



Application of pilot-judgment procedure to length of judicial proceedings in Turkey

In today's Chamber judgment in the case [Ümmühan Kaplan v. Turkey](#) (application no. 24240/07), which is not final, the European Court of Human Rights held unanimously that:

There had been **a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy)** of the European Convention on Human Rights.

The case concerned proceedings instituted in 1970 by the applicant's father, since deceased, in relation to some plots of land.

Having applied the "pilot-judgment procedure"¹ in this case, the Court further held that **with regard to all cases raising the same general problem** of length of judicial proceedings:

-Turkey had to put in place, within one year², an effective remedy affording adequate and sufficient redress, as concerned pending applications and those lodged between now and 22 September 2012;

-The following would be adjourned for one year: pending applications not yet communicated to the Turkish Government (2,373 applications as of 31 December 2011) and all those lodged between now and 22 September 2012

-The Court reserved the right to continue to examine under the normal procedure the 330 pending applications already communicated.

Principal facts

The applicant, Ümmühan Kaplan, is a Turkish national who was born in 1945 and lives in Antalya (Turkey). The case concerned proceedings brought by her father in December 1970 before the land tribunal concerning the classification of plots of land in the villages of Çenger and Yağıdibi, which, he argued, should have been registered in his name. Evidence was taken from witnesses and expert examinations and on-site inspections – which were adjourned several times – were carried out. On 31 July 1990 the land tribunal joined another case to that of Ms Kaplan's father because they were linked. That decision was overturned in 1993 on the ground that the applicant's father was involved in administrative proceedings with the Treasury, the village as a legal entity and the

¹ This procedure has been used by the Court in recent years to deal with large groups of identical cases arising out of the same structural problem.

² From the date on which the judgment becomes final. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

forestry authority. Following her father's death on 1 June 1995, Ms Kaplan took the necessary steps to be joined as a civil party to the proceedings in his place. Between 1995 and 2007 the case continued to be examined by the land tribunal and further expert examinations were conducted. The tribunal subsequently adopted various measures with a view to examining the case on the merits (conducting on-site inspections of the plots of land, issuing notice of hearings, appointing experts, etc.). The proceedings are still pending before the land tribunal.

Complaints, procedure and composition of the Court

The applicant complained under Article 6 § 1 (right to a fair hearing within a reasonable time) about the length of the proceedings before the land tribunal and, relying on Article 13 (right to an effective remedy), alleged that there was no court in Turkey before which such a complaint could be made. The application was lodged with the European Court of Human Rights on 23 May 2007.

On 6 December 2011 the Court informed the parties that it considered it appropriate to apply the "pilot-judgment" procedure.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The period to be considered began on 28 January 1987, the date on which Turkey had recognised the right of individual application to the European Court of Human Rights, and continued to this day. The proceedings had therefore already lasted for 25 years across two levels of jurisdiction.

The Court had already found in numerous cases that the length of proceedings in Turkey – in administrative, civil, criminal and commercial cases and before the employment and land tribunals – was excessive. The Court reiterated that States should organise their courts in such a way as to administer justice without delays which might jeopardise its effectiveness and credibility. For several years, there had been repeated violations of Article 6 § 1 in Turkey, amounting to a structural and systemic problem with the legal system. As the Government had not provided any evidence that would lead to a different conclusion in the present case, the Court held that there had been a violation of Article 6 § 1.

Article 13

The Court held that Turkish law did not provide any remedy within the meaning of Article 13 by which Ms Kaplan could have enforced her right to have her case heard within a reasonable time for the purposes of Article 6 § 1. It saw no reason to depart on this point from its case-law as set forth in the [Daneshpayeh v. Turkey](#) judgment of 16.07.2009.

Article 46 (binding force and execution of judgments)

The Court noted that the violation of the applicant's rights arose out of a structural problem in Turkey. As of 31 December 2011, over 2,700 applications stemming from the same issue had been pending before it (of which 2,373 had not been communicated to the Turkish Government and 330 had been communicated). Against that background, the Court decided to apply the pilot-judgment procedure, in view of the growing number of applicants and potential judgments finding a violation.

While reiterating that it was for the State, subject to supervision by the Committee of Ministers of the Council of Europe, to choose how to discharge its obligations under Article 46 of the Convention, the Court referred to its case-law concerning compensatory remedies.

It also drew the Government's attention to the fact that they had already adopted measures aimed at putting an end to a structural or systemic problem concerning displaced Greek Cypriots owning immovable property in the northern part of Cyprus. It further noted with interest the legislative reforms already enacted, in particular the individual appeal to the Constitutional Court due to enter into force on 23 September 2012, as well as the pledge made by the Minister of Justice to remedy this structural problem.

The Court held, with regard to the applications pending before it and those lodged between now and 22 September 2012, that Turkey had to put in place, no later than one year from the date on which the judgment in the present case became final, an effective remedy affording adequate and sufficient redress in cases where judicial proceedings exceeded a reasonable time. The Court further decided to adjourn examination of similar applications not yet communicated to the Turkish Government and those lodged between now and 22 September 2012. Applications already communicated would continue to be examined by the Court under the normal procedure.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicant 15,600 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.