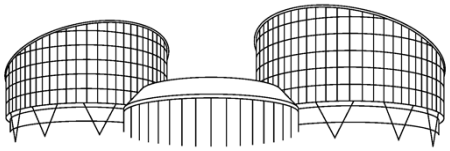

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KARAHASANOĞLU v. TURKEY

(Applications nos. 21392/08 and 2 other applications)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Imposition of litigation costs on applicant, for proceedings which had become devoid of purpose, determined by domestic courts in fair and adversarial manner
Art 1 P1 • Control of the use of property • Proportionate, temporary injunctions on applicant's assets lasting more than ten years in the context of proceedings for his role as general manager of formerly public banks • Provisional and precautionary measures, with a view to securing a possible award of damages in favour of the creditor

STRASBOURG

16 March 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Karahasanoğlu v. Turkey,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Aleš Pejchal,
Valeriu Griţco,
Egidijus Kūris,
Branko Lubarda,
Saadet Yüksel, *judges,*
and Hasan Bakırsı, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 21392/08, 53870/09 and 32844/17) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Şükrü Karahasanoğlu ("the applicant"), on the various dates indicated in the Appendix;

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

the parties' observations;

Having deliberated in private on 9 February 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complained of unfairness in proceedings, in particular, their suspension, about having to bear litigation costs, about not being awarded lawyers' fees in proportion to the amounts claimed by the claimant, and of a disproportionate interference with his property rights on account of the lengthy injunctions on his assets ordered by the domestic courts in order to secure the claim of the claimant.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant was born in 1947 and lives in Istanbul. He was represented by Mr E. Eraslan, a lawyer practising in Istanbul.

3. The Government were represented by their Agent.

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

A. Background to the case

5. The applicant is a former executive and director of two previously public banks, Sümerbank and Etibank.

6. Sümerbank and Etibank were originally State-owned companies which operated in a number of different sectors, including the banking sector.

7. They were restructured for privatisation purposes. As part of the restructuring process, their banking assets were transferred to two newly incorporated legal entities, Sümerbank A.Ş. (hereinafter "Sümerbank") and Etibank *Anonim Ortaklığı* (later renamed Etibank A.Ş. – hereinafter "Etibank").

8. On 17 October 1995 Sümerbank was privatised and İpeks İplik Tekstil Sanayi A.Ş., a joint-stock company owned by a businessman named Hayyam Garipoğlu and his companies, became the majority shareholder of the bank.

9. On 2 March 1998 Etibank was privatised and Medya İpek Holding A.Ş. (later renamed Medya Sabah Holding A.Ş.), a joint-stock company, which at the time was partly owned by a businessman named Dinç Bilgin and his companies, became the majority shareholder of the bank.

10. The applicant was appointed to the management and board of directors of Sümerbank and Etibank following their privatisation, and resigned from his duties before they were later taken over by the State.

11. He was general manager of Sümerbank and Etibank from 31 October 1995 to 16 February 1998 and from 2 March 1998 to 25 March 1999 respectively.

B. Background information on the Savings Deposit Insurance Fund

12. The Savings Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu* – hereinafter "the Fund") was established in 1983 to protect depositors and enhance the stability of the banking system.

13. The Fund was a separate legal entity but remained under the control of the Central Bank of the Republic of Turkey and the Banking Regulation and Supervision Agency (*Bankacılık Düzenleme ve Denetleme Kurumu* – hereinafter "the Agency") until it became an independent administrative authority in 2003.

14. The Fund's mandate, as described in the repealed Banks Act (Law no. 3182) of 25 April 1985, which entered into force on 2 May 1985, was initially limited to the insurance of the savings of depositors in banks.

15. The repealed Banking Activities Act (Law no. 4389) of 18 June 1999, which entered into force on 23 July 1999 and replaced Law no. 3182, broadened the Fund's mandate to include the management of resolution processes of financially distressed banks.

16. Law no. 4389 provided for the transfer of the management and supervision of a bank and the rights of its shareholders, except dividends, to the Fund in the event that the bank encountered certain financial problems (section 14(3)) or its resources and assets were misused or abused by the majority shareholders (section 14(4)).

17. Law no. 4491 of 17 December 1999, which entered into force on 19 December 1999, introduced important changes to Law no. 4389, particularly its provisions governing the scope of the Fund's mandate in respect of bank resolution processes.

18. Section 14(5), as amended by Law no. 4491, allowed the Fund to acquire ownership of shares of a transferred bank on the condition that the Fund assumed the losses of the bank corresponding to its paid-up equity capital on the basis of its balance sheet at the time of the transfer.

19. Under the same provision, the Fund, in addition to the right to acquire the shares of a transferred bank, was also entitled to request the return of or compensation for losses incurred by the bank as a result of misuse and abuse of its resources.

20. To recover those losses, under section 17(2) of Law no. 4389, the Fund was authorised to bring civil proceedings to engage the personal liability of the majority shareholders and executives of the transferred bank who were responsible for the transactions which constituted misuse of the bank's resources, regardless of whether or not the bank had become insolvent.

21. For the purpose of securing the recovery of those losses, the Fund was also entitled to request the courts to take precautionary measures, such as a temporary injunction on the assets of those persons, by virtue of section 14(5)(b) of Law no. 4389.

22. Under section 15 of Law no. 4389, the Fund was also exempt from financial liabilities such as taxes, charges and levies.

C. Transfer of Sümerbank and Etibank to the Fund

23. Following the failure of the measures taken to improve their financial situation, first Sümerbank, by a decision of the Council of Ministers of 21 December 1999, and then Etibank, almost a year later, by a decision of the Banking Regulation and Supervision Board (*Bankacılık Düzenleme ve Denetleme Kurulu* – hereinafter "the Board") of 27 October 2000, were transferred to the Fund pursuant to section 14(3) and (4) of Law no. 4389.

24. As a result, the Fund took over the management and supervision of those banks as well as the rights of their shareholders, except dividends.

25. The Fund also acquired ownership of the shares of those banks under section 14(5) of Law no. 4389, as per the Council of Ministers' decision.

D. Proceedings brought against the applicant by the Fund and subsequent legal and factual developments

26. Following the transfer of Sümerbank and Etibank to the Fund, the auditors of the Board examined the transactions that the former executives of those banks had authorised and approved in their capacity as directors and/or general managers.

