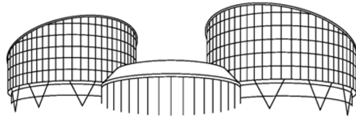

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 170 (2019)
07.05.2019

Violation of right to property for lack of compensation: appeal to a compensation board now provides a remedy

The case concerned civil proceedings dealing with claims in respect of the ownership of land purchased by the applicants and classified as a "natural site". The domestic courts decided to register the land in the name of the Treasury on the basis of a new law which came into force during the proceedings. The applicants did not receive any compensation.

In today's **Chamber** judgment[1] in the case of **Kaynar and Others v. Turkey** (applications nos. 21104/06, 51103/06 and 18809/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The Court found in particular that the change in legislation had deprived the applicants of the possibility of obtaining the registration of their land, even though they could legitimately have expected to meet all the requirements for recognition as owners. It also found that the applicants, who had not received any compensation for their loss of property, had thus had to bear an individual and excessive burden.

The Court also found that domestic law now allowed reparation for such a breach. An appeal to the compensation board, whose remit had been extended in 2019 by presidential ordinance no. 809, would now enable the applicants to obtain compensation. Taking the view that this appeal would represent an appropriate means of remedying the violation of Article 1 of Protocol No. 1 to the Convention, the Court decided to strike out the part of the application relating to Article 41 of the Convention (just satisfaction).

It also found a violation of Article 6 § 1 (right to a fair hearing within a reasonable time)

The Court found that the length of the proceedings (about 10 years), in the context of applications lodged by two of the applicants, did not satisfy the requirement of a reasonable time. It thus awarded those applicants just satisfaction for their non-pecuniary damage.

Principal facts

The applicants, Naci Kaynar, Ayşe Boztepe and Cemile Bürge Kuşman, are Turkish nationals who were born in 1953, 1938 and 1967 respectively, and live in Çanakkale (Turkey).

In 1993 and 1995 the applicants purchased land on the island of Gökçeada. The land was classified as a "natural site" whose ownership was unregistered.

In 1996 the land was registered in the name of the Treasury, in connection with a cadastral review. That same year, the applicants applied to the Gökçeada land tribunal seeking the registration of the land in their names, in accordance with the rules on adverse possession.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 1999 the tribunal granted their request, taking the view that the conditions for adverse possession were satisfied. That judgment was overturned by the Court of Cassation, which found that the judges of the land tribunal had not duly enquired as to whether the land was used for grazing and could not therefore be acquired by adverse possession.

In 2004, while the proceedings before the land tribunal were pending, the legislation on the protection of cultural and natural heritage was amended. Land classified as a “natural site” could no longer be acquired by adverse possession. As a result, the applicants’ claim was dismissed and the land was registered in the name of the Treasury.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) the three applicants complained that they had sustained a breach of their right to the enjoyment of their property on account of legislative interference. They argued in particular that without that legislative amendment the national courts would have secured the registration of the land in their own names.

Under Article 6 § 1 (right to a fair hearing within a reasonable time), two of the applicants complained about the length of the proceedings and alleged that the court decisions contained insufficient reasoning.

The applications were lodged with the European Court of Human Rights on 8 April 2006 and on 18 December 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Işıl **Karakaş** (Turkey),
Julia **Laffranque** (Estonia),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),

and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1 (protection of property)

The legislative amendment of 2004 had deprived the applicants of the possibility of obtaining the registration of their land, whereas they could have legitimately believed that they had satisfied all the requirements to enable them to be recognised as owners of the real estate that they or their vendors had possessed for a lengthy period of time.

The 2004 law had thus entailed an interference with the ownership rights that could have been asserted by them under the law in force hitherto and, consequently, with their right to the peaceful enjoyment of their possessions. The interference had satisfied the condition of lawfulness for the purposes of Article 1 of Protocol No. 1.

The Court was prepared to admit that the legislative amendment sought to protect the environment, which was a legitimate aim in the general interest. However, in 2007, after less than three years, the law had again been amended such as to exclude all the land classified as natural sites – the classification of the land at issue – from its scope. Henceforth, as already at the time

when the applications were lodged, land within a natural site could be acquired by adverse possession.

The Court further found that the applicants had not received any compensation and that the Government had not relied on any exceptional circumstance to justify the total absence of any award. Thus the applicants had been made to bear an individual and excessive burden, entailing a breach of their rights under Article 1 of Protocol No. 1 to the Convention.

Article 6 § 1 (right to a fair hearing within a reasonable time)

The Court found that the length of the proceedings (about 10 years) did not satisfy the requirement of a reasonable time. It thus found a violation of Article 6 § 1 of the Convention in respect of the applications lodged by Ms Boztepe and Ms Kuşman.

Just satisfaction (Article 41)

As regards the interference with the right to the enjoyment of property, the Court noted that presidential ordinance no. 809, which entered into force on 8 March 2019, had extended the remit of the compensation board, set up in January 2013. That ordinance had laid down the principles and procedure to be followed relating to compensation in cases where the Court had found a violation of Article 1 of Protocol No. 1 to the Convention but had not ruled on claims for just satisfaction under Article 41 of the Convention (which was the case here) or had decided to reserve the question.

Referring to the subsidiary nature of the human rights protection mechanism under the Convention, the Court found that an appeal to the compensation board within one month from the notification of its final judgment was capable of enabling compensation to be obtained from the authorities and was therefore an appropriate means of seeking redress for an established breach of Article 1 of Protocol No. 1. In this context the Court reiterated that the domestic authorities were undoubtedly best placed to assess any damage sustained and had the appropriate legal and technical means to put an end to a violation of the Convention and allow for reparation to be made, especially where it was a matter of determining the value of real estate in a Contracting State at a given date.

The Court thus found that domestic law now allowed for reparation of the breach established in the present case. It took the view that it did not need to rule on the monetary claims submitted by the applicants and decided to strike out the part of the application under Article 41 of the Convention concerning the alleged pecuniary and non-pecuniary damage.

As to the excessive length of the proceedings, the Court held that Turkey had to pay Ms Boztepe and Ms Kuşman EUR 5,000 each for non-pecuniary damage and EUR 2,270 jointly for costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.