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

SECOND SECTION

DECISION

Application no. 44281/18
Sebahat YARAŞIR and Others
against Türkiye

The European Court of Human Rights (Second Section), sitting on 18 October 2022 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Saadet Yüksel, *judges,*

and Hasan Bakırcı, *Section Registrar.*

Having regard to the above application lodged on 4 September 2018;

the decision to give notice to the Turkish Government ("the Government") of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

Having deliberated, decides as follows:

INTRODUCTION

1. The application concerns the Bakırtepe gold mine in Sivas and the applicants' attempts to set aside the environmental impact assessment ("EIA") approval decision in respect of it.

THE FACTS

2. The applicants, whose details are set out in the Appendix, were represented by Mr M. Horuş, a lawyer practising in Ankara.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

A. EIA report and the first set of administrative proceedings

5. On 13 March 2013 the Ministry of Environment and Forestry ("the Ministry") issued a private developer, Demir Export A.Ş., ("the developer"), with a decision approving the EIA report in respect of the Bakırtepe mine for the extraction of gold using cyanide leaching.

6. The applicants, together with various professional bodies, cultural associations and a union of mining workers, made an application to the Sivas Administrative Court for the Ministry's decision to be set aside. They argued, *inter alia*, that the EIA report had not discussed at all the effects of the mine development and its operation on livestock herding, agriculture and apiculture, on which the local population relied. They also submitted that the report did not contain any findings on the immediate and future impact of the gold mine operation on water resources. They expressed concerns that the water envisaged to be used for the operation of the mine would lead to water scarcity and the contamination of current water resources for the population. They further complained that the public consultation process had not been in accordance with domestic regulations. Lastly, they submitted that the Bakırtepe region was considered sacred for the Alevi faith.

7. The Sivas Administrative Court delivered an interim decision suspending the operation of the mining activities until it gave a decision on the merits, and appointed a panel of five experts with a view to determining whether the impugned report adequately addressed the technical aspects required by the relevant EIA regulations, and the effects of the intended mining operations on the environment.

8. In a report of 3 March 2014, the experts assessed the adequacy of the EIA report from several aspects, specifically, ore enrichment and production processes; geology of the area, including geological and natural risks; hydrogeological sources including ground and surface water; other environmental factors, including cultural assets and public participation; and lastly meadows, flora and fauna. It appears that the panel of experts could not reach a unanimous opinion on all aspects of their evaluations. Accordingly, the majority held that the project was not against the public interest provided that certain technical aspects were supplemented and rectified in the report and all the precautionary measures mentioned therein were fully complied with. Concerning the issue of public participation, the experts noted that a public information meeting had been organised in accordance with the relevant regulations but locals had protested and left the meeting. For this reason, the EIA report did not contain a section setting out the public's

concerns and other feedback in respect of the project nor a section regarding the cultural assets in, or within the vicinity of, the project area. During the on-site inspection, the experts had noticed a barrow (the Molladere barrow) next to the concession area and they observed that the locals considered the site of Bakırtepe to be sacred and performed various religious rituals at the site. The experts went on to add that both the Bakırtepe site and the barrow were within the concession area and for this reason it was necessary that the EIA reflect the opinions of the local population.

9. The experts further noted that in the preparation of the EIA report, the flora and fauna of the area had been assessed over the course of six days, namely three days in the month of June and three days in the month of September, during which period it had not been possible to observe the variety in the plants, as a study of this kind would normally take two years to discover all of the species native to the area. In addition, the experts found the geological conclusions and references made in the EIA report to be very inadequate, noting that no studies had been done as to precautions to be taken with respect to natural risks, such as earthquakes, landslides and erosion that were likely to occur in the hilly parts of the project area. The EIA report also lacked an analysis with respect to the flow and discharge direction of the groundwater resources, and the appropriate calculations with respect to the quantity of water flow in rainy months. The experts considered that an in-depth analysis of those issues was necessary for planning for the consequences of the dewatering process on the groundwater resources. With respect to the question of whether the water resources of the communities adjacent to the project area would be negatively affected (such as contamination or water shortages), the experts considered that they would not be.

