



Court's rejection of compensation claim on unsupported time-limit grounds violated the right to a fair trial

In today's **Chamber** judgment¹ in the case of **Kurşun v. Turkey** (application no. 22677/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the applicant's claims for compensation following an oil explosion which damaged his property. He alleged that the State, in its handling of the situation, had failed to give him a fair trial and had violated his right to property.

The Court found in particular that the Turkish Court of Cassation's ruling that the applicant had submitted his compensation claims after the one-year time limit had expired was unreasonable and unforeseeable. Reiterating the fact that it was not within its remit to interpret domestic legislation, the Court held that the domestic court, with its legally unsupported decision to start the clock on the one-year time limit before the applicant could have been expected to know the party responsible for the damage to his property, had deprived him of the right of access to a court to have his claims for compensation examined.

The Court dismissed his claim that the Government had violated his right to property under Article 1 of Protocol No. 1 as he had not exhausted domestic remedies with respect to his complaint against the State authorities.

Principal facts

The applicant, Mazhar Kurşun, is a Turkish national who was born in 1963 and lives in Batman (Turkey).

On 3 May 2004 a large underground explosion took place in the Toptancılar Sitesi area of Batman, in Turkey. Criminal proceedings against a number of officials from the Tüpraş Batman Oil Refinery were initiated soon after the explosion, but were eventually discontinued in 2012 as prosecution had become time-barred. During the proceedings it was considered that, although Tüpraş was the likely cause of the explosion, there was not sufficient evidence to confirm this.

Following a number of civil claims brought against Tüpraş by other property owners, the Batman Civil Court concluded in July 2006 that the refinery was solely responsible for the leak that had caused the initial explosion. This first public confirmation of the refinery's responsibility was subsequently upheld by the Court of Cassation in January 2007.

On 16 November 2006, Mr Kurşun brought an action for compensation against Tüpraş in the Batman Civil Court. A court-commissioned expert report concluded that the applicant's property had sustained damage equivalent to that caused by a magnitude 9 earthquake. The court held that the applicant's claims had been brought within the one-year time-limit required by the Code of Obligations as it found that the time-limit should apply only from when the victim became aware of

1. 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.

damage to property, on the one hand, and the party responsible for that damage, on the other. The party responsible for the damage had only been confirmed in the judgment of July 2006.

In February 2008, following an appeal by Tüpraş, the Court of Cassation quashed the initial ruling, holding that the time-limit had applied from the date of the explosion. Deferring to this decision when the case returned for its consideration in December 2008, the Batman Civil Court dismissed Mr Kurşun's claims on the grounds that they were time-barred. This ruling was upheld by the Court of Cassation in May 2009. Following his request for the rectification of that court's decision, Mr Kurşun's case was dismissed for a final time in October 2009.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 of the Convention, the applicant complained that he had been denied a fair trial. Specifically, he argued that the dismissal of his compensation claim as out of time was based on an inaccurate interpretation of Turkish law and an erroneous assessment of the facts. He also argued that it had lacked reasoning and contradicted decisions by the Court of Cassation in similar cases resulting from the same explosion.

Relying on Article 1 of Protocol No. 1, the applicant complained that the State authorities had failed to meet their positive obligations with respect to his right to protection of property, both before and after the explosion.

The application was lodged with the European Court of Human Rights on 30 March 2010.

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

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

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

Decision of the Court

The Government argued that the case be dismissed as inadmissible on the grounds that it had been lodged more than six months after the last relevant domestic judicial ruling, the Batman Civil Court's judgment of December 2008. The Court rejected this argument. It observed that, when he had appealed against that ruling in 2009, Mr Kurşun had sought to make use of a remedy whose effectiveness the Court had no reason to doubt.

Article 6 § 1

The Court reiterated its position that the responsibility for interpreting domestic legislation fell mainly to domestic courts. However, it stressed that the Court still had a role to play in verifying the effects of interpretation in terms of their compatibility with the Convention.

The Court concluded that the Turkish Court of Cassation's finding that the one-year time-limit for claiming compensation should be calculated from the day of the explosion was reached in a manner that was neither reasonable nor foreseeable. The respondent State had been unable to provide any legal precedent for that decision. Meanwhile, the applicant had made multiple submissions illustrating his point that the Court of Cassation had made a more lenient interpretation of the

time-limit procedural rule on other occasions, including in similar cases involving claims resulting from the same explosion.

The Court acknowledged that it was beyond its remit to give a robust interpretation of the meaning of “know” as used in the procedural rule in Turkey’s former Code of Obligations. However, it noted that it was in a position to observe that the Court of Cassation’s statement that Mr Kurşun ought to have known who had caused the damage, on the day of the explosion itself, was overly burdensome.

Taking these considerations together, the Court found a violation of the applicant’s right of access to a court under Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1

The applicant also argued that the Government had violated his property rights. It had neither taken the necessary preventative measures to protect his right against the dangerous activity that had led to the explosion, nor provided him with adequate remedies for subsequently asserting that right.

The Court affirmed that the Government had a positive obligation to regulate the kind of dangerous industrial activity undertaken by the Tüpraş Refinery and to put appropriate safeguards in place to protect the right to property. It also had an obligation to provide adequate remedies where this right was violated.

However, the Court shared the Government’s view that criminal proceedings were not called for in the present circumstances and that the applicant had had other effective domestic remedies.

Taking into account the conclusion already reached under Article 6 § 1 of the Convention, the Court found it unnecessary to examine the admissibility or merits of the applicant’s complaints under Article 1 of Protocol No. 1 where they concerned Tüpraş’s responsibility for the explosion and his inability to obtain compensation from them for the related damage.

As for his remaining complaints against the State authorities on account of their alleged failure to comply with their positive obligations to protect his right to property, both before and after the explosion, the Court found that the applicant had failed to explore other avenues for asserting his property rights, some of which the Court deemed more suitable.

The Court thus dismissed Mr Kurşun’s complaint under Article 1 of Protocol No. 1 as inadmissible.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 2,500 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

The judgment is available only in English.

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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.