27. For each transaction which, according to the auditors' reports, constituted misuse or abuse of the bank's resources in violation of banking laws and rules of practice, the Fund brought separate personal liability lawsuits (details of the lawsuits which are the subject of the present applications are set out in the Appendix) against the applicant and others under section 17(2) of Law no. 4389.

28. In those lawsuits, the Fund asked the domestic courts not only to hold the applicant and other defendants financially liable for the losses allegedly incurred by the banks as a result of the unlawful transactions, but also to declare him personally bankrupt under the same provision.

29. At the beginning of the proceedings, the Fund also asked the courts to place an injunction on the assets of the defendants, including the applicant, in accordance with section 14(5)(b) of Law no. 4389.

30. With the exception of a few sets of proceedings, the courts granted the Fund's requests and issued in each set of proceedings separate temporary injunctions covering all the applicant's assets, including his movable and immovable property, his receivables and rights against third parties, without requiring the Fund to post any collateral (see the Appendix for the cases in which the Fund's request for an injunction was granted and the scope of the injunction on the applicant's assets).

31. While the proceedings against the applicant were ongoing, Law no. 4389 was amended by Law no. 4743 and Law no. 4672. The amendments not only granted the Fund exemptions specific to proceedings for the recovery of losses of transferred banks, but also broadened the scope of receivables that it could claim in connection with those banks. The Fund was also granted additional powers, such as the power to enter into agreements with debtors and to ask the courts to suspend lawsuits already filed for the duration of the agreements.

32. The Banking Activities Act (Law no. 5411) of 19 October 2005, which came into force on 1 November 2005, repealed and replaced Law no. 4389.

33. Law no. 5411 not only preserved the prerogatives of the Fund under Law no. 4389, but also gave it additional powers to collect its receivables in connection with a transferred bank. Accordingly, the Fund was authorised to take over the management and shareholding of companies owned by the majority shareholders of the banks and to sell the shares and assets of the

companies in a bundle to achieve maximum recovery of the amounts owed to it.

E. Proceedings concerning Sümerbank

34. The Fund brought several different lawsuits against the applicant for the losses caused to Sümerbank as a result of loan transactions which he had authorised during his time as manager and director of the bank.

35. These proceedings are the subject of application no. 32844/17 (see Part A of the Appendix for details). In these proceedings, the applicant argued that during the period in which he had been general manager of the bank, that is, until 1998, the bank had not reported any losses. The applicable law governing the liability of bank managers at the relevant time had not been Law no. 4389, which had only entered into force in 1999, but Law no. 3182, which had not contained any provisions providing for the bankruptcy of bank managers in the event of a bank's insolvency on account of unlawful actions of its managers.

36. While the proceedings against the applicant were still ongoing, on 12 August 2004 the Fund signed a protocol with, among others, Hayyam Garipoğlu and his companies (hereinafter "H.G. Group"), the majority shareholders of Sümerbank at the time the bank was transferred to the Fund. This protocol entered into effect on 27 January 2006.

37. The protocol was aimed at restructuring the debt that H.G. Group owed to the Fund by reason of the loans and other transactions that had allegedly caused losses to Sümerbank and defining the terms of repayment of the debt. It also contained a special provision concerning the lawsuits filed by the Fund to recover the losses of Sümerbank. According to that provision, the proceedings against the applicant and other individuals were to be suspended as long as the parties complied with the terms of the protocol.

38. The parties to that protocol then signed additional protocols on 7 January 2009, 9 April 2010 and 25 June 2010 to supplement the original protocol of 12 August 2004.

39. The above-mentioned protocols concluded between the Fund and H.G. Group had a significant impact on the development of the proceedings brought against the applicant. In some sets of proceedings, the courts decided that the lawsuits had become devoid of purpose, whereas in others the Fund decided to withdraw the lawsuits.

1. Lawsuits which became devoid of purpose

40. In two sets of proceedings (case nos. 2011/399 E. and 2012/291 E.), the courts found it established that the payments made by H.G. Group to the Fund under the protocols dated 12 August 2004 and the additional protocols dated 7 January 2009, 9 April 2010 and 25 June 2010 had compensated the

Fund for the alleged losses. On that basis, the courts decided that the lawsuits against the applicant had become devoid of purpose (*davanın konusuz kalması*).

41. In the first set of proceedings (case no. 2011/399 E.), the first-instance court held that in proceedings where a lawsuit became devoid of purpose because of subsequent events, the litigation costs and lawyers' fees of the party who "prevailed" at the time the lawsuit was filed, that is, who appeared to be more in the right, should be reimbursed by the other party. Accordingly, the court found that the applicant had not caused the lawsuit to be filed on account of any culpable behaviour and therefore awarded him a fixed amount of 1,200 Turkish liras (TRY – equivalent to approximately 512 Euros (EUR) at the time of the decision) in lawyers' fees, noting that the status of the Fund should be taken into account under the terms of the Tariff on Minimum Lawyers' Fees (hereinafter "the Tariff").

42. The applicant appealed against the first-instance court's decision, arguing that he should have been awarded lawyers' fees on a *pro rata* basis, that is, in proportion to the amount claimed by the Fund.

43. On 14 April 2014 the Court of Cassation dismissed the appeal and upheld the first-instance court's decision.

44. In the second set of proceedings (case no. 2012/291 E.), the applicant lodged a petition with the first-instance court on 28 September 2012 stating that he would agree to waive his right to litigation costs and lawyers' fees on the condition that the Fund also did the same.

45. However, at a hearing on 31 December 2012 the Fund asked the court to order the applicant to pay lawyers' fees, arguing that he had caused the lawsuit to be filed.

46. The first-instance court, in a decision delivered on the same date, held that there was no reason to award any lawyers' fees to either of the parties. As regards litigation costs, it decided that they would be borne by the Fund since the financial losses suffered by the latter had been remedied before the parties had had a chance to discuss the applicant's alleged culpability in the management of the impugned loan during the proceedings before it.

47. The applicant did not appeal and the decision became final on 3 May 2013.

2. Lawsuits withdrawn by the Fund

48. In two sets of proceedings (case nos. 2008/271 E. and 2009/650 E.), the Fund, during the course of those proceedings, decided to withdraw the lawsuits against the applicant.

49. During the first set of proceedings (no. 2008/271E.), the Fund lodged a petition with the court on 25 February 2011 expressing its wish to withdraw the lawsuit and waive its right to lawyers' fees and litigation costs, as well as its right to appeal against the decision. The applicant

consented to the Fund's wish to withdraw the case and waived his right to lawyers' fees. Subsequently, by a decision dated 25 May 2011, the first-instance court severed the lawsuit against the applicant (registering it under case no. 2011/293 E.) and dismissed it on account of its withdrawal by the Fund.

