

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

SECOND SECTION

CASE OF KARAHASANOĞLU v. TURKEY

(Application no. 2458/11)

JUDGMENT

STRASBOURG

15 March 2022

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Karahasanoğlu v. Turkey,

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

Egidijus Kūris, *President,*
Pauliine Koskelo,
Gilberto Felici, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 2458/11) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 August 2010 by a Turkish national, Mr Şükrü Karahasanoğlu, born in 1947 and living in Istanbul ("the applicant") who was represented by Sir E. Eraslan, a lawyer practising in Istanbul;

the decision to give notice of the complaints under Articles 6 § 1 and Article 1 of Protocol No.1 to the Turkish Government ("the Government"), represented by their Agent, Mr Hacı Ali Açıkgül, Head of Department of Human Rights of the Ministry of Justice of the Republic of Turkey, to the European Court of Human Rights, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to dismiss the Government's objection to examination of the application by a Committee;

Having deliberated in private on 22 February 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT-MATTER OF THE CASE

1. The application concerns the suspension of personal liability lawsuits against the applicant pending the outcome of other procedures and proceedings, and the temporary injunctions placed on his assets during this period.

2. The applicant is a former executive and director of Etibank, a formerly public bank. He acted as a general manager between 2 March 1998 to 25 March 1999 following the bank's privatisation.

3. In late 2000 Etibank was transferred to the Savings and Deposit Insurance Fund (Tasarruf Mevduatı Sigorta Fonu – hereinafter "the Fund"), following the failure of measures to improve its financial situation (see *Karahasanoğlu v. Turkey*, nos. 21392/08 and 2 others, §§ 5-25, 16 March 2021 for background information).

4. The Fund brought several personal liability lawsuits against the applicant on various dates (details of those lawsuits which are the subject of the present application are set out in the Appendix) for the losses caused to Etibank as a result of loans and other types of transactions which he had

authorised during his time as executive of the bank. During those proceedings, the applicant's assets were placed under temporary injunction at the Fund's request.

5. In parallel to the proceedings against the applicant, the Fund made several protocols with majority shareholders of Etibank with a view to recovering the Etibank's financial loss. The protocols provided for the sale of the shareholders' media companies by a public tender whereby the proceeds from the sale would be used to repay the debt of those media companies to third parties and the remainder towards the settlement of Etibank's debt. To set out the way in which the proceeds from the sale of the Unit would be distributed to those third-party creditors, the Fund prepared a list in accordance with domestic law indicating the ranking of each creditor (hereinafter "the ranking list").

6. Following the publication of the ranking list in the Official Gazette on 2 December 2008, some creditors of the media companies brought civil and administrative proceedings against the Fund seeking to annul the sale or challenging their place in the ranking list.

7. Around the same time, the Fund requested the domestic courts to stay proceedings against the applicant pending the finalisation of the sale. According to the information available to the Court on the date of the observations of the parties, the impugned proceedings remain in the state of suspension.

8. In his application to the Court, the applicant complained under Article 6 of the Convention about the suspension of the proceedings, and the absence of any rulings in those proceedings in respect of fees of his legal representation. He also complained under Article 1 of Protocol No. 1 to the Convention about the temporary injunctions, which in some cases, lasted over sixteen years.

9. While the present application was pending examination before the Court, and subsequent to the remedy of right of individual appeal before the Constitutional Court becoming available, the applicant lodged an individual appeal before the Constitutional Court complaining under Article 6 of the Convention about the stay of proceedings, and under Article 1 of Protocol No. 1 to the Convention, about the temporary injunctions placed on his assets.

10. In a decision of 18 June 2020, the Constitutional Court declared the applicant's case admissible in respect of those complaints and found a violation only in respect of Article 1 of Protocol No. 1 to the Convention on account of the length of the temporary injunctions, by which time it had been eighteen years. As regards Article 6 of the Convention, it found that the suspension of the proceedings had been lawful and pursued the legitimate aim of recovering loss of public money. The Constitutional Court further considered that the stay of proceedings against the applicant for his personal bankruptcy could not be considered to impose a disproportionate burden on

him. Lastly, the Constitutional Court did not award any compensation because the applicant had failed to make a just satisfaction claim.

11. The applicant informed the Court on 5 March 2021 that the domestic courts, pursuant to the decision of 18 June 2020, had lifted the temporary injunctions on his assets. That being so, he requested the Court to continue its consideration of the case.

THE COURT'S ASSESSMENT

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

12. The Court notes that the applicant did not complain before the Constitutional Court about the absence of a ruling on part of the domestic courts on attorney fees. It therefore follows that this part of the complaint under Article 6 § 1 is inadmissible for non-exhaustion of domestic remedies (see *Karahasanoğlu*, cited above, §§ 123-124).

