CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67145/01
by Habibe KIR and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 30 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 19 November 2000,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Habibe Kır, Mr Feriştah Çenesiz, Mr Ali Çenesiz, Mr Hasan Çenesiz and Ms Fatma Çenesiz, are Turkish nationals, who live in Mersin. They are represented before the Court by Mr M. Akdoğan, a lawyer practising in Mersin.

The facts of the case, as submitted by the applicants, may be summarised as follows.

On 17 December 1992 the General Directorate of National Roads and Highways expropriated plots of land belonging to the applicants in Mersin

in order to built a motorway. A committee of experts assessed the value of the plots of land belonging to the applicants and these amounts were paid to them when the expropriation took place.

On 28 December 1994, following the applicants' requests for increased compensation, the Mersin Civil Court of First Instance awarded Habibe Kır, Feriştah Çenesiz, Hasan Çenesiz and Fatma Çenesiz additional compensation plus an interest at the statutory rate, applicable at the date of the court's decision, running from the date of transfer of title-deed of the plots of land. The first-instance court dismissed the case brought on behalf of Ali Çenesiz, holding that the applicants' lawyer failed to submit a valid power of attorney authorising him to represent the applicant.

On 14 September 1998 the Court of Cassation upheld the judgment of the Mersin Civil Court of First Instance.

On 22 June 2000 the General Directorate of National Roads and Highways made payments to the applicants. Details are indicated in the table below:

DATE OF TRANSFER OF TITLE DEED OF THE PROPERTY	**DATE OF FINAL DECISION OF THE COURT OF CASSATION**	**AMOUNT OF ADDITIONAL COMPENSATION (INTERESTS AND LEGAL COSTS ARE NOT INCLUDED) (In Turkish liras)**	**DATE AND AMOUNT OF PAYMENT (INCLUDING STATUTORY INTEREST RATES AND COSTS) (in Turkish liras)**
17.12.1992	14.09.1998	131,387,300	22.06.2000 556,290,000

COMPLAINTS

The applicants complain under Article 1 of Protocol No. 1 that they were paid insufficient interest on additional compensation received following the expropriation of their property. They further allege that the authorities delayed in paying them the relevant amounts.

The applicants contend that the length of the civil proceedings exceeded the “reasonable time” requirement of Article 6 § 1 of the Convention.

THE LAW

The applicants complain that the national authorities delayed in paying additional compensation for expropriation which caused damage as a result of the low interest rate applied to State debts despite the high inflation in Turkey. They further allege that the length of civil proceedings was

excessive. They invoke Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention, the relevant parts of which read as follows:

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 6 § 1 of the Convention

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

a) As to the applicants Habibe Kır, Feriştah Çenesiz, Hasan Çenesiz and Fatma Ekiz, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

b) As to the applicant Ali Çenesiz, the Court notes that the case filed by the applicants' representative for increased compensation on behalf of this applicant was dismissed by the Mersin Civil Court of First Instance on the ground that the lawyer failed to submit a valid power of attorney authorising him to represent the applicant.

The Court reiterates that there is no exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention where a domestic remedy is not admitted because of a procedural mistake (see *Ankerl v. Switzerland*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1565, § 34).

It follows that the complaints brought by Ali Çenesiz must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the complaints of Habibe Kır, Feriştah Çenesiz, Hasan Çenesiz and Fatma Ekiz concerning the national authorities' delay in paying the additional compensation for expropriation, damage sustained by the applicants as a result of the low interest rate applied to it and the length of civil proceedings;

Declares the remainder of the application inadmissible insofar as brought by Ali Çenesiz.

Vincent BERGER
Registrar

Georg RESS
President