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

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Attachment measures against the property of three relatives of the managers of İmarbank and of two of their employees: violation of the right to property

The case concerned attachment measures which had been ordered against the property of the applicants (Jasmin Paris Uzan, Renç Emre Uzan, Ayla Uzan-Ashaboğlu, Nimet Hülya Talu and Bilge Doğru) on the grounds that their relatives, or their managers in some cases, were being prosecuted for the misuse of public funds in a case concerning the activities of the bank Türkiye İmar Bankası, which had been controlled since 1984 by the Uzan group and whose banking licence had been withdrawn after it had registered a loss of several billion euros.

In today's **Chamber** judgment[1] in the case of **Uzan and Others v. Turkey** (applications nos. 19620/05, 41487/05, 17613/08 and 19316/08) the European Court of Human Rights held that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights (by a majority) in respect of Jasmin Paris Uzan and Renç Emre Uzan, and (unanimously) in respect of Ayla Uzan-Ashaboğlu, Nimet Hülya Talu and Bilge Doğru.

The Court found in particular that the Turkish authorities had not struck a fair balance between public-interest imperatives and the requirements of protecting the applicants' right to respect for their property.

In its reasoning, the Court noted, among other things, that the period of validity of the impugned restrictions had been almost 10 years in the case of one applicant and more than 12 and 15 years in respect of the others. The Court also noted the automatic, systematic and inflexible nature of those measures, as well as their wide reach (two of the applicants, who were minors at the time, had been deprived of the opportunity of purchasing a wide range of goods, while the other applicants had been prevented from benefiting from their salaries, their private vehicles, etc.). Finally, the Court noted the lack of evidence of the applicants' involvement in any kind of fraudulent activity.

The Court pointed out that interference with the rights set out in Article 1 of Protocol No. 1 was unjustified in the absence of an adversarial hearing complying with the equality of arms principle. In that regard, it noted that the applicants, who had not been parties to the main criminal proceedings, had not benefited from the procedural safeguards in question.

The Court ruled that the question of just satisfaction was not ready for decision, and reserved it.

Principal facts

The applicants Jasmin Paris Uzan, Renç Emre Uzan, Ayla Uzan-Ashaboğlu, Nimet Hülya Talu and Bilge Doğru, are Turkish nationals who were born in 2003, 1999, 1971, 1948, and 1952 respectively. Ayla Uzan-Ashaboğlu lives in San Francisco (USA) and the other applicants live in Istanbul (Turkey).

In July 2003 İmarbank's banking licence was withdrawn as the authorities considered that the bank, which had registered a loss of several billion euros, was no longer in a position to conduct normal business. The administration and oversight of İmarbank were transferred to the Savings Deposit

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.

Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu* - SDIF), and the Commercial Court ordered attachment measures *vis-à-vis* the ownership and compensation rights of the former managers of the bank. Subsequently, further attachment measures were ordered against the property of other persons, including the applicants.

In December 2003, criminal proceedings were brought against the managers and the majority shareholders of the bank on charges of conspiring to commit criminal offences (embezzlement and fraud). Furthermore, the SDIF decided to continue recovering Treasury debts from İmarbank, to a total estimated at 4,284,172,000 euros at the material time.

In January 2004 the SDIF asked the State Prosecutor to commence criminal proceedings for embezzlement and aiding and abetting against a number of natural and legal persons, including the applicants. The prosecutor gave a discontinuance decision. Subsequently, further criminal proceedings were brought against Ms Talu and Ms Doğru, but they were acquitted.

In June 2005 the Istanbul Commercial Court declared İmarbank bankrupt.

As regards the attachment measures imposed on the applicants' property:

- Between 2003 and 2015 attachment measures were imposed on the property of Jasmin Paris Uzan and Renç Emre Uzan, who were the children (minors at the time) of one of the defendants in the main criminal proceedings (C.C. Uzan). In the framework of those proceedings, the domestic courts conferred on these two applicants "status other than that of parties to the proceedings (*dava dışı*)". Such status, which would not appear to be set out in Turkish law, prevented them from appealing, even though they were affected by the outcome of the proceedings.

- Attachment measures were imposed on the property of Ayla Uzan-Ashaboğlu, who was the daughter of the bank's executive director, from 2003 onwards. Those measures were still in force in 2016.

- The property of Nimet Hülya Talu and Bilge Doğru, who had been management auditors at the bank, was the subject of attachment measures ordered from 2003 onwards. Subsequently, those measures were partly lifted, in particular as regards part of their salaries. In 2013 all the attachment measures imposed on Ms Talu's property were lifted. Also in 2013 the measures concerning Ms Doğru were partly lifted. In 2015, however, her real property had still been distrained.

