CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32554/96
by Ali Saip SARIASLAN and others
against Turkey

The European Court of Human Rights (First Section) sitting on 23 March 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr L. Ferrari Bravo,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Pantiru,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 16 April 1996 by Ali Saip SARIASLAN and others against Turkey and registered on 7 August 1996 under file no. 32554/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, all farmers, are Turkish citizens who are related to each other and are resident in Adana, Turkey. They are represented by Mr Selim Sarıibrahimoğlu, a practising lawyer in Ankara.

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

The applicants maintain that their families had *de facto* possession (*zilyedlik*) of an area of land in the Karaömerli Village in Adana for more than half a century. They allege that over the years their ascendants had been leasing the land to various villagers and had successfully claimed and defended their rights over the land.

According to the applicants, one of their ancestors in 1936 leased the land to a family in the village (*aşiret*). For reasons which are unknown, the money which was received in rent for the lease of the land was paid directly to the village administration. The ancestor sued the Karaömerli Village Administration for the return of the money, claiming that the latter had unlawfully retained it. However, their ancestor and the village mayor (*Muhtar*) reached a friendly settlement (*sulh*). According to the terms of that settlement, the ancestor agreed that the village mayor could collect and keep the rent due under the lease up until 1941. In return the mayor agreed that, after 1941, "the village people" would respect the ancestor's property (*mülkiyet*) rights over the land. On 25 November 1939, this friendly settlement was registered with the Kadirli Magistrates' Court (*Sulh Hukuk Mahkemesi*) in the form of a judgment.

At various times in the 1940s their ancestors complained to the Ezirli Enforcement Office that some villagers had trespassed on and used the land without their consent. The Ezirli Enforcement Office, with reference to the judgment of the Kadirli Magistrates' Court of 25 November 1939, upheld the complaint.

In 1943 the former mayor of the village was charged with abusing his official powers as a civil servant in connection with the conclusion of the 1939 friendly settlement with one of the applicants' ancestors. In a judgment dated 8 May 1945 the Kadirli Criminal Court acquitted the former mayor of the charge.

In 1946 several villagers requested the Kadirli Civil Court of General Jurisdiction (*Asliye Hukuk Mahkemesi*) to rule that the applicants' ancestors had unlawfully interfered with their use of the land. In its judgment of 4 March 1946 that court held that the consent of the former mayor of the village to the friendly settlement which was registered with the Kadirli Magistrates' Court on 25 November 1939 did not bind the villagers. The court nevertheless found that the plaintiff villagers' claims to be in *de facto* possession (*zilyedlik*) of the land were manifestly ill-founded. On the other hand, the court also accepted that the villagers had built houses and barns on the land and had cultivated fruit gardens in good-faith and with the knowledge of the applicants' ancestors. For that reason, it held that the latter had interfered with the plaintiffs' possessions on the land. It would appear that the applicants' ancestors did not appeal.

In 1950 other villagers resident in the Karaömerli Village challenged the decision of the Kadirli Magistrates' Court of 25 November 1939 before the Kadirli Civil Court of General Jurisdiction (*Asliye Hukuk Mahkemesi*). However, a friendly settlement (*sulh*) was reached between the applicants' ancestors and the plaintiff villagers according to which the former accepted the villagers' property rights with respect to a certain part of the disputed land. This friendly settlement was registered with the Kadirli Civil Court of General Jurisdiction in the form of a judgment dated 20 March 1950. The applicants' ancestors appealed on procedural grounds. The Court of Cassation upheld the registration judgment.

On 15 December 1952, at the request of the applicants' ancestor, the disputed areas of land were registered with the land registry (*Tapu Kütüğü*) of Kadirli. This registration was based on the judgment of the Kadirli Magistrates' Court of 25 November 1939.

In 1953 and twice in 1955 some villagers attempted to use the land without the consent of the applicants' ancestors. The latter complained to the Office of the Kadirli County Governor under Law No. 5971 which protects *de facto* possessors of immovable property against third party interferences. The Governor ordered the villagers to leave the land with the exception of that part of the land which they used as meadowland (*mera*).

At some stage, certain villagers together with the Karaömerli Village Administration requested the Kadirli Civil Court of General Jurisdiction (*Asliye Hukuk Mahkemesi*) to annul the title deed to the land which had been registered by the applicants' ancestor with the land registry of Kadirli in December 1952. On 31 May 1956 the court concluded that the mayor was not entitled to enter into a friendly settlement on behalf of the village in the absence of a decision of the Board of Aldermen (*İhtiyar Heyeti*). The court nevertheless ruled that the plaintiffs failed to provide sufficient evidence to show that the disputed land was meadowland and as such the property of the Village. The plaintiff village and the villagers appealed. The applicants have not provided a copy of the decision of the Court of Cassation.