50. During the second set of proceedings (case no. 2009/650 E.), at a hearing on 28 February 2011 the Fund informed the court that it wished to withdraw the lawsuit. On the same date, the applicant lodged a petition with the court consenting to the withdrawal of the case provided that the temporary injunctions on his assets were lifted by the courts and waiving his right to lawyers' fees and right to appeal. Accordingly, on 9 March 2011 the court dismissed the lawsuit against the applicant on the grounds that it had been withdrawn and lifted the temporary injunction on his assets. The parties were ordered to bear their own litigation costs and lawyers' fees. Neither of the parties appealed against this decision.

F. Proceedings concerning Etibank

51. The Fund brought several different lawsuits against the applicant for the losses caused to Etibank as a result of loans and other types of transactions which he had authorised during his time as executive of the bank.

52. These proceedings are the subject of applications nos. 21932/08 and 53870/09 (see Part B of the Appendix for details).

1. Protocols concluded between the Fund and the majority shareholders of Etibank

53. Dinç Bilgin and his companies gradually acquired all shares in Medya Sabah Holding A.Ş. and became the majority shareholders of Etibank at the time the latter was transferred to the Fund.

54. While the proceedings against the applicant were still ongoing, on 17 November 2003 the Fund signed a protocol with, among others, Dinç Bilgin and his companies, including Medya Sabah Holding A.Ş., (hereinafter "Medya Group"), which owned and operated a number of assets in the media sector, including the television channel ATV and the daily newspaper *Sabah*.

55. According to the protocol, Medya Group would transfer some of its assets in the media sector and assign its receivables under some of its commercial agreements to the Fund towards the settlement of the amounts that it owed to the Fund for losses caused to Etibank as the bank's majority shareholder.

56. However, due to difficulties in the implementation of this protocol, Dinç Bilgin entered into an arrangement with another businessman, Turgay

Ciner, who also owned companies that operated in the media sector (hereinafter "Merkez Group").

57. According to that arrangement, the assets and receivables that could not be transferred to the Fund would be acquired by Merkez Group, which, in return, would assume Medya Group's obligations towards the Fund under the protocol of 17 November 2003.

58. A protocol was concluded between, among others, the Fund, Medya Group and Merkez Group on 3 May 2005 to amend the protocol of 17 November 2003 pursuant to the terms of that arrangement and put the amended protocol into effect.

59. However, on an unspecified date, the Fund cancelled the protocols of 17 November 2003 and 3 May 2005 on the grounds that Dinç Bilgin and Turgay Ciner had allegedly colluded in violation of the terms of the protocols.

60. As a consequence, the Fund, using the powers granted by Law no. 5411, took over the management, supervision and shareholders' rights, except dividends, of the companies forming Medya Group and Merkez Group and also seized the media sector assets of those companies.

61. The Fund put together the shares of these companies and their assets, which also included the television channel ATV and the daily newspaper *Sabah*, formed a single unit named ATV-Sabah Economic and Commercial Unit (*ATV-Sabah Ticari ve İktisadi Bütünlüğü* – hereinafter "the Unit") and called for tenders for its sale.

62. On 5 December 2007 the Fund sold the Unit for 1.1 billion United States dollars (USD).

63. On 28 November 2008 the Fund concluded a new protocol with Medya Group and Merkez Group to define the terms of repayment of the amount that Medya Group owed to the Fund with the proceeds from the sale of the Unit.

64. The relevant provisions of the protocol dated 28 November 2008 concerning the proceedings against the applicant and its entry into effect read as follows:

Article 8.7

> "Following the signature of this protocol, upon the withdrawal of the civil or administrative lawsuits filed by the debtors and the finalisation of the lawsuits and enforcement proceedings brought by the Fund, in respect of the financial liability proceedings under case no. 2001/1200E.,...2001/2193E. before the 1st Commercial Court of Istanbul ..., for personal bankruptcy and all other personal bankruptcy and compensation proceedings, the Fund shall request that the relevant courts suspend these proceedings for all defendants and all claim amounts. Following the finalisation of the ranking list for the ATV-Sabah Economic and Commercial Unit, the Fund shall take the necessary legal steps to ensure that the suspended financial liability, personal bankruptcy and recovery and compensation proceedings shall be rendered devoid of purpose in so far as they concern the claims which fall within the scope of this protocol ..."

Article 18

> "... This protocol shall enter into effect after its signature by the parties provided that the debtors and/or their relatives by blood or marriage and/or related natural and legal persons withdraw the lawsuits filed against the Fund, that they allow for the finalisation of all lawsuits and enforcement proceedings and the tender for the sale of ATV Sabah Economic and Commercial Unit, and that the ranking list pertaining to the purchase price becomes final."

65. Before their shares and assets were acquired by the Fund, Medya Group and Merkez Group companies were going concerns, which had been doing business with third parties. By taking the management, shares and assets of those companies, the Fund also assumed their obligations towards third parties.

66. Accordingly, the proceeds from the sale of the Unit, which comprised assets and shares of Medya Group and Merkez Group companies, would therefore also have to be used to repay the debts of those companies to those third parties, which the Fund had taken over.

67. To set out the way in which the proceeds from the sale of the Unit would be distributed to those third-party creditors, the Fund prepared a list in accordance with Law no. 5411 and the Regulation on the Sale of Seized Assets Forming an Economic and Commercial Unit by the Savings Deposit Insurance Fund ("the Regulation") indicating the ranking of each creditor (hereinafter "the ranking list").

68. The ranking list was published in the Official Gazette on 2 December 2008.

69. Subsequently, some of the creditors of Medya Group and Merkez Group companies brought civil and administrative proceedings against the Fund seeking to annul the sale of the Unit or challenging their place in the ranking list.

70. Both the protocol of 28 November 2008 and the developments related to those protocols had a significant impact on the proceedings against the applicant concerning Etibank. In the first lawsuit, the courts decided that it had become devoid of purpose, whereas in the second the courts suspended the proceedings at the Fund's request pursuant to the terms of the protocol.

2. Lawsuit which became devoid of purpose

71. In one set of proceedings (case no. 2008/192 E.), the courts ruled that the lawsuit had become devoid of purpose and that there was no reason to deliver a judgment. The court held that while the conditions for declaring the applicant bankrupt had been met on account of his responsibility for providing unlawful loans, the borrowers in the impugned loan transactions had compensated the bank for its losses by fully repaying the debt.

