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

SECOND SECTION

DECISION

Application no. 13567/09
Cem Cengiz UZAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 21 November 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 February 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Cem Cengiz Uzan, is a Turkish national, who was born in 1960 and lives in Istanbul. He was represented before the Court by Ms E.M. Bollecker, a lawyer practising in Strasbourg.

A. The circumstances of the case

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

3. The applicant was one of the main shareholders of Türkiye İmar Bankası T.A.Ş. (hereinafter "İmarbank") and Adabank A.Ş., two banks owned by the Uzan Group at the time of the events.

4. By a decision dated 3 July 2003, the Banking Regulation and Supervision Board *(Bankalar Düzenleme ve Denetleme Kurulu* - hereinafter "the Board") revoked İmarbank's licence to conduct banking activities pursuant to section 14 § 3 of the Banking Activities Act (Law no. 4389). It also decided to transfer the bank's management and control to the Savings

Deposit Insurance Fund (*Tassarruf Mevduatı Sigorta Fonu* - hereinafter "the Fund").

5. On 25 July 2003 the Board adopted a decision with regard to Adabank pursuant to section 14 § 1 of Law no. 4389 and dismissed all members of the board of directors except for two, whom it had appointed by a previous decision. It further appointed new members to the board and a new general director.

6. On the same day, the Banking Regulation and Supervision Agency (*Bankalar Düzenleme ve Denetleme Kurumu* – hereinafter "the Agency") issued a press release, indicating that the Board's decision was taken in order to supervise and inspect the developments that may occur in Adabank as a result of its affiliation with İmarbank.

7. Subsequently, the applicant brought proceedings against the Agency, requesting the stay of execution and annulment of the Board's decision. He claimed that the Board's decision to apply section 14 § 1 of Law no. 4389 in the case of Adabank was unlawful given that the bank had sufficient assets as supported by the auditors' reports. In that connection, he argued that the dismissal of the board members, a measure adopted as a precaution, had substantially deteriorated the bank's financial situation, as most of the creditors withdrew their money, assuming that the bank had been taken over by the State.

8. On 30 March 2004 the Supreme Administrative Court rejected the applicant's request for the stay of execution. The court indicated that, except for a brief period in 2000, Adabank had been under the supervision of the State authorities since 1994. It held that the conditions for the application of section 14 § 1 of Law no. 4389 had been fulfilled, as despite the authorities' warnings, particularly with regard to the interest rates applied, the money kept in foreign banks and the transactions from offshore banks, the bank's board of directors had failed to take the required measures.

9. On 21 October 2004 the Joint Administrative Chambers of the Supreme Administrative Court rejected the applicant's objection to that decision, stating that the stay of execution of a decision was possible only on the condition that the impugned administrative act was unlawful and if its execution would cause irreparable damage. The high court considered that those conditions were not present in the applicant's case.

10. On 29 November 2005 the Supreme Administrative Court dismissed the case. Reiterating its previous findings with regard to the stay of execution of the Board's decision and taking into account the fact that the dismissed board members were the same people who formed the board of İmarbank, the court held that the impugned measure needed to be taken in order to ensure Adabank's management in line with the principles and customary practices of banking, and to remove the conditions which could jeopardise the secure operation of the bank.

11. On 21 March 2007, after having reiterated the findings of the first instance court, the Joint Administrative Chambers of the Supreme Administrative Court upheld the judgment.

12. On 26 June 2008 the high court rejected the applicant's request for rectification. That final decision was served on the applicant on 21 August 2008.

13. In the meantime, by a letter dated 4 January 2008, the Fund informed the applicant that it had taken over the control and management of Adabank pursuant to the recent Banking Activities Act (Law no. 5411).

14. Subsequently, the applicant brought administrative proceedings for the stay of execution and annulment of the Fund's decision.

15. On 10 September 2008 the Fund held an auction and sold the bank to the highest bidder.

B. Relevant domestic law

16. The relevant paragraphs of section 14 of the Banking Activities Act (Law no. 4389) read:

> "1. Without prejudice to the Agency's right to institute legal proceedings against liable persons, if the results of supervision reveal any transactions that are contrary to this Act or to decisions taken and legislation introduced under this Act or to the principles and customary practices of banking, and which could jeopardise the secure operation of the bank in question, the Agency shall warn the bank to correct the transactions in question within a period of time specified by it and to take such measures as are necessary to ensure that similar transactions are not allowed in the future. The bank must, within the periods specified, take the measures required by the Agency and notify it of the consequences of the actions it has taken. In the event that the required measures are not taken or that transactions jeopardising the secure operation of the bank are repeated, the Board shall be authorised, depending on the nature and significance of the transactions in question, to take and implement all such measures as are necessary for the secure operation of the bank and for the protection of depositors, including but not limited to the following:
>
> (a) to appoint new members to the Board by dismissing or replacing all or some of the members of the Board of Directors or by increasing the number of seats thereon..."

COMPLAINTS

17. The applicant complained under Article 6 of the Convention about the length of the administrative proceedings.

18. Relying on Article 6 of the Convention, he further claimed that both the Supreme Administrative Court and the Joint Administrative Chambers of the Supreme Administrative Court had failed to adequately state the reasons for their decisions.

19. The applicant claimed under Article 1 of Protocol No. 1 to the Convention that the State's dismissal of Adabank's board members had substantially decreased the value of his shares. He claimed that the decision was unlawful, in that it had been taken merely because of the bank's connection with İmarbank, without the conditions set forth by section 14 § 1 of the Banking Activities Act (Law no. 4389) having been satisfied. The applicant further maintained that as a result of the replacement of the board members, the bank's management had been *de facto* transferred to the Fund, which rendered his rights as a main shareholder ineffective and had led to the Fund's takeover and sale of the bank.