10. Furthermore, the existence of juniper trees in the area had been ignored, and the EIA report contained no assessment as to their fate nor concerning the fact that some of the area in the project had the characteristics enabling it to develop into a small forest in the next twenty to thirty years. The experts noted inconsistencies in the report which, in one part, stated that there were no trees in the concession area, whereas in another part mentioned the necessity of cutting all the trees down. The EIA report had also described the open-pit mine area to amount to 47 hectares, whereas, the area where the earth stripped from those 47 hectares, transported by trucks and deposited as a mound for the duration of the mine (which was a minimum of five years) was described as five hectares. The experts considered that the claim in the EIA report that the earth, its flora and its fauna were to be preserved for future use revealed a contradiction in the light of those figures because earth stored in such conditions would not keep its vitality and most life in it would be destroyed. The experts further observed that the developer had made no plans concerning how it would go about the replanting and restoration of the project area after the closure of the mine. In that respect, the EIA report did not

contain the names of the plants that would be replanted. The experts also found fault with the claim in the EIA report that five per cent of the hydrogen cyanide used in the mine would dissipate into the atmosphere, and that its concentration would rapidly dissolve through the wind and other atmospheric events. They stated that five per cent was not a negligible amount and stressed that whatever the cost, the developer should be required to implement filtering technology to avoid the release of five per cent of the hydrogen cyanide into the atmosphere and not just rely on unreliable wind movements. The experts further recommended that cyanide detectors and air quality detectors be set up in villages close to the mining operations, as well as a system whereby villagers could be alerted in the event of pollutants reaching unhealthy levels, and that villagers be provided with gas masks for use in the event of an emergency. Lastly, since there were already other mining activities in the region, the ecosystem was under threat, and even if the shortcomings identified in their report were rectified by the developer, the experts expressed a negative view of the developer being given a licence to operate, on account of the effects on the flora and fauna. One of the two experts in the minority expressed the view that the EIA report was not adequate and that there was no public interest in the development of the mine, whereas the other expert expressed a diametrically opposite view.

11. On 28 November 2014 the Sivas Administrative Court, after summarising the main points in the expert report, set aside the Ministry's decision approving the EIA report, on the basis of the majority opinion in the expert report. It held that although the project was in the public interest with regard to the economic development of the local and national economy, and the EIA report had adequately addressed the technical aspects *vis-à-vis* the mining operation itself, it had not contained a scientific assessment of the effects of the development and operation of the mine on flora and fauna, geology, and surface and groundwater resources, and as the project now stood, its effects on the environment were not within the acceptable levels provided for by law and science. Concerning the issue of public participation, the court found that the opinions of the public during the consultation process had not been reflected in the EIA report as a result of the participants leaving the meeting held for that purpose, but that otherwise the requirement to hold a public meeting had been carried out in accordance with the law.

12. The Sivas Administrative Court's decision became final on 20 April 2015 following unsuccessful appeals to the Supreme Administrative Court.

B. The revision of the EIA report and the second set of administrative proceedings

13. Before the Sivas Administrative Court delivered its decision in the first set of proceedings, but after the expert report of 3 March 2014 was delivered, the developer revised parts of its original EIA report and submitted

it to the Ministry for approval on 10 August 2014. The Minister issued a decision on 31 December 2014, approving the revised EIA report in the context of the fast-track procedure provided for in Circular no. 2009/7; that is to say without starting the EIA process anew and without conducting a public meeting (see paragraphs 42 and 43 below).

14. The applicants Ali Mermer, Hüsne Gölbaşı and Hüsnü Koçyıldız, together with various professional bodies and cultural associations, made an application to the Sivas Administrative Court for the Ministry's decision of 31 December 2014 to be set aside, arguing, *inter alia*, that the previous decision of the Sivas Administrative Court of 28 November 2014 had not been executed, the opinion of the public had been ignored and the sacred site of Bakirtepe would be in danger if the project went ahead. At the same time, a separate action for the quashing of Circular no. 2009/7 was brought before the administrative courts by several professional bodies and two local villages in their capacity as legal entities. The applicants were not parties to the latter proceedings.

1. Administrative proceedings for the setting aside of the Ministry's decision of 31 December 2014

15. The Sivas Administrative Court made an interim order suspending the impugned decision of the Ministry until the submission of the latter's defence. The court also asked the defendant administration what actions had been taken after the court's decision of 24 November 2014 to eliminate the deficiencies it had found in the original EIA report.

16. After the defendant submitted a table outlining the studies and the steps taken to rectify the deficiencies in the original report, the Administrative Court decided to seek an expert report to assess the amendments contained in the revised EIA report.