72. In a decision of 17 April 2006 the court initially ordered the applicant and other defendants to pay a certain amount in litigation costs and fixed lawyers' fees.

73. The applicant appealed against this judgment to the Court of Cassation, arguing, *inter alia*, that the court's decision to impose on him litigation costs and lawyers' fees and not to award him any lawyers' fees on a *pro rata* basis was not in accordance with the law.

74. On 22 February 2008 the Court of Cassation upheld the first-instance court's judgment, except its decision concerning litigation costs, and remitted the case to the first-instance court for a recalculation of the litigation costs.

75. On 30 June 2008 the first-instance court ordered the applicant jointly with the other defendants to pay an amount of TRY 11,678.43 (equivalent to approximately EUR 7,116 at the time of the decision) in litigation costs and held that there was no reason to issue a separate ruling as regards the parts of its previous judgment which had become final with the Court of Cassation's decision.

76. The applicant appealed against this decision, complaining about the imposition of litigation costs on him, which in his view, did not comply with the principles of a fair trial because the courts had not assessed the case on the merits.

77. On 21 May 2009 the Court of Cassation dismissed the appeal without responding to the applicant's argument about litigation costs.

3. Lawsuit suspended at the Fund's request

78. In one set of proceedings (case no. 2008/509 E.), the first-instance court decided to suspend the proceedings against the applicant at the Fund's request in accordance with the relevant provisions of the protocol of 28 November 2008 and the relevant provisions of Law no. 4389 and Law no. 5411 until the ranking list drawn up for the distribution of the proceeds from the sale of the Unit was finalised pursuant to Articles 6.2 and 8.7 of the protocol of 28 November 2008. In that connection, the courts noted that even though the applicant had not consented to the suspension of the proceedings, the conditions for his personal bankruptcy on the basis of his responsibility for granting unlawful loans during his time as executive of the bank had been met. According to the reasoning of the courts, in such circumstances and on the basis of the prerogative conferred on the Fund by domestic law, the latter had the right to request the suspension of the proceedings until it secured the reimbursement of the bank's losses. In view of the "one satisfaction principle" (*tek zarar tek tazminat ilkesi*), the courts considered that the amount of the debt for which the applicant would remain liable would rest contingent on the payments made by the debtor party to the protocol. Furthermore, in the event that the debt was paid in full, the case against the applicant would become devoid of purpose. In view of

those possibilities and the direct consequences they would have on the compensation amounts the applicant would be required to pay, the courts decided that it would be best to suspend the proceedings.

79. In their decisions, the courts also held that there was no need to make any determination as to lawyers' fees on the grounds that the suspension decision could not be regarded as a final decision on the merits of the dispute.

80. The applicant appealed against these decisions, arguing that he did not consent to the suspension of the proceedings and insisted that the courts continue to examine the case. He further submitted, *inter alia*, that the courts' decision not to award him any lawyers' fees, despite the fact that he had been represented by a lawyer throughout the proceedings, was not in accordance with the law.

81. The Court of Cassation dismissed the applicant's appeal and upheld the first-instance court's decision on 15 June 2009.

G. Temporary injunctions placed on the assets of the applicant

82. During the course of the majority of the proceedings where the courts granted the Fund's request for an injunction on the basis of sections 14(5)(bc) and 17 of Law no. 4389, the domestic courts agreed to gradually reduce the scope of the injunction so as to allow the applicant to use either his salary and retirement pension or the money in his accounts up to a certain amount.

83. In the proceedings registered under case nos. 2008/271 E. and 2009/650 E. concerning Sümerbank, the injunctions on the applicant's assets were lifted on account of the withdrawal of the lawsuit by the Fund. Thus, in those proceedings, the temporary injunction on the applicants' immovable property remained in place for almost eleven years, whereas the injunction on his movable property, including his salary, lasted for about six years in the proceedings under case no. 2008/271E. and less than a month in the other proceedings.

84. In the proceedings registered under case nos. 2008/192 E. and 2008/509 E. concerning Etibank, the courts eventually decided to lift the injunction at the applicant's request. In those proceedings, the courts held that the injunction on the applicant's assets had automatically lapsed (*mürtefi*) under Article 112 of the repealed Civil Procedure Code (Law no. 1086) on account of the absence of any express ruling regarding the maintaining of the injunction in the decisions delivered by the first-instance court. Thus, the temporary injunctions on the applicants' assets *de jure* remained in place for seven years but in reality lasted about ten years, since it was not until 2011 that the courts clarified that the injunctions had lapsed on account of the absence of a ruling in their decisions of 30 June and 31 December 2008 respectively.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Provisions of banking legislation concerning bank resolution processes and the Fund's powers and privileges

1. Banking Activities Act, Law no. 4389, as amended by Law no. 4491

85. The relevant provisions of Law no. 4389 read as follows:

Section 14

"4. If the Agency determines that the shareholders of a bank who, directly or indirectly, solely or jointly, hold the bank's management and supervision, have used the bank's resources in their favour so as to jeopardise the secure operation of the bank or caused losses to the bank in such a way, the Board shall be authorised to transfer the management and supervision of the bank and the rights of its shareholders, except dividends, to the Fund.

5. (a) The Fund, in respect of a bank whose management, supervision and shareholders' rights, except dividends, are transferred to it under subsection 3 of this provision, taking as a basis the balance sheet to be prepared as of the transfer date, shall be authorised to ...

(ab) take over the losses corresponding to the capital of the bank, provided that the losses do not exceed the savings covered by insurance and all of the shares are acquired ...

(b) The Fund, in respect of a bank whose management, supervision and shareholders' rights, except dividends, are transferred to it under subsection 4 of this provision shall be entitled to:

(ba) request the return of or compensation for the resources used in the way described in the aforementioned provision or the losses [of the bank] within the periods specified by it and the transfer of the shares [of the bank] to natural and legal persons deemed appropriate by the Board;

...

(bc) request from the domestic courts, without being required to post collateral [to secure the potential losses of the defendant], the imposition of any precautionary measures, including but not limited to the freezing of assets or a ban on persons who are managers, auditors or partners of the bank from leaving the country."

Section 15

"1. The savings deposits in banks shall be insured by the Savings Deposit Insurance Fund, a public-law body with separate legal personality. The Fund shall be responsible for and authorised to strengthen the financial situation, restructuring and transfer to third parties of banks whose shares and/or management and supervision have been transferred to it and to carry out all other tasks conferred on it by this [Act] ...