Following an official cadastre measurement (*tapulama tesbiti*) dated 20 June 1959, the Kadirli Cadastre Administration (*Kadastro Müdürlüğü*) identified the disputed land as "village heritage" and classified it as meadowland, which was to be registered as the property of the village.

On an unknown date the applicants challenged the decision of the Kadirli Cadastre Administration before the Kadirli Cadastre Court. The court held on 4 April 1977 that the applicants had to lodge their complaint with the Objections Commission (*İtiraz Komisyonu*) of the Title Deeds Directorate (*Tapulama Müdürlüğü*) and for that reason the file was transferred to the latter authority.

On 9 April 1991 the Objections Department of the Kadirli Title Deeds Administration (*Tapulama Müdürlüğü*) rejected the applicants' complaints.

On 28 June 1993 and 20 September 1993, the applicants challenged the decision of the 9 April 1991 before the Kadirli Cadastre Court. The respondents were the Karaömerli Village (legal entity) represented by its mayor (*muhtar*) and the Municipality (*Belediye Başkanlığı*) of Kadirli-Sumbaş District. The applicants requested that the administrative

classification be annulled and their former registration as owners in the land registry (*tapu kütüğü*) be reconfirmed. The State Treasury of Kadirli (*Kadirli Maliye Hazinesi*) also challenged the decision before the same court, claiming that certain lots which were registered as the property of Kadirli village were in fact the property of the Treasury.

In support of their claims, the applicants referred to the events surrounding the land since the 1930s. They argued that their property rights as the undisputed owners of the land had been determined and affirmed by the 1939 court decision and that no other court could alter that decision.

The Kadirli Cadastre Court heard all the concerned parties as well as witnesses. The court commissioned the preparation of expert reports on the disputed land and also inspected the site.

On 29 December 1994 the Kadirli Cadastre Court concluded that the classification of the land as meadowland by the Cadastre Administration and the registration of the Karaömerli Village as the owner was lawful. The court also ruled that certain parts of the disputed land were the property of the State Treasury of Kadirli. In its reasoning the court held that the judgment of the Kadirli Magistrates' Court of 25 November 1939 only pertained to a dispute over receivables between two parties (one of the applicants' ancestors and the village) and was only intended to register the friendly settlement reached. According to the court, the 1939 judgment was neither a determination of ownership of the land nor a legal basis for registering the applicants' title to it in the land register in 1952.

The applicants appealed. They complained that the trial court did not investigate the case sufficiently. They also claimed that the court could not give a judgment which was in contradiction to the judgment of the Kadirli Magistrate's Court of 25 November 1939.

On 20 June 1995 the 17th Chamber of the Court of Cassation for Civil Law Matters upheld the judgment of the Kadirli Cadastre Court. It ruled that the lower court had investigated the case sufficiently and evaluated the evidence in accordance with the law. It concluded that the 1952 registration of the applicants as owners in the land registry was groundless since it was not based on a judgment validating title to the land (*tescil ilamı*). According to the Chamber, the 1939 judgment of the Kadirli Magistrate Court did not affect the rights of the State Treasury of the Kadirli village since it was not a party to the friendly settlement. It added that the meadowland was public property and *bona fide* possessors thereof could not acquire property rights with the passage of time. The Chamber furthermore found that in any event the land was never in the undisputed and uninterrupted possession of the applicants for more that twenty years. The Chamber nevertheless stated that it was not the first instance court's task to determine the true owners of the lots. The trial court should have confined itself to ordering that the classification of the land as meadowland be registered as such in the relevant register. The Chamber corrected the corresponding parts of the trial court's judgment.

The applicants asked for the correction (*karar düzeltme*) of the Court of Cassation judgment. On 19 October 1995 the 17th Chamber of the Court of Cassation of Civil Law Matters rejected their request.

COMPLAINTS

The applicants invoke Article 6 of the Convention. They complain that the Kadirli Cadastre Court reached its decision without having regard to the original court and administrative decisions pertaining to the disputed land. They maintain that they had made these available for inspection but that the court never referred to them during its investigation into the question of ownership. They also disputed the objectivity of the expert witnesses relied on by the court. They further allege that the court did not evaluate the evidence properly and contended that the inspection of the site had not been carried out diligently. They maintained in addition that the impugned judgment contradicted in particular the judgment of the Kadirli Magistrates' Court of 25 November 1939 which had clearly affirmed their rights to the land. In their submission the judgment of the Kadirli Cadastre Court breached their right to legal security (*hukuki güvenlik*) and amounted to an interference with their acquired rights to the land (*kazanılmış haklar*).