17. In a report of 26 August 2015, five experts, three of whom were those appointed by the court in the first set of proceedings, concluded by a majority that the deficiencies identified in the first set of administrative proceedings had been to a large extent eliminated, and that the effect of the intended mining operation on the environment would be within tolerable standards. The experts noted that the revised EIA report had completely revised its assessment concerning the flora and fauna, identifying and listing endemic and native species in the area and pointing out its rich diversity. The developer had also pointed out that this rich diversity would not be irretrievably lost but that it would be significantly affected. Concerning the identification of trees in the concession area and their destiny, the developer had identified the small group of trees as having the potential to grow into a forest but noted that they would be cut down. The experts considered that reforestation of an area equivalent to the mining site after the cessation of the mining activity would be desirable even though there was no particular undertaking by the developer in this respect. Concerning the transportation

and disposal of the existing earth, the developer had made the necessary revisions in the plan. With regard to the issue of the Bakırtepe ritual site, the experts observed that a new section had been added to the EIA report, which pledged that neither the site nor the roads that led to it would be included in the mining activities and this area would be cordoned off for security purposes. While this addition was sufficient to eliminate the deficiency identified in the first set of administrative proceedings, the experts opined that it would have been desirable for the developer to hold a public participation meeting with a view to hearing the views of the locals. With respect to the Molladere barrow, the experts noted that the EIA report did not contain an assessment but in any event this area, which was classified as a first-degree archaeological site, was 600 metres away from the concession area and it would not be negatively affected by mining activities. As to water resources and geological assessment, the experts noted that the developer had eliminated the deficiencies in its original report, by identifying the flow direction of each resource, drawing the geological segments in the manner required in the first expert report and making calculations as to the flow discharge in high rain seasons. Overall, the risk of liquid waste contaminating the groundwater resources by passing through the aquifer was negligent, on the basis of the new calculations and on the low conductivity of the existing rocks, and also provided that the developer took all the precautionary measures mentioned in the EIA report. On the other hand, the expert panel's reservations in the first set of proceedings as to the five per cent emission level of hydrogen cyanide being too much, and the recommendation that filters or other mechanisms be implemented in the project, as well as a casualty plan and precautionary measures for the local village, had not been implemented in the revised report. The expert who had been in the minority in the first set of proceedings disagreed, noting that the project did not serve the public interest on account of the risks it posed to the ecosystem in the event of a casualty, and that certain points he had raised in the first report with respect to flora and fauna had not been taken into account in the revised report.

18. On 17 December 2015 the Sivas Administrative Court dismissed the case by a majority, finding the revised EIA report to be compliant with the EIA regulations and with its previous judgment of 28 November 2014, basing its decision on the conclusions of the majority opinion in the expert report of 26 August 2015. The court further noted that its role in judicial review proceedings of this sort was to verify whether the industrial activity and the pledges made by the developer complied with the principle of sustainable development in the light of public interest. It went on to add that the claimants' position that the activity in question would harm the environment in the event of an accident or bad management was not an argument it could entertain within the context of those proceedings. The question of whether the activity was being performed in accordance with environmental

regulations and the pledges made in the EIA report could be subject to further judicial review proceedings only when the activity commenced. Lastly, it concluded that accidents did not happen if all precautions were taken and implemented accordingly. The likelihood of an accident occurring, and the related findings in the expert report, were therefore not sufficient to invalidate the EIA report.

19. The judge in the minority considered that the revised EIA report should be set aside on account of the findings in the expert report to the effect that the mining activity would cause definitive harm to the endemic plants, and because a decision by the Sivas Regional Cultural Commission issuing the developer with a favourable opinion for the operation of the mine, concerning part of the Molladere barrow that overlapped with the concession area, had been set aside by the administrative courts in the meantime.