3. The Fund shall be exempt from all types of tax, charges and levies ..."

Section 17

"1. If it is determined that the decisions and transactions of a bank's board of directors, chairman and members of the credit committee, general managers, assistant general managers and officers whose signatures are binding on the bank have caused the insolvency of the bank, they may be held personally liable for the amount of losses that they caused to the bank and, by virtue of a Board decision and at the request of the Fund, the courts may decide on their personal bankruptcy. If these decisions and transactions are carried out for the benefit of the shareholders of a bank who, directly or indirectly, solely or jointly, hold the management and supervision of that bank, this provision shall apply to the shareholders for the benefits that they acquired ...

2. This provision shall also apply to the shareholders of the banks whose management, supervision and rights of shareholders, except dividends, have been transferred to the Fund pursuant to [section 14(3) to (5)], who also have been referred to in subsection 1 of this provision, and to employees of the bank referred to in subsection 1 of this provision, who have been responsible for the transactions mentioned in [section 14(3) and (4)], regardless of whether the bank has become insolvent.

3. The provisions of [section 14(5)(b)] relating to the declaration of assets and injunction measures shall also apply *mutatis mutandis* to this provision."

2. Law no. 4672 amending Law no. 4389

86. The relevant parts of section 15(3) of Law no. 4389 as amended by Law no. 4672 and section 15(7) added by Law no. 4672 read as follows:

Section 15

"3. ... As regards the receivables that it has taken over, the Fund shall be authorised to carry out all kinds of transactions, including discount, reaching of a settlement, acquisition of movable and immovable property and all kinds of rights and receivables, without being subject to limitation, and to set these off against the amounts owed to it ...

7. ... (b) the amounts due from the use of bank resources and assets by the shareholders of banks whose shares have been partly or wholly transferred to the Fund and who, directly or indirectly, solely or jointly, hold the management and supervision of that bank, or their executives who, through the board of directors, credit committees, branches and other authorised persons or officials or using other means, have acquired or helped third parties to acquire money, property, rights and receivables by way of creating, directly or indirectly, a security interest over the resources and assets of the bank in favour of third parties, showing these as collateral, granting loans to persons who do not have the means to repay, granting loans to secure financing, opening accounts in domestic and foreign banks and financial institutions under the name of deposit or other names or using these accounts as collateral or for other purposes or through other unlawful transactions, shall be considered to be owed to the Fund ..."

87. Provisional section 1 of Law no. 4672 stipulated that some of the provisions added to Law no. 4389 by Law no. 4672, including section 15(7), also apply to receivables owed to the Fund in connection with banks whose management, supervision and shareholding rights, except

dividends, have been transferred to the Fund prior to the entry into force of Law no. 4672.

3. Law no. 4743 amending Law no. 4389

88. The relevant part of section 15(3) of Law no. 4389 as amended by Law no. 4743 provides:

Section 15

"3 ... As regards all of its receivables under this [Act], including those which it had taken over or it is tasked and authorised to claim in lawsuits or execution proceedings, the Fund shall be authorised to carry out all kinds of transactions including discount, settlement, acquisition of movable and immovable property and all kinds of rights and receivables, without being subject to limitation, so as to set these off against the amounts owed to it, entering into agreements with debtors, including the rescheduling of repayment of the debt and within the framework of these agreements taking or not taking precautionary measures as per sections 14 and 17 of this [Act], filing or not filing lawsuits or requesting that the courts suspend civil lawsuits already filed for the duration of these agreements ..."

4. Law no. 5411 repealing and replacing Law no. 4389

89. The relevant parts of Law no. 5411 read as follows:

Section 108

"The majority shareholders and executives of banks which have been transferred to the Fund ... shall return and compensate for the resources used as explained in the paragraphs below, as well as the damages arising from such misuse, within the period given by the Fund, without prejudice to the provisions of this [Act] governing personal liability.

For the purposes of this provision, the resources and assets of banks used by the majority shareholders and executives of banks, through the board of directors, credit committees, executives, branches and other authorised persons and officials to acquire or help third parties to acquire money, property and any kind of rights and receivables directly or indirectly by way of creating a security interest over the bank's resources and assets, showing these as collateral, granting loans to persons who do not have any credibility, granting loans to secure financing, opening accounts in domestic and foreign banks and financial institutions under the name of deposit or other names or using these accounts as collateral or for other purposes or through other ways, shall be considered as fraudulently misused resources ..."

Section 132

"... As regards the receivables collected by it, the Fund shall be authorised to carry out all kinds of transactions including discount, settlement, selling or buying back, acquisition of movable and immovable property and all kinds of rights and receivables on account of its claim under the conditions specified; entering into agreements with debtors including a new repayment plan for its receivables, applying or not applying precautionary measures in accordance with the principles and procedures to be determined by its board pursuant to the provisions of this [Act] under the agreements

it has concluded with the debtors, filing or not filing lawsuits and requesting that the court suspend lawsuits already filed for the duration of those agreements ..."

Section 134

"If the Fund considers it useful for the collection of its receivables, it shall be authorised to take over the shareholders' rights, except for dividends, associated with all and/or some of their shares, and their management and control, ..., of the following regardless of whether these are indebted to the Fund:

(a) the subsidiaries [of a bank transferred to the Fund],

(b) the legal person shareholders holding the majority of the shares of a bank transferred to the Fund,

(c) the companies in which the legal and natural person majority shareholders of a bank transferred to the Fund are majority shareholders, and

(d) the shareholders of companies acting on behalf of the above-listed persons and entities or acquiring funds or rights on their behalf.

The Fund ... shall be authorised to sell the shares of companies owned by the persons referred to in this provision and/or licences, permits and all other rights and assets, including rights arising from the temporary frequency utilisation, channel utilisation and concession agreements ... and/or all property owned by these companies or those assets in proportion to the shares taken over by the Fund and to apply the proceeds to set off against its receivables or to pay the debts owed by those companies ...

In order to ensure the collection of its receivables, the Fund shall be authorised to bring together the attached assets, the rights arising from licences, permits and concession contracts and all other rights and assets under the contracts that are accessories or inseparable parts of these assets but do not have a separate economic value alone so as to sell these in a manner that will ensure commercial and economic integrity, to sell the attached property even though these are owned by more than one debtor and/or more than one creditor, to establish the payment method and currency of the tender value, the conditions required to be met by buyers, the payment date, other principles and procedures applicable to the tender as well as sale conditions ... , to acquire the commercial and economic unit towards the settlement of the debts owed to the Fund ... The board of the Fund shall set up a sale committee consisting of a minimum of three members to execute the sale process and shall appoint the chairman of the committee ... The estimated value of the commercial and economic unit shall be set by the board of the Fund on the basis of a report to be prepared by the sale committee taking into account the valuation reports prepared by expert persons and entities ... The ranking list for the distribution of the proceeds of the tender shall be prepared by the sale committee ...