Complaints, procedure and composition of the Court

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicants complained about the maintaining of the attachment measures against their property and the authorities' refusal to lift those measures for several years, even though they had not been found guilty or liable in criminal or civil proceedings. They also alleged that the measures had been illegal, in breach of their right to be presumed innocent, and that they had suffered discriminatory treatment.

The applications were lodged with the European Court of Human Rights on 24 May 2005, 16 November 2005, 4 April 2008 and 15 April 2008.

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

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Işıl **Karakaş** (Turkey),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),

and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1 to the Convention (protection of property)

The interference and legitimate aim

The Court noted that the attachment measures had not been intended to deprive the applicants of their property, but merely to prevent them from using it temporarily, pending the outcome of the criminal proceedings and the recovery of the sums claimed by the SDIF. It also noted that domestic legislation allowed the courts to decide to maintain those measures until such time as all the sums claimed by the SDIF had been recovered, against a background of uncertainty as to the outcome of the criminal proceedings against the persons presumed responsible for the financial losses, on account of those persons' absence. The Court also observed that the measures had been in the public interest of preventing the use of property liable to have been purchased with the proceeds of crime.

Proportionality of the interference

The Court accepted that the imposition of attachment measures could be justified on public-interest grounds where the aim was to prevent fraudulent activities in order to ensure the payment of debts. However, it pointed out that in view of the restrictive nature of those measures they had to be terminated when no longer necessary.

In the present case the Court noted that the problem of the proportionality of the attachment measures had arisen when the applicants had benefited from the discontinuance decision of 21 January 2004. It also noted that the attachment measures had remained in force for at least almost 10 years in the case of each applicant. Moreover, in assessing the severity of the burden placed on the applicants, the Court also considered the following facts relevant:

- The period of validity of the restrictions: almost 10 years for one applicant and over 12 and 15 years in the case of the other applicants.

- The extent of the restrictions in question: Ms and Mr Uzan had been deprived of the opportunity of purchasing a wide range of goods. The other applicants had been deprived, among other things, of the enjoyment of their salaries, their private vehicles and/or their savings.

- The automatic, systematic and inflexible nature of the impugned restrictions, which were not subject to regular individual review, even though the applicants had never been convicted in the framework of the criminal proceedings and the domestic courts had established that the persons in question could not be held responsible for the pecuniary damage sustained by the SDIF.

- The lack of evidence that the applicants might have been involved in any kind of fraudulent activity: they had all benefited from a discontinuance decision in 2004 and had not been involved in the main criminal proceedings. Furthermore, Ms Talu and Ms Doğru had been acquitted in 2008.

The Court also found that the assignment by the Istanbul Assize Court to some of the applicants of "status other than that of parties to the proceedings (*dava dışı*)" had prevented them, and was still preventing them, from taking part in the main criminal proceedings, even though the fate of their rights depended on those proceedings. Neither the domestic courts' decisions nor the Government's observations had explained why such status had been conferred on the applicants.

Finally, the Court stated that the importance of the procedural obligations under Article 1 of Protocol No. 1 should not be overlooked. For example, judicial proceedings concerning the right to respect for property should provide the individual in question with an opportunity to explain his or

her case to the competent authorities in order to effectively contest the measures infringing the rights secured under that provision.

Thus, interference with the rights laid down in Article 1 of Protocol No. 1 could not be justified in the absence of an adversarial hearing complying with the equality of arms principle, which facilitated discussion of facts relevant to the outcome of the proceedings. Consequently, the imposition and automatic maintaining of the attachment measures concerning the applicants' property pursuant to domestic legislation for the sole reason that some of them were related to the bank managers and the others had, at some time, discharged duties at the bank – despite the discontinuance decisions and acquittals on all charges – were incompatible with those principles because they prevented the judge from assessing which instruments were best suited to the specific circumstances of the case and also, more broadly, from balancing the underlying legitimate aim against the rights of those affected by the said sanction. Moreover, the applicants – not having been parties to the main criminal proceedings – had benefited from none of those procedural safeguards.

Consequently, the Court found that the Turkish authorities had failed to strike a "fair balance" between public-interest imperatives and the requirements of the protection of the applicants' right to respect for their property. There had therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

The Court held that the question of just satisfaction was not ready for decision and reserved it. It invited the Government and the applicants to send it their observations on that question within six months of the notification of the present judgment.

Separate opinion

Judge Lemmens expressed a partly dissenting opinion which is annexed to the judgment.

The judgment is available only in French.

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