The applicants also complain that the impugned judgment is a violation of their property rights. They maintain that the effect of that judgment is to deprive them of the land which belonged to them for more that 50 years without payment of compensation.

THE LAW

1. The applicants maintain that they were denied a fair trial before the Kadirli Cadastre Court, in breach of Article 6 § 1 of the Convention, which provides as relevant:

"In the determination of his civil rights ... everyone is entitled to a fair ... hearing ... ."

The applicants contended that the Kadirli Cadastre Court failed to take due account of the decision reached by the Kadirli Magistrates' Court of 25 November 1939. In their opinion that decision formed the legal basis on which their claim to ownership of the land rested, a claim which, moreover, they had successfully asserted over the years. Furthermore, the court had not carried out a proper and sufficient inquiry into their claim and had wrongly evaluated the evidence. They criticised the court's reliance on expert witnesses who were resident in Karaömerli Village. In their view this fact must call into question the objectivity of these witnesses' conclusions and hence the fairness of the proceedings.

The Court notes at the outset that it is not its function to deal with errors of fact or law allegedly committed by the Kadirli Cadastre Court unless and in so far as that court has infringed the applicants' rights and freedoms guaranteed by the Convention including their right to a fair procedure under Article 6 of the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *mutatis mutandis* the Garcia Ruiz v. Spain judgment of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, p. ..., § 28).

Against that background, the Court observes that the applicants had the benefit of an adversarial procedure before the Kadirli Cadastre Court. They were legally represented throughout the proceedings and were able argue their claim to ownership of the land and call

witnesses in support of their case. While they have maintained that the domestic court failed to have regard to the original decision of the Kadirli Magistrates' Court dating back to 25 November 1939, it would nevertheless appear that the court was fully apprised of the importance which the applicants attached to that decision and to the fact that they had registered their title as owners of the land on 15 December 1952 on the strength of that judgment. Indeed, the Kadirli Cadastre Court specifically rejected the applicants' contention that the decision of 25 November 1939 was proof of their rights with respect to the land. Moreover, the factual and legal reasons for the first-instance decision rejecting their claim were set out at length. On appeal, the Court of Cassation confirmed that the applicants' entry in the land register in 1952 was worthless since it was not supported by a judgment validating title. In these circumstances it cannot be contended that the domestic court had overlooked relevant arguments or had failed to have regard to the historical background to the dispute.

While the applicants have impugned the objectivity of the findings of certain of the expert witnesses used in the course of the proceedings, they have not substantiated the impact which this may have had on the outcome of the case. They had the opportunity to have their own witnesses examined and to discredit the findings of the court-appointed witnesses as well as their opponents' witnesses. In any event, the Court of Cassation found that the Kadirli Cadastre Court's handling of the evidential issues and its overall inquiry into the factual and legal issues were not open to criticism. For its part the Court considers that the applicants have not adduced any evidence which would lead it to conclude that they were placed at a disadvantage with respect to their opponents or that the domestic court did not ensure a fair balance between the different parties throughout the proceedings which, it is to be recalled, were not of a criminal nature (see *mutatis mutandis* the Dombo Beheer B.V. v. the Netherlands judgment of 27 October 1993, Series A, no. 274, p. 19, § 33).

Having regard to the above considerations, the Court concludes that the applicants' complaint must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicants maintained that the judgment of the Kadirli Cadastre Court, by confirming the decision that the land was to be classified as meadowland and registered as the property of the village, amounted to an interference with their property rights. Article 1 of Protocol No. 1, which is relevant to this complaint, provides:

> "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."

The Court observes that the Kadirli Cadastre Court specifically found that the applicants never had any lawful title to the land. Although the Court of Cassation ruled that the lower court did not have to pronounce on the issue of who were the true owners of the

land, it too accepted that the applicants had no lawful entitlement to the land. In these circumstances the Court finds that the authorities' decision to classify the land as meadowland and the decision of the domestic courts to uphold that classification cannot be said to be an interference with the applicants' property rights with respect to the land: they had none to assert. It would also observe that the applicants were never safe in their belief that they were the undisputed owners of the land since they had to fend off legal challenges to their title on several occasions. The applicants' complaint under this head must be considered inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President