Other principles and procedures applicable to the sales to be carried out pursuant to this provision shall be set out in a regulation to be issued by the Fund ...

The proceeds of the sale of the assets and property of natural and legal persons, either as a commercial and economic unit or separately under this provision, shall be used to repay the outstanding debts of the companies, in the following order: the debts arising out of the purchase of technical knowledge, software, hardware, equipment, goods and services, the debts to the State and social security organisations ... and the remaining part shall be used to pay the debts owed to other public bodies and entities

and regulatory bodies on a *pro rata* basis provided that these debts accrued prior to the date of the sale ...

The Fund shall be authorised to place a precautionary attachment on the money, goods, rights or receivables specified herein or to take custody of them and take over any such assets at a value to be determined taking into account appraisal reports ... to set off against its receivables ..."

Section 136

"The injunction measures in order to secure the collection of debts owed to the Fund in the proceedings initiated by the Fund shall remain in place until the finalisation of the proceedings or payment of the debt ..."

Provisional Section 11

"Sections 14, 15, ... , 17, ... of Law no. 4389, which is repealed by this [Act], shall remain applicable until the Fund collects all kinds of receivables and finalises all kinds of procedures initiated against banks whose shareholder rights, except dividends, as well as management and control have been transferred to the Fund ... prior to 26 December 2013.

The provisions of section 14(5) and (6) of Law no. 4389, which have been repealed by this [Act], shall continue to apply for banks in connection with which procedures were carried out under section 14 of Law no. 4389 ..."

Provisional Section 16

"The provisions of this [Act] which are favourable to the Fund and facilitate the collection of its receivables, shall apply retroactively."

5. Regulation on the Sale of Seized Assets Forming an Economic and Commercial Unit by the Savings Deposit Insurance Fund

90. The relevant provisions of the Regulation issued by the Fund provide:

Section 4

"The assets owned by one or more natural or legal persons that are attached ... licences, permits and concession agreements and rights arising out of the provisional or permanent use of frequency and channel and agreements that are accessories or inseparable parts of this property, rights and/or assets and all or part of all other property, rights and/or assets including those under those contracts that do not have a separate economic value shall constitute a commercial and economic unit."

Section 26

"1. The ranking list pertaining to the distribution of the proceeds of the sale of the commercial and economic unit shall be prepared by the sale committee as per Law no. 5411 after the tender price is paid by the purchaser.

2. Following the deduction of the costs related to the sale, provided that they accrue prior to the date of sale, the outstanding debts under section 25 of this regulation and the debts owed to the State and social security authorities shall be first paid out and

the remaining part shall be used to pay the debts owed to other public bodies and entities and regulatory bodies on a *pro rata* basis.

...

4. A copy of the ranking list shall be ... published in the Official Gazette.

5. Objections to the ranking list can be made within [fifteen] days. The time period starts from the date of its publication."

B. Provisions concerning litigation costs and lawyers' fees

91. Under Turkish law, the party against whom the first-instance court has decided has an obligation to bear the litigation costs and court fees (*yargılama giderleri*).

92. The court fees include not only the different items of expenditure made by the court throughout the proceedings, which are in practice referred to as litigation costs, but also lawyers' fees (*vekalet ücreti*), which are payable in the event that the party in favour of whom the court has decided is represented by a lawyer.

93. Depending on the nature and the subject matter of the dispute and the relevant provisions of the applicable laws, a court may award in lawyers' fees the fixed sum set out in the Tariff or calculate them on a *pro rata* basis, that is, in proportion to the amount in dispute.

1. Civil procedure legislation

94. The relevant provisions of the repealed Civil Procedure Code (Law no. 1086) pertaining to the awarding of court fees in the event of withdrawal of a lawsuit or a decision that the case is devoid of purpose read as follows:

Article 94

"The party which withdraws or accepts [the lawsuit] shall be required to pay the court fees as if [the court] has ruled against him or her.

The defendant party may not be required to pay court fees as long as he or she has not caused the lawsuit to be filed and provided that he or she has accepted the lawsuit at the first hearing."

Article 425

"In lawsuits where it is not possible to reach a decision on account of the death of a party or abandonment of the lawsuit, the judge shall determine the court fees."

95. The relevant provisions of the Civil Procedure Code (Law no. 6100), which entered into force on 4 February 2011 and repealed and replaced Law no. 1086, pertaining to the awarding of court fees in the event of withdrawal of a lawsuit or a decision that the case has become devoid of purpose, read as follows:

Article 312

"The party who makes a withdrawal or acceptance declaration shall be ordered to pay court fees as if he or she had been found against...

The defendant party may not be required to pay court fees as long as he or she has not caused the lawsuit to be filed and provided that he or she has accepted the lawsuit at the first hearing."

Article 331

"If there is no reason to deliver a decision on the merits of the dispute on account of the lawsuit becoming devoid of purpose, the judge shall determine the court fees by taking into account the validity [of the claims] of the parties at the time the lawsuit was filed..."

2. Tariff on Minimum Lawyers' Fees

96. As a general rule, the Tariff stipulates that in the event that the subject matter of the legal services provided by a lawyer is money or has a monetary value, the lawyers' fees depend on the amount of the claim and are calculated by applying the coefficients provided for in the annex to the Tariff to the amount in question.

97. In limited situations specified in the Tariff and in cases where there is an express provision of law, regardless of the subject matter and nature of the dispute, the court is to award in lawyers' fees the fixed sum stipulated in the annex to the Tariff.

98. The amount of fixed lawyers' fees and coefficients used to calculate *pro rata* lawyers' fees are updated with the publication of the tariff for the next year in the Official Gazette at the end of each year.

99. The Tariff also stipulates that if the court, after the completion of the evidence collection stage, for some reason decides that the lawsuit has become devoid of purpose or the lawsuit is withdrawn, the fees in the Tariff are to be awarded in full.

100. The aforementioned terms of the Tariff remained the same over the years and were in force at the time the domestic courts delivered their decisions in the present cases.

