CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51963/99
by Lami Daim NAMLI and Others
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 8 March 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr R. TÜRMEN,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 28 June 1999,

Having deliberated, decides as follows:

THE FACTS

The applicants, Lami Daim Namlı, Sabiha Namlı, Turan Namlı, Umit Namlı, Muhterem Tuncay and Munise Tepebaşı, are Turkish nationals, who were born in 1958, 1961, 1949, 1961, 1955 and 1950 respectively and live in Tokat.

A. The circumstances of the case

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

According to the registry records of the Land Registry on 13 April 1955, the applicants' ancestors were the owners of 55158 square metres of land, along with three other persons, in Gelemağrı village of the district of Bafra. This plot of land was registered as plot no.77.

In 1955 the applicants' ancestors together with the other owners of plot no. 77 brought an action before the Bafra Civil Court of First Instance claiming that the plot in question was in reality 632 hectares and 7765 square metres and requested that the surplus of land should be registered under their name.

On 21 April 1955 the Bafra Civil Court of First Instance, taking into consideration an expert report, held that the plot of land should be registered in the names of the applicants' ancestors and the other owners. The decision of the court became final on 22 April 1955.

In 1957 the four plots of land numbered as 49, 50, 51 and 52 in the Koruluk village were registered in the Land Registry with the title deed of six other persons in addition to the applicant's family.

The Koruluk village administration contested the Land Registry's aforementioned decision claiming that the plots of land were meadows and thus, the common property of the village. The Treasury Ministry contested the same decision claiming that surplus part of the land was registered in the Land Registry. The Forest Directorate contested the decision in respect of the plot no. 50 stating that the latter was a forest.

On 4 November 1971 Bafra Cadastre Court identified the plot no. 50 as forest and annulled the title-deed. The court also decided that plot no. 51 and 52 should be registered in the name of the Treasury. In respect of the plot no. 49, the court decided that part of the land should be registered in the names of the applicants and the other title-holders and the rest in the name of the Treasury.

On 9 June 1972 the Court of Cassation upheld the judgment of the court in respect of the plot no. 50 and quashed the judgment in respect of the other plots of land. The court considered that the examination conducted by the first instance court was insufficient and that the court had to decide after taking into consideration whether the plots of land were in nature to be expanded and whether de facto possession of these plots of land was possible.

On 26 December 1975 the Bafra Cadastre Court decided that part of the plot no 49 should be registered in the name of the Treasury and that the rest of the plots of land should be registered in the name of the applicants and the other title-holders.

On 5 April 1977 the Court of Cassation held a hearing and quashed the judgment of the court. The court reasoned that the Treasury Ministry had acquired procedural rights over the land and that the applicants' were granted surplus of land.

On 16 March 1989 the Bafra Cadastre Court decided that a part of the plot no 49 should be registered in the names of the applicants and the other title-holders. In respect of the rest of the plot of land, the court decided that they should be registered in the name of the Treasury.

On 25 September 1990 the Court of Cassation quashed the judgment of the Bafra Cadastre Court. The court reasoned that the Ministry of Treasury had acquired a procedural right over the land and that the applicants' were given surplus of land. The court further stated that according to the witnesses and experts' reports, the land was not farming land and that grazing ones' animals over the land was not such as to confer any ownership over the land.

In 1990 the applicants became parties to the proceedings following the death of the second applicant's husband and the father of the other applicants.

On 28 November 1998 the Bafra Cadaste Court abided by the Court of Cassation's decision and held that a part of the plot no. 49 should be registered in the names of the applicants and the other title-holders and the rest be registered in the name of the Treasury.

On 10 March 1998 the Court of Cassation held a hearing and upheld the judgment of the Bafra Cadastre Court.

On 18 December 1998 the Court of Cassation dismissed the applicants' request for the rectification of the decision of the Court of Cassation. On 4 January 1998 the decision of the Court of Cassation was sent to the Bafra Cadastre Court. According to the Registry of the Bafra Cadaste Court the decision of the Court of Cassation was not notified to the applicants.

B. Relevant domestic law and practice

The applicants have submitted various judgments of the Joint-Civil Chambers of the Court of Cassation concerning the jurisprudence of the Court of Cassation in respect of the procedural acquired right.

According to the jurisprudence of the Court of Cassation, when a judgment is quashed and the first-instance court abides with this ruling, then it must give a decision which is in accordance by the principles laid down by the Court of Cassation. However, the first-instance court can both abide with the judgment of the Court of Cassation and at the same time follow a different reasoning if new jurisprudence or a new law has been adopted in the meantime.

COMPLAINTS

The applicants contend under Article 6 § 1 of the Convention that the length of the civil proceedings contravened the reasonable time requirement under Article 6 § 1 of the Convention.

The applicants submit under Article 1 Protocol No. 1 that they had acquired a procedural right over the land and that this was not taken into consideration by the domestic courts. In this connection they assert that by the judgment of 9 June 1972 and the subsequent judgments of the domestic courts, they had acquired procedural rights which were overlooked by the judgment of the Bafra Cadastre Court of 28 November 1998 and the subsequent judgments.

THE LAW

1. The applicants contend under Article 6 § 1 of the Convention that the length of the civil proceedings contravened the reasonable time requirement under Article 6 § 1 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint 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.

2. The applicants submit under Article 1 Protocol No. 1 that they had acquired procedural rights over the land, which were not taken into consideration by the domestic courts.

The Court observes that the applicants' family never had any lawful title to the impugned lands since the moment these plots of land were registered in their names, different parties brought an action of annulment before the Cadastre Court. Accordingly, they were never safe in their belief that they were the undisputed owners of the lands in question. Nor do the applicants contend otherwise. Therefore, the Court considers that, in the present case, the applicants have not been deprived of their property in breach of Article 1 of Protocol No. 1 and that no issue arises under this heading.

Taking into consideration that the applicants' complaint under Article 1 of Protocol No. 1 essentially arises out of the interpretation of the domestic jurisprudence by the national courts, the Court considers that this complaint should be examined under Article 6 § 1 of the Convention.

The Court observes that the applicants complain about the interpretation given by the domestic courts concerning the established jurisprudence of the Court of Cassation. In this connection, the Court reiterates that according to its established case-law, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may

have infringed rights and freedoms protected by the Convention (see, among other authorities, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The Court further reiterates that the establishment of the facts and the assessment of the evidence are primarily matters for the domestic courts, the Court's supervisory jurisdiction being limited to ensuring the applicants' Convention rights have not been breached. In the instant case, the Court notes that throughout the proceedings, the applicants were fully able to state their case and that there is nothing in the case file to indicate that the taking and the assessment of the evidence was arbitrary or the proceedings were otherwise unfair to raise an issue under Article 6.

Consequently, this part of the applications is *manifestly ill-founded* within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaint concerning the length of the civil proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President