20. On an appeal by the applicants, on 16 June 2016 the Supreme Administrative Court reversed the decision of the Sivas Administrative Court in the following terms:

> "Even though the first-instance court had kept its examination to whether the shortcomings it had found in the EIA report in its previous ruling of 28 November 2014 had been rectified, there have been new legal developments in the meantime ... In that connection, following the initial decision of the Ministry approving the EIA on 13 March 2013, the Molladere barrow and its surroundings, which appear to fall within the concession area of the project, were declared to be a first-degree archaeological conservation area, and the Bakırtepe ritual site was declared to be an intangible cultural asset by the local authorities on 28 June 2015. In the light of those new developments, and having regard to the regulations that prohibit any development in a conservation area, the EIA procedure must be started afresh with a view to resolving whether there is an overlap between the concession area and the Molladere barrow. Should there be an overlap, no mining activity may be allowed there. If there is no overlap, given the close proximity of the conservation area to the mining site, an assessment must still be made as to the likely effects of the activity on the Molladere barrow and the Bakırtepe ritual site and what type of precautionary measures are necessary to ensure their conservation ... In addition, a part of the concession area was designated as meadowland on 30 April 2014 ... thus in accordance with the relevant legislation in place which prohibits any mining activity on meadows, the Ministry's decision is unlawful in this respect as well."

2. Administrative proceedings for the quashing of Circular no. 2009/7

21. Referring to the administrative and judicial decisions above in the context of the Bakırtepe mine, several professional bodies and two local villages in their capacity as legal entities brought proceedings for the quashing of the Ministry's Circular no. 2009/7, which enabled the Ministry to approve an EIA report set aside by an administrative court, in a fast-track manner and only on the basis of the revisions made to it by the developer and without the participation of the public. The litigants argued that the circular lacked a legal basis, bypassed the public participation process and had the effect of circumventing court judgments.

22. On 9 November 2016 the Supreme Administrative Court dismissed the case by a majority, finding that Circular no. 2009/7 was a practical solution aimed at rectifying the shortcomings found in an EIA report which was otherwise compliant with the EIA regulations. The minority considered that the circular was unconstitutional on the basis of Article 138 of the Constitution which prohibited the executive from deferring, amending or otherwise not complying with court judgments.

C. The second revision to the EIA report and the third set of administrative proceedings

23. Following the decision of the Supreme Administrative Court of 16 June 2016 setting aside the revised EIA report of 2016 (see paragraph 20 above), the developer submitted on 7 September 2016 a second revised EIA report to the Ministry, who approved it on the basis of Circular no. 2009/7 on 21 September 2016. By that time, the mining activity had become partly operational.

24. On 10 October 2016 the applicants Ali Mermer, Hüsnü Koçyıldız, Sabahat Yaraşır and Nadiriye Arslan, together with other individuals, several professional bodies, cultural association and two local villages in their capacity as legal entities, made an application to the Sivas Administrative Court for the Ministry's decision of 21 September 2016 to be set aside. They argued, *inter alia*, that despite the previous decisions of the administrative courts setting aside the original and the subsequent revision to the EIA report, the developer had again in a very short time revised the report and obtained an approval for its project, which attested to the fact that the exception granted in Circular no. 2009/7 was being used to circumvent court judgments. Although the Supreme Administrative Court's decision of 16 June 2016 setting aside the revised EIA report was based on legal facts which had not been dealt with in the original EIA report, the Ministry had not started the EIA procedure afresh. Furthermore, the developer had been processing ore brought from other mines, which had not been envisaged in the EIA report, with the result that the dust emissions from this practice had not been factored in in the original calculations.

25. In the course of the proceedings, the Sivas Administrative Court appointed a panel of experts, none of whom had been appointed as experts in the previous proceedings, with a view to determining a) the negative effects of the activity on the environment and whether the precautionary measures to that effect were in line with regulations, b) whether the allegation that the ore extracted from other mines was being processed at the operation site was well founded and, if so, the compliance of this factual situation with the existing regulations, c) whether there was an overlap between the Molladere barrow and the concession area, d) whether the activity could have negative effects on the Bakırtepe ritual site and, if so, what measures were being taken to

prevent or alleviate such effects, and e) whether there was an overlap between the concession area and the meadowland and in any case whether the activity could have negative effects on meadows. The Sivas Administrative Court also held an on-site inspection in the presence of the experts and the parties.