3. Banking legislation on lawyers' fees

101. The relevant provision of Law no. 5411 concerning lawyers' fees in proceedings brought by the Fund in respect of banks whose operating permits have been revoked provides:

Section 133

"If the liquidation process of the banks whose operating permits have been revoked has been completed but the receivables of the insolvency and liquidation administrations have not been collected, the Fund may file lawsuits against the shareholders, former members of the board of directors and auditors who have been

found liable for compensation of the losses that they have caused by their actions ... within five years following completion of the liquidation ...

In proceedings brought or to be brought [by the Fund] under this provision, a fixed sum shall be paid in lawyers' fees to the party in whose favour the dispute is settled."

C. Provisions concerning temporary injunctions

1. Civil procedure legislation

102. The relevant provisions of Law no. 1086 pertaining to temporary injunctions read as follows:

Article 103

"... The judge may order the imposition of a temporary injunction in circumstances where a deferral [of action] may be dangerous or may cause significant harm, with a view to averting such danger or damage."

Article 105

"A request for an interim measure shall be submitted to the judge by a written petition. Immediately after the request and as a matter of urgency both parties shall be summoned and the required decision shall be given even if they do not attend."

Article 110

"The party requesting the ordering of a temporary injunction shall be required to post collateral to secure the potential losses that the other party or third parties may incur as a result of the temporary injunction. If the circumstances so require, the judge may waive that obligation and if the party requesting the temporary injunction is the State or a person benefiting from legal aid the posting of collateral shall not be required."

Article 112

"Following the pronouncement or delivery of the judgment on the merits, the interim measure shall be lifted. However, the court may decide to prolong the measure for a period that it shall set to ensure the enforcement of the judgment ..."

103. The relevant provisions of Law no. 6100 pertaining to temporary injunctions provide:

Article 389

"If there is a concern that a change in the existing situation would significantly impede or make impossible the vindication of a right or the delay would cause harm or serious loss, a preliminary injunction in respect of the subject matter of the dispute may be ordered."

Article 396

"If it is established that the situation and the conditions have changed, [the court] may order that the temporary injunction be changed or lifted, without requiring collateral."

Article 397

"... 2. The effects of the temporary injunction, unless stated otherwise, shall continue until the decision becomes final."

Article 399

"1. If it is determined that the party who obtained a preliminary injunction did not have a valid ground at the time of the request for the preliminary injunction or the preliminary injunction is lifted automatically or upon objection, that party shall be required to compensate the loss [of the other party] caused by the temporary injunction ...

2. Proceedings for an unjust preliminary injunction shall be brought before the court which decided on the merits of the dispute.

3. The right to bring the compensation proceedings shall be time-barred within one year following the finalisation of the judgment or the lifting of the preliminary injunction."

2. Banking legislation

104. The relevant provision of section 14(5) of Law no. 4389, as amended by Law no. 4491, reads as follows:

Section 14

"The Fund shall be authorised ...

(bb) to request the shareholders who, directly or indirectly, solely or jointly, hold the management and supervision and the natural person shareholders who own more than 10% of the shares in the legal person shareholders to provide a declaration of property showing the immovable property, participations, movable property, rights, receivables and securities that can be attached and all kinds of revenues and salaries belonging to them, their spouses and children under custody as well as the immovable property, movable property rights, receivables and securities that can be attached which they acquired either free of charge or for a consideration within the last two years prior to the declaration,

(bc) to request the court to take all precautionary measures for the protection of the interests of creditors, including the ordering of a temporary injunction or precautionary attachment on the assets owned by the shareholders who directly or indirectly, solely or jointly, hold the management and supervision [of the bank], without being required to provide collateral ..."

105. Subsection (c) of section 14(7) added to Law no. 4389 by Law no. 4672 reads as follows:

Section 14(7)

"(c) If the Fund elects to bring an action or initiate enforcement proceedings to collect its receivables, sections 2, 23 and 29 of the Charges Act (Law no. 492) and section 1 of the Levy of Charges for the Construction of Prisons and Courthouses and the Fees Charged to Prisoners for Food Act (Law no. 2458) shall not apply in those proceedings. The requirement concerning the submission of collateral to request temporary injunctions and precautionary attachment and the payment of charges by the other party to receive and serve a copy of the judgment shall also not apply to ... the Fund ..."

106. The relevant provisions of Law no. 5411 provide:

Section 136

"To ensure the collection of the Fund's receivables, the temporary injunction and precautionary attachment decisions delivered in the lawsuits and enforcement proceedings brought by the Fund as per the provisions of this [Act], in respect of money, all property, rights and receivables shall constitute the legal security of the receivables which form the subject matter of these lawsuits and proceedings and shall remain until the court judgments become final or the enforcement proceedings end ..."

Section 138

"In case any kind of lawsuit and enforcement proceedings to which the Fund is party is concluded against the Fund in whole or in part, the compensation and penalties stated in the Enforcement and Bankruptcy Act (Law no. 2004) shall not apply to the Fund ..."

D. Right of Individual Application to the Constitutional Court

107. A description of the relevant domestic law and practice regarding the right of individual application to the Turkish Constitutional Court, as well as a review of the mechanism for individual application, may be found in *Hasan Uzun v. Turkey* (dec.), no. 10755/13, §§ 7-27 and §§ 52-71, 30 April 2013).

E. Judicial practice

108. In their observations, the Government provided examples of case-law from the Court of Cassation concerning the conditions for obtaining compensation for harm suffered as a result of an injunction.

It appears that a lawsuit for such compensation may be filed on the basis of Article 399 of Law no. 6100 against the party who requested such temporary injunction measures and who has lost his or her case on the merits or when the temporary injunction has been automatically lifted. According to the interpretation of the Court of Cassation, the domestic courts would need to determine the liability for compensation in those cases on an objective basis, that is, on the basis of the final outcome of the case on the merits. The Court of Cassation further held that non-pecuniary damage

in such cases could only be granted if the party who requested temporary injunction had been culpable (see the decision of 17 January 2019 E.2016/8328 K.2019/156). Lastly, the Court of Cassation noted that the time-limit for lodging a compensation claim was one year following the final judgment on the merits or the lifting of the temporary injunction.

