities' refusal to comply with the decisions of the administrative courts constituted violations, respectively, of their right to life and their right to an effective remedy. They relied on Articles 2 and 13 of the Convention.

140. The Court notes that these complaints are, in essence, the same as those submitted under Articles 8 and 6 § 1 of the Convention, examined above. Accordingly, it considers that it is not necessary to examine them separately under the other provisions relied on.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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 and costs and expenses

142. The applicants did not claim compensation for either pecuniary damage or for costs and expenses. However, they claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

143. The Government did not comment on this point.

144. The Court considers that the violation of the Convention has undoubtedly caused the applicants a considerable degree of damage. The judicial decision cancelling the award of a permit was not enforced, in violation of the fundamental principles of a State governed by the rule of law. The applicants were thus obliged to tolerate adverse living conditions and to bring several actions against decisions taken by the central authorities in order to ensure that the authorities would comply with that decision. Damage of this sort cannot be precisely calculated. Making its assessment on an equitable basis, the Court awards the applicants EUR 3,000 each.

B. Default interest

145. The Court considers it appropriate that the default interest 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. *Holds* that Mrs Ayşe Öçkan has standing to continue the present proceedings in Mr İzzet Öçkan's place;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that it is unnecessary to examine the complaints under Articles 2 and 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) for non-pecuniary damage plus any tax that may be payable on the above sum, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the claims for just satisfaction.

Done in French, and notified in writing on 10 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President