26. In a report submitted to the Sivas Administrative Court on 27 November 2017, the experts did not find fault with the technology and precautionary measures provided for in the EIA and currently in use at the plant with respect to water and cyanide monitoring, however they noted that there was a problem concerning proper inspection and the monitoring process in the operation, on account of the financial arrangement between the developer and the inspecting company, which was a private enterprise. For this reason, the experts considered that the inspection mechanism in place was not independent and that as a result, the tests conducted for measuring pollution were not reliable. They further noted that if the testing and precautionary measures set out in the EIA report were not actually implemented, it would pose very serious health hazards to the environment and the health of local residents. In order to address the justified concerns of the local population, regular monitoring and inspection of pollution levels should be undertaken by State authorities. Concerning the question of the operation processing ore from other mines, the experts did not find any issues, noting that it corresponded to a very negligible amount of the operation's processing capacity. However, they pointed out the likelihood of dust pollution during the transport of the ore, which they found not to have been addressed in the EIA report. With regard to the more general question of dust, the experts noted that the issue of the momentary dust exposure had not been addressed and it was quite likely that during explosions carried out on the development site, the nearest village of Eğricek and its inhabitants would be exposed to dust, which could lead to respiratory diseases. Concerning the issue of the Molladere barrow, there had originally been an overlap between the barrow and the concession area but in the last revision made to the EIA, the concession area had been amended with a view to leaving the barrow and its immediate surrounding area completely out. The experts concluded that the operations would not have a negative effect on the Molladere barrow. Although the Bakırtepe site was found to be within the concession area, the experts considered that the operation would not have any significant effects on it, as the developer had sectioned off the open pit and the industrial site with barbed wire, and the area where the industrial operation was taking place was 675 metres away from the ritual site and the public's access to it was not hindered. As regards the meadowland, the experts noted that part of this area was included in the concession area in the original EIA, but the developer had applied to the Sivas Meadowland Administration and requested the declassifying of its status as a meadow. However, the operation which was adjacent to the remaining meadowland had negative effects on grazing

animals and wildlife, on account of the corruption of the meadowland's integrity, as well as the dust and noise emanating from the operation.

27. On 19 March 2018 the Sivas Administrative Court set aside the Ministry's decision of 21 September 2016 on the basis of the conclusions in the expert report.

28. On an appeal by the Ministry, the Supreme Administrative Court quashed the Administrative Court's decision of 19 March 2018 on the basis of a number of shortcomings in the expert report and the absence of certain experts from the panel, and remitted the case for a fresh examination.

29. When the case was remitted, the Ministry informed the Sivas Administrative Court that the EIA report in question had been revised by the developer on 6 March 2018 and that the Ministry had issued a new decision to approve the revised report on 15 March 2018.

30. Accordingly on 6 March 2019 the Administrative Court held that the case had become devoid of subject matter and therefore struck the application out of its list of cases.

D. The applicant Ali Mermer's individual application to the Constitutional Court

31. Shortly after the applicants lodged the third set of proceedings with the Sivas Administrative Court, the applicant Ali Mermer made an individual application to the Constitutional Court on 20 October 2016, complaining that an administrative-law action for the setting aside of a decision by the Ministry approving an EIA report was not an effective remedy for the protection of his rights under Articles 6 (execution of final judgments) and 8 (right to live in a healthy environment) of the Convention, on account of the Ministry's Circular no. 2009/7 allowing the authorities to circumvent court judgments by issuing approvals for revised EIA reports. In addition, the applicant argued that the impugned circular made it possible for the developer and the authorities to bypass the public participation process. Lastly, the applicant contended that neither the ongoing proceedings before the Administrative Court for the setting aside of the revised EIA nor the action concerning Circular no. 2009/7 would be effective remedies for his grievances. In respect of the action concerning Circular no. 2009/7, he noted that a previous action brought by the Union of Chambers of Turkish Engineers and Architects (TMMOB) had been dismissed by the Supreme Administrative Court.

32. On 27 November 2017 the Constitutional Court delivered a short-form decision finding the application inadmissible for non-exhaustion of remedies, on the ground that the third set of administrative proceedings before the Sivas Administrative Court were still ongoing.

E. The third revision to the EIA report and the fourth set of administrative proceedings

33. Following the Ministry's decision of 15 March 2018 approving the third revision to the EIA report (see paragraph 27 above), the applicants, with other litigants, lodged a new case with the Sivas Administrative Court for that decision to be set aside, arguing that despite court decisions setting aside the EIA reports, the fast-track approval procedure in Circular no. 2009/7 provided the developers with the right to make unlimited changes to their EIAs even before court decisions on ongoing proceedings were delivered, rendering judicial procedures ineffective.