13. The Court notes that the complaint about the proceedings being stayed for a considerable period time and therefore depriving the applicant for having the dispute against him being determined by a court is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

14. Turning to the merits, the Court reiterates that a stay of execution of a judicial decision for such period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 69, ECHR 1999-V). The Court recalls that in the cases of *Kutić v. Croatia* (no. 48778/99, ECHR 2002-II) and *Multiplex v. Croatia* (no. 58112/00, 10 July 2003) it found a violation of the applicants' right of access to a court under Article 6 § 1 of the Convention in so far as the possibility to have their claim determined by a court was stayed for a long period of time as a result of the intervention of the legislature.

15. The Court considers that with regard to the conduct of the national courts, it might be reasonable for them to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency. This decision must however be proportionate having regard to the special circumstances of the case (see, *mutatis mutandis*, *Kirsten v. Germany*, no. 19124/02, § 43, 15 February 2007 with further references). Given that the proceedings against the applicant are in a state of suspension since 2008 and the fate of those proceedings are entirely dependent on the terms of the Protocol and on the actions of the Fund, the majority shareholders of the bank or third parties, the Court considers that this period of inaction cannot be justified merely by referring to the principle of procedural efficiency. The Court therefore concludes that the long period over which lawsuits were left hanging over the applicant for an indefinite time period precluded the courts

from reaching a conclusive decision and therefore infringed the applicant's right of access to court.

16. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

17. The Government submitted that the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention with respect to the temporary injunctions depriving him of his assets since the domestic courts had acknowledged the alleged breach, whereas they could not have awarded the applicant compensation because the applicant had never made such a claim.

18. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012).

19. As regards the second condition, the Court notes that the Constitutional Court did not order the lifting of temporary injunctions and did not grant applicant damages, the applicant not having made a compensation claim in his individual appeal. That being so, the domestic courts following the Constitutional Court's judgment and the applicant's requests, have lifted the temporary injunctions in the impugned proceedings (see paragraph 10 above). Therefore, in the circumstances of the case and having regard to the fact that the applicant failed to claim damages before the Constitutional Court, the Court considers that the redress provided by the domestic courts was sufficient and adequate, having the effect of rendering the applicant "no longer a victim" of the violation (see for a similar conclusion, *Popovici v. Moldova* (dec.), no. 38178/08, 24 June 2014).

20. In these circumstances, the applicant can no longer claim to be a victim of the alleged breach. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must therefore be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant claimed 1,576,800 euros (EUR) in respect of pecuniary damage consisting of the loss of opportunity to rent his properties during the duration of temporary injunctions, property taxes he had paid and lawyers' fees he had been refused in the domestic proceedings. The applicant claimed non-pecuniary damage fixed at the Court's discretion. Lastly, he claimed

20,835 EUR in respect of costs and expenses incurred before the domestic courts.

22. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant 1,500 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant (see, *mutatis mutandis*, *Kocaman v. Turkey,* no. 77043/12, § 45, 24 November 2020).

23. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and finds that there is no call to award the applicant any amount under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning suspension of proceedings under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros) to be converted into Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable;

   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Egidijus Kūris
Deputy Registrar	President

APPENDIX

PROCEEDINGS CONCERNING ETİBANK

Date and details of the initial proceedings	Docket No. of the Final Proceedings	Interim Injunction	Date and Reasoning of the Final Court Decision	Ruling on Attorney Fees/ Litigation Costs	Appeal Proceedings against the Decision on Merits	Complaints Communicated to the Parties
21/01/2002 2002/118 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 12,419,803,776,963 (equivalent to approximately EUR 10,619,891)	**2008/331 E.**	**30/01/2002:** Dismissal of the request for injunction	**23/02/2009:** Suspension of the proceedings until the list of ranking for the sale of the Unit is finalised pursuant to the protocol of 28 November 2008	No reason to rule on attorney fees since there is no decision on the merits	**15/03/2010:** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of any ruling on attorney fees in favour of the applicant
19/10/2001 2001/2192 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 22,487,732,463,222 (equivalent to approximately EUR 15,213,811)	**2008/333 E.**	**26/10/2001:** Injunction on all assets **27/12/2001:** Dismissal of the request for the lifting of the injunction on the assets **24/10/2002:** Lifting of the injunction on the salary, the pensions and the accounts up to TRL 10,000,000 or USD 5,000 or EUR 5,000 **03/11/2008:** Request for the lifting of the injunction **23/02/2009:** Maintaining of the injunction on the remaining assets **07/05/2014:** Request for the lifting of the injunction **12/03/2015:** Dismissal of the request **27/04/2017:** The Court of Cassation upheld the decision of 12 March 2015	**23/02/2009:** Suspension of the proceedings until the list of ranking for the sale of the Unit is finalised pursuant to the protocol of 28 November 2008	No reason to rule on attorney fees since there is no decision on the merits	**07/10/2010:** The Court of Cassation upheld the judgment dismissing the appeal and the request for rectification and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of any ruling on attorney fees in favour of the applicant **Article 1 of Protocol No. 1:** Maintaining of an injunction on assets for over sixteen years