THE LAW

A. Complaint under Article 6 of the Convention with regard to the length of the proceedings

20. The applicant complained under Article 6 of the Convention that the administrative proceedings had lasted for an unreasonably long time.

21. The Court observes that a new domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013), the Court declared a new application inadmissible, finding that the Compensation Commission established by Law no. 6384 of 19 January 2013 constituted a remedy which needed to be exhausted. In so doing, the Court considered in particular that this new remedy was *a priori* accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

22. Consequently, the Court reiterates its conclusion in the case of *Turgut and Others* (cited above) and finds that this complaint is inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Complaint under Article 6 of the Convention with regard to the alleged lack of reasoning

23. The applicant alleged under Article 6 of the Convention that the domestic courts had failed to indicate the reasons for their decisions. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to

the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I).

24. In the present case, the Court notes that, with regard to both its decision on the stay of execution and subsequent judgment dismissing the applicant's case for the annulment of the Board's decision, the Supreme Administrative Court stated the reasons leading it to its conclusions in detail, addressing the arguments raised by the applicant in so far as it deemed relevant (see paragraphs 8 and 10 above). Moreover, with regard to the decisions of the Joint Administrative Chambers of the Supreme Administrative Court, the Court observes that the proceedings cannot be deemed unfair simply on the ground that the higher court endorsed the first-instance decision without stating any additional reasons, specifically where the court of first instance had set out its reasoning at length.

25. Consequently, the Court holds that the requirement for the domestic courts to adequately state reasons for their decisions was satisfied in the particular circumstances of the instant case. The complaint is therefore inadmissible for being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 1 of Protocol No. 1 to the Convention

26. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complained that the dismissal and replacement of Adabank's board of directors on the basis of the bank's connection with İmarbank was unlawful, in that section 14 § 1 of Law no. 4389 did not foresee such a condition for the measures taken. He argued that his rights as a main shareholder had become ineffective by that administrative decision.

27. At the time he lodged the present application with the Court, the applicant was one of the main shareholders of Adabank. In that connection, the Court reiterates that a share in a company is a complex object. It certifies that the holder possesses a share in a company together with the corresponding rights. This encompasses the right to a share to the company's assets in the event of its being wound up, but other unconditioned rights, especially voting rights and the right to influence the company's conduct. The Court further notes that the shares held by the applicant had an economic value and thus constituted "possessions" (see *Olczak v. Poland* (dec.), no. 30417/96, § 60, ECHR 2002-X (extracts)).

28. The Court observes that, unlike the cases where State authorities transferred the banks' control and management to the Fund pursuant to section 14 §§ 3 and 4 of the Banking Activities Act (see *Reisner v. Turkey*,

no. 46815/09, 21 July 2015, and *Yaşar Holding A.Ş. v. Turkey*, no. 48642/07, 4 April 2017), the present case solely concerns the replacement of the bank's board of directors with new members appointed by the State, which, in itself, did not cause prejudice to the applicant's status as a main shareholder. However, as a result of the administrative decision, the applicant could not effectively exercise certain rights related to his shares since he was no longer involved in the bank's decision-making mechanism. Accordingly, this provision is applicable to the circumstances of the present case and there was an interference with the applicant's right to peaceful enjoyment of his property.

29. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest.

30. The Court observes that the interference at issue could not be considered as deprivation within the meaning of the second sentence as the applicant still held his shares following the replacement of the bank's board. It considers that the measure complained of was a step leading to deprivation of possessions, that is, the subsequent transfer of the bank to the Fund, and did not fall within the ambit of the second paragraph either. It must accordingly be examined under the first sentence of the first paragraph. For the purposes of that provision, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 62-65 and 69, Series A no. 52).

31. Turning to the facts of the present case, the Court observes that the background to the interference complained of was the irregularities in the management of Adabank, which had a board of directors comprising the same persons who also formed the board of İmarbank, a bank previously transferred to the Fund for its failure to remedy the deficiencies in its control and management. Moreover, as pointed out by the Supreme Administrative Court, Adabank had been under the supervision of the State authorities since 1994 and its management had failed to take the required measures following the warnings made by these authorities; in particular, with regard to its interest policy, the substantial amount of money deposited with foreign banks and the transactions from offshore banks.

32. The Court notes that in 2008, following the imposition of the impugned measure and during the final stages of the domestic proceedings at issue, the Fund took over the control and management of the bank and

subsequently sold it to another company. The domestic proceedings brought by the applicant with regard to the bank's transfer to the Fund were still pending at the time of the present application. The applicant clearly indicated that the present application concerned the replacement of the bank's board members and did not provide the Court with information concerning the developments in that latter set of proceedings. Accordingly, the Court does not consider it necessary to make an assessment with regard to Adabank's transfer to the Fund.

33. In the light of the foregoing and taking account of the wide margin of appreciation enjoyed by the national authorities, the Court finds that the replacement of Adabank's board of directors by a decision of the Banking Regulation and Supervision Board was undeniably intended to protect the interests of the bank's depositors, and to remove the conditions which could jeopardise the secure operation of the bank. This aim was clearly within the ambit of section 14 § 1 of the Banking Activities Act and compatible with the notion of public interest. The Court cannot find that in taking the measure complained of the national authorities upset the fair balance between the demands of the general interest of the community and the requirements of the protection of the applicant's property rights by imposing on the applicant an individual and excessive burden (see, *mutatis mutandis*, *Olczak*, cited above).

34. It holds accordingly that this complaint is also inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 December 2017.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President