34. The Sivas Administrative Court, in an interim decision of 6 June 2018, appointed a panel of eleven experts and put several questions to them, including, with respect to the scale of negative effects of the project on the environment, questions concerning the adequacy of the precautions provided for in the revised EIA with respect to the Molladere barrow and the Bakırtepe ritual site.

35. The applicants lodged their application with the Court on 4 September 2018 without awaiting the decision in those proceedings and without lodging an individual application with the Constitutional Court. In their application form to the Court, they submitted that they decided to apply to the Court after the Ministry's decision to approve the fourth revision to EIA report, that is to say 15 March 2018.

F. Developments after the lodging of the application

36. In their observations, the Government informed the Court of the developments in the fourth set of administrative proceedings.

37. According to the Government, in a report of 29 January 2019 the panel consisting of eleven experts concluded unanimously that the mining operations would inevitably have an environmental, biological and hydrogeological impact on the area but the measures provided for in the revised EIA report to minimise those effects were acceptable; that the Molladere barrow was outside of the operational area (as a result of the amendments made to the concession area in the second revision of the EIA) and as long as the measures and commitments indicated in the EIA report were complied with, it would not be damaged; the Bakırtepe ritual site was, on the other hand, within the concession area, however it was sufficiently distant (650 metres) from the open pit, and the ponds and the mining activity would not cause damage or otherwise disrupt the physical integrity of the sacred place, which consisted of a building, a well and a place for animal sacrifice, but no burial site; however, the landscape around the sacred place would be adversely affected. They noted that access to the ritual site was not hindered. In conclusion, the experts considered that despite the inevitable

damage caused to the environment, the mining activity would be beneficial for the regional and national economy and the revised EIA report complied with the relevant regulations.

38. On 16 July 2020 the Administrative Court dismissed the case on the basis of the conclusions in the expert report.

39. An appeal by the applicants against the Administrative Court's ruling was dismissed by the Supreme Administrative Court in a final decision on 19 November 2020.

40. The Government submitted that the applicants had not lodged an individual appeal with the Constitutional Court concerning the fourth set of proceedings.

RELEVANT LEGAL FRAMEWORK

41. The relevant legal framework can be found in *Taşkın and Others v. Turkey* (no. 46117/99, §§ 90-97, ECHR 2004 X) and *Okyay and Others v. Turkey* (no. 36220/97, §§ 46-59, ECHR 2005 VII).

42. In accordance with the relevant provisions of the Regulation on Environmental Impact Assessments, published in the Official Gazette no. 26939 on 17 July 2008, which was in force at the relevant time, no project involving industrial activity requiring an EIA could go ahead without the Ministry's decision to approve the EIA report submitted by the developer. The EIA process began when a developer submitted an application file for that purpose. An EIA commission within the Ministry consisting of Ministry officials, representatives of the developer and other representatives of public institutions evaluated the application form, and if it found the application form to be complete, announced the project to the public. A meeting was organised for the public to express its views and those views were included in the EIA report; during that period, the EIA commission decided whether a special format was necessary for the EIA report. Once that process had been completed, the developer submitted the EIA report to the commission and the commission began its review. When the final EIA report was submitted to the commission, the report was also published for comments to be received within ten days. At the end of that period the commission evaluated the EIA report in the light of the comments received by the public and issued a decision to approve or reject the project.

43. Circular no. 2009/7, issued by the Ministry on 13 February 2009, provides that it is not necessary to start the EIA report procedure afresh when a court sets aside, or orders a stay of execution of, a decision by the Ministry approving the EIA in question as long as the incompatibility found by the court concerns certain parts and does not prejudice the other parts of the EIA report. In such situations, the Ministry will convene an EIA examination commission and issue a decision to approve or reject the revision to the EIA without going through a separate public consultation process.

COMPLAINTS

44. The applicants complained under Article 6 of the Convention that the systematic administrative practice based on Circular no. 2009/7 deprived any administrative-law action for the setting aside of an EIA report of its useful effect. They argued in that connection that despite the fact that the Ministry's decisions approving the EIAs issued by the developer were set aside in each of the administrative proceedings they brought, the national authorities continued to approve the revised EIAs shortly after the decisions in question, thus depriving the applicants of effective judicial protection.

45. Relying on Article 8 of the Convention, the applicants complained of negative effects of the development and the operation of the mine on the Bakırtepe site, which they regarded as sacred and culturally significant for their Alevi faith and identity.