Date and details of the initial proceedings	Docket No. of the Final Proceedings	Interim Injunction	Date and Reasoning of the Final Court Decision	Ruling on Attorney Fees/ Litigation Costs	Appeal Proceedings against the Decision on Merits	Complaints Communicated to the Parties
19/10/2001 2001/2323 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 33,251,361,435,883 (equivalent to approximately EUR 22,495,818)	**2008/336 E.**	**24 /04/2002:** Dismissal of the request for injunction	**23/02/2009:** Suspension of the proceedings until the list of ranking for the sale of the Unit is finalised pursuant to the protocol of 28 November 2008	No reason to rule on attorney fees since there is no decision on the merits	**15/3/2010:** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of any ruling on attorney fees in favour of the applicant
19/11/2001 2001/2314 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 10,552,728,842,231 (equivalent to approximately EUR 8,139,271)	**2008/332 E.**	**18/02/2002:** Injunction on all assets of the applicant **18/11/2002:** Lifting of the injunction on the salary, the pensions and accounts up to TRL 10,000,000 or USD 5,000 or EUR 5,000 **03/11/2008:** Request for the lifting of the injunction **23/02/2009:** Maintaining of the injunction on the remaining assets **07/05/2014:** Request for the lifting of the injunction **12/03/2015:** Dismissal of the request for both applicants **25/02/2016:** The Court of Cassation upheld the decision of 12 March 2015	**23/02/2009:** Suspension of the proceedings until the list of ranking for the sale of the Unit is finalised pursuant to the protocol of 28 November 2008	No reason to rule on attorney fees since there is no decision on the merits	**18/03/2010:** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of any ruling on attorney fees in favour of the applicants **Article 1 of Protocol No. 1:** Maintaining of an injunction on assets for over thirteen years

Date and details of the initial proceedings	Docket No. of the Final Proceedings	Interim Injunction	Date and Reasoning of the Final Court Decision	Ruling on Attorney Fees/ Litigation Costs	Appeal Proceedings against the Decision on Merits	Complaints Communicated to the Parties
19/10/2001 2001/2191 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 2,060,528,888,889 (equivalent to approximately EUR 1,394,026)	**2008/334 E.**	**26/10/2001:** Injunction on the assets of the second applicant only **27/12/2001:** Dismissal of the request for the lifting of the injunction on the assets **24/10/2002:** Lifting of the injunction on the salary, the pensions and the accounts up to TRL 10,000,000 or USD 5,000 or EUR 5,000 **03/11/2008:** Request for the lifting of the injunction **23/02/2009:** Maintaining of the injunction on the assets of both applicants **07/05/2014:** Request for the lifting of the injunction **12/03/2015:** Dismissal of the request for both applicants	**23/02/2009:** Suspension of the proceedings until the list of ranking for the sale of the Unit is finalised pursuant to the protocol of 28 November 2008	No reason to rule on attorney fees since there is no decision on the merits	**25/03/2010** **(Docket No. 2008/329) and 15/03/2010 (Docket Nos. 2008/334-335)** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of any ruling on attorney fees in favour of the applicants **Article 1 of Protocol No. 1:** Maintaining of an injunction on assets for over fourteen years
19/10/2001 2001/2194 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 9,608,750,000,000 (equivalent to approximately EUR 6,500,687)	**2008/329E.**					

Date and details of the initial proceedings	Docket No. of the Final Proceedings	Interim Injunction	Date and Reasoning of the Final Court Decision	Ruling on Attorney Fees/ Litigation Costs	Appeal Proceedings against the Decision on Merits	Complaints Communicated to the Parties
19/10/2001 2001/2190 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 26,739,995,778,551 (equivalent to approximately EUR 18,090,630)	**2008/335 E.**	**22/02/2016 (Docket Nos. 2008/334-335) and 25/02/2016 (Docket No. 2008/329):** The Court of Cassation upheld the decision of 12 March 2015				
16/03/2001 2001/552 3rd Commercial Court of Istanbul **Amount claimed:** TRL 112,402,403,131,488 (equivalent to approximately EUR126,025,367)	**2009/396 E.** 2nd Commercial Court of Istanbul	**10/04/2001:** Injunction on all assets of both applicants **13/07/2006:** Maintaining of the injunction until the decision becomes final **22/06/2001:** Partial lifting of the injunction on the applicants' salaries and pensions **27/09/2001**: Lifting of the injunction on the applicants' salaries **21/10/2002:** Lifting of the injunction on the second applicant's salary, pensions and accounts up to TRL 10,000,000 or USD 5,000 or EUR 5,000 **21/12/2009:** Maintaining of the injunction on the remaining assets	**21/12/2009:** Suspension of the proceedings pursuant to the terms and conditions of the protocol and section 15 (3) of the Law no. 4389 and section 132 (10) of the Law no. 5411	No reason to rule on attorney fees since there is no decision on the merits	**25/05/2011:** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of any ruling on attorney fees in favour of the applicant **Article 1 of Protocol No. 1:** Maintaining of an injunction on assets for over sixteen years