THE LAW

Alleged violations of the Convention

46. The applicants complained under Article 6 § 1 of the Convention about the non-execution of the administrative courts' judgments in their favour. They further complained under Article 8 of negative effects of the mining operation on their Alevi faith and cultural identity. In view of the applicants' submissions, the Court considered that they may have been understood to have also complained of a violation of their right to respect for religion, and decided to communicate this complaint also under Article 9 of the Convention. The relevant parts of Articles 6, 8 and 9 read as follows:

Article 6 § 1

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

Article 8

"1. Everyone has the right to respect for his private ... life.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

1. As regards the complaint under Article 6 § 1 of the Convention

(a) The parties' arguments

47. The Government argued that the complaint was inadmissible on a number of counts, as discussed below. The applicants failed to any submit observations, in reply to the Government, on the admissibility of their complaint.

(i) Non-exhaustion of domestic remedies

48. The Government submitted that the applicants, other than Mr Ali Mermer, had not appealed to the Constitutional Court and that, therefore, their application should be declared inadmissible on account of non-exhaustion of domestic remedies.

49. In respect of Mr Ali Mermer, the Government submitted a plea of non-exhaustion of domestic remedies in two respects. First, they argued that the Constitutional Court in its decision of 27 November 2017 had declared that applicant's individual appeal inadmissible on account of the fact that the proceedings for the setting aside of the second revision had been ongoing at the time of the examination of his appeal. The Government added that the applicant had not lodged another application with the Constitutional Court when the proceedings with respect to the second revision ended with the decision of 6 March 2019. Secondly, the Government noted that the third revision to the EIA had resulted in the administrative courts dismissing the applicants' action for the EIA to be set aside and that after the decision of 19 November 2020, neither Mr Ali Mermer nor the other applicants had lodged an individual appeal with the Constitutional Court. The Government opined that had the applicants made such an appeal, their complaints would have been examined on the merits.

(ii) Compliance with the six-month time-limit

50. The Government argued in any event that the application had been submitted outside of the six-month time-limit provided for by Article 35 of the Convention. They maintained that they were aware of the Court's case-law to the effect that the six-month time-limit did not apply to situations of a continuing nature. That being so, they contested the argument that the EIA revision processes that were complained about by the applicants constituted a "continuing situation" within the meaning of the Court's case-law. They argued that each EIA revision decision constituted an "independent" act, attested by the fact that the administrative courts reviewed

the revised EIA reports anew each time, commissioning separate expert reports and conducting an on-site review. For this reason, the Government contended that the date when the applicants exhausted the domestic remedies before lodging an application with the Court should be accepted as the beginning of the six-month time-limit, which in their view, corresponded to 27 November 2017 when the Constitutional Court declared Ali Mermer's application inadmissible. Given that the applicants lodged their application on 31 August 2018, outside the six-month time-limit, the Government asked the Court to declare the case inadmissible.

(iii) Victim status and abuse of the right of application

51. The Government contested the argument that the applicants had victim status at the time when they lodged their application with the Court. They submitted that in all four sets of administrative proceedings, the administrative courts had set aside the EIA reports in question, resulting in the mining activities being suspended. Given that the decisions had been favourable to the applicants and that those decisions had been enforced, the Government submitted that the applicants could not claim to be victims in respect of those sets of proceedings.

52. Lastly, the Government argued that the fact that the applicants had not apprised the Court of the final set of proceedings where the revised EIA was upheld by the administrative courts should be considered as an abuse of the right of application. They argued that the circumstances of the present application were similar to those in *Şeker v. Türkiye* ((dec.), no. 30330/19, 30 September 2021) where the Court decided to strike the case out of its list of cases on account of the fact that the applicant had not disclosed the existence of a mediation agreement that she had entered into with the authorities at the time of lodging the application with the Court.

(b) The Court's assessment

53. The Court does not consider it necessary to address the Government's objections because the applicants' complaints are in any event inadmissible for the following reasons.

54. The Court notes that the applicants complained that despite the administrative courts' judgments setting aside the EIA reports and the subsequent revisions made to the reports, the Ministry and the developer had circumvented those decisions owing to the fast-track approval procedure, and had gone ahead with the project. They therefore complained that the final administrative court judgments were not executed in their case.

55. The Court reiterates that the execution of a judgment given by a court is to be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, Reports of Judgments and Decisions 1997-II).

56. The Court notes that the final judgments setting aside the original EIA report and the two subsequent revisions to the EIA report did not order the authorities to take or omit from taking a particular course of action. The administrative courts set aside the relevant decisions of the Ministry approving the EIAs, finding the assessment and certain conclusions in the reports to be non-compliant with the relevant regulations. The Court further notes that the courts did not find the project to be contrary to public interest or entirely inadequate on all counts of their assessments. The execution of those judgments meant that the project could not go ahead on the basis of the EIA reports that had been set aside and no permits could be issued in the absence of a new EIA report (see *Taşkın and Others*, cited above, § 123). The shortcomings identified in the original EIA were found to be eliminated by the revised EIA in the second set of proceedings; however, because of the new legal developments with respect to the Bakırtepe site and the Molladere barrow, the courts set aside the revised EIA one more time (see paragraph 20 above). The third and fourth set of proceedings revolved around the issues identified by the Supreme Administrative Court's decision of 16 June 2016; that is to say the inconclusive findings made by the experts *vis-à-vis* the overlap between the Molladere barrow and the concession area and the possible negative effects of the mining activity on those two sites. The developer's amendments to the boundaries of the concession area with a view to leaving the Molladere barrow completely outside it, and the precautions it took with respect to not hindering access to the Bakırtepe ritual site were found to be adequate by the Supreme Administrative Court in its final decision of 19 November 2020.

57. It therefore cannot be said that the administrative courts' judgments in the applicants' cases were disregarded because each time the EIA report in question was found to be unlawful, the developer revised it and the Ministry took a new decision approving the revisions with the result that the final EIA report approved by the courts was in substance and in form different from the original EIA report.

58. The Court further notes that reasoned decisions of the administrative courts in the first, second and third sets of proceedings did not indicate that the public participation process had to be performed anew. In this respect too, it cannot be said that the court decisions were not executed. Lastly, the Court observes that the Supreme Administrative Court upheld Circular no. 2009/7, finding that it did not give rise to court judgments being circumvented, but it allowed the authorities to implement changes in a practical manner.

In the light of the foregoing, the Court considers that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. As regards the complaint under Articles 8 and 9 of the Convention

59. The Government raised the same objections concerning the alleged failure of the applicants to exhaust domestic remedies (see paragraph 48 above). They further pointed out that in his individual application to the Constitutional Court, the applicant Ali Mermer had not voiced any grievances with respect to violation of his freedom of religion nor had he substantiated his complaint with respect to the right to a healthy environment. The Government also maintained their objections with respect to the six-month time-limit and victim status (see paragraphs 50 and 51 above).

60. The applicants did not submit any observations on this point either.

61. The Court reiterates that Article 35 § 1, in addition to requiring that the applicants should avail themselves of domestic remedies capable of providing redress for their complaints, also requires that the complaints, including the relevant arguments, intended to be made subsequently before the Court should have been raised before the appropriate domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

62. Turning to the present application, the Court reiterates that an individual appeal before the Constitutional Court is a remedy to be made use of (see *Uzun v. Turkey* ((dec.), no. 10755/13, §§ 68-71, 30 April 2013). The Court further notes that only the applicant Ali Mermer made an individual application to the Constitutional Court. Apart from a general reference to his right to live in a healthy environment, he did not expressly rely on or raise an issue under Articles 8 and 9 of the Convention nor did he explain that he identified with the Alevi faith or argue about the alleged negative effects of the mine operation on his cultural identity and religious rights with respect to the Bakırtepe site, which is considered sacred by the adherents of the Alevi faith. As the applicants failed to raise those arguments either expressly or in substance and thereby provide the Constitutional Court with the opportunity of putting right the alleged violation, the Court, in accordance with its subsidiarity role, cannot examine this complaint. It must therefore be rejected for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 November 2022.

Hasan Bakırcı Registrar	Jon Fridrik Kjølbro President

Appendix

List of applicants:

Application no. 44281/18

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Sebahat YARAŞIR	1967	Turkish	Sivas
2.	Nadiriye ARSLAN	1960	Turkish	Sivas
3.	Hüsne GÖLBAŞI	1970	Turkish	Sivas
4.	Hüsnü KOÇYILDIZ	1948	Turkish	Sivas
5.	Ali MERMER	1969	Turkish	Sivas