THE LAW

I. JOINDER OF THE APPLICATIONS

109. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

110. In all applications, the applicant, relying on Article 6 of the Convention, complained that the suspension of the lawsuits brought against him at the unilateral request of the Fund, in the majority of the lawsuits, subsequent to their respective dates of introduction, had resulted in the lawsuits hanging over him for an indefinite time period as the courts had been precluded from reaching a conclusive decision. He further submitted under application nos. 32844/17 and 53870/09 that because the courts had not delivered a decision on the merits of the dispute in the suspended proceedings, he had not been awarded any lawyers' fees despite being represented by a lawyer throughout the entire proceedings. With respect to the proceedings in which he had received a fixed sum in lawyers' fees or had not received any sum (case nos. 2011/399 E. and 2012/291 E.), he further submitted that the domestic courts should have awarded him lawyers' fees in proportion to the amount claimed by the Fund as per the provisions of the Tariff. In application no. 21392/08, concerning the proceedings under case no. 2008/192 E. where the courts had decided that the lawsuit had become devoid of purpose, the applicant complained that he had been unfairly ordered to pay litigation costs, arguing that in the event of a lawsuit becoming devoid of purpose, under the applicable legislation, the party who caused the lawsuit to be filed was liable for litigation costs. Lastly, the applicant further alleged under all applications that the temporary injunctions placed on his assets at the Fund's request, which in some cases had lasted for over ten years on average, had unjustifiably deprived him of a large of portion of his assets, in violation of his right under Article 1 of Protocol No. 1, even though the Fund had mostly recovered its alleged losses from the majority shareholders of the banks by way of settlements.

111. The Court is of the view that the complaints fall to be examined under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. Those provisions, in so far as relevant, 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 1 of Protocol No. 1

"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."

A. Admissibility

1. The parties' submissions

112. Firstly, the Government objected that the applicant had not exhausted the appropriate remedies. According to them, the applicant should have lodged an individual application with the Constitutional Court, which had been entrusted with the power to provide redress for violations of the rights and freedoms protected by the Convention as of 23 September 2012, as acknowledged by the Court in its decision in *Uzun v. Turkey* ((dec.), no. 10755/13, §§ 68-71, 30 April 2013) and many other cases (they relied in particular on *Müdür Turgut and Others v. Turkey* (dec.), no. 4860/09, §§ 69-70, 26 March 2013, and *Ahmet Erol v. Turkey* (no. 73290/13, §§ 30-33, 6 May 2014). They further submitted that the Constitutional Court had accepted an extension of its jurisdiction *ratione temporis* to situations involving a continuing violation which had begun before the introduction of the right of individual application and had carried on after that date, as had been acknowledged by the Court in the case of *Koçintar v. Turkey* ((dec.), no. 77429/12, §§ 15-26 and 39, 1 July 2014). In the Government's view, the proceedings which had been suspended had to be considered as a continuing situation and therefore the applicant had been required to lodge an application with the Constitutional Court as of 23 September 2012.

113. With respect to the proceedings where the temporary injunction had eventually been lifted, the Government argued that the applicant had had the opportunity to bring compensation proceedings under Article 399 of Law no. 6100, but that he had not availed himself of that remedy. They

referred in that connection to the decisions of the Court of Cassation (see paragraph 108 above) demonstrating that the remedy was effective and accessible in practice. The Government further considered that in the event of the case being dismissed by the domestic courts, the applicant would further have had the possibility to lodge an individual application with the Constitutional Court. Lastly, the Government argued that the provision set out in section 138 of Law no. 5411 exempting the Fund from any liability for compensation or penalties set out in Law no. 2004 with respect to proceedings to which it was party would not prevent the applicant from making a claim under Article 399 of Law no. 6100 on which such a compensation case would be based.

114. With respect to the proceedings under case no. 2012/291 E., the Government further argued that the applicant had not appealed to the Court of Cassation against the decision of the Istanbul Commercial Court of 31 December 2012. They therefore considered that the applicant had only first raised his complaint concerning the absence of an award for lawyers' fees in respect of those proceedings before the Court, without filing an appeal or rectification request.

115. Lastly, the Government submitted that with respect to the cases where the applicant had filed a petition waiving his right to litigation costs, he could not claim to be a victim of the alleged violation of Article 6 of the Convention.

116. The applicant argued that the impugned decisions in the domestic proceedings had all been rendered before the right of individual application to the Constitutional Court became available and that he had not had to exhaust this remedy while his application was pending before the Court.

2. The Court's assessment

117. The Court reiterates that the purpose of the exhaustion rule, contained in Article 35 § 1 of the Convention, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Accordingly, this rule requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts (see *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 other cases, §§ 69-70, 25 March 2014). Yet, the rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach (see *Radomilja and Others v. Croatia* [GC], no. 37685/10, § 117, 20 March 2018; *Latak v. Poland* (dec.), no. 52070/08, § 75, 12 October 2010; and *İçyer v. Turkey* (dec.), no. 18888/02, 12 January 2006).

118. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many

occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001, and *İçyer*, cited above, § 83).

119. Having examined the main aspects of the new remedy before the Turkish Constitutional Court, the Court found that the Turkish Parliament had entrusted that court with powers that enabled it to provide, in principle, direct and speedy redress for violations of the rights and freedoms protected by the Convention, in respect of all decisions that had become final after 23 September 2012, and declared it a remedy to be used (see *Uzun*, cited above, §§ 68-71).

(a) Complaints under Article 6 § 1 of the Convention

(i) Application no. 32844/17

120. As regards the proceedings under domestic case no. 2012/291E. concerning Sümerbank, the Court notes, as pointed out by the Government, that the applicant did not appeal against the decision of the first-instance court of 31 December 2012 to the Court of Cassation (see paragraph 47 above). Nothing suggests that an appeal to the Court of Cassation would not have been effective in relation to the applicant's grievance about the absence of a ruling on lawyers' fees. This complaint must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

121. The Court takes the view that the exception referred to in paragraph 118 above should also be applied in the proceedings under domestic case no. 2011/399E. concerning Sümerbank, since the impugned domestic decisions in those proceedings became final after 23 September 2012 and thus fell within the Constitutional Court's temporal jurisdiction. Accordingly, the Court observes that the applicant failed to exhaust this remedy before the Constitutional Court and that the Government's preliminary objection in respect of those proceedings must therefore be allowed.

122. It therefore follows that complaints introduced by application no. 32844/17 under Article 6 of the Convention must be declared inadmissible for non-exhaustion of domestic remedies.

(ii) Application no. 53870/09

123. In the same vein, with respect to the complaints introduced by application no. 53870/09, the Court takes the view that the domestic proceedings which were suspended should be considered a continuing situation on account of the fact that they were ongoing before the domestic courts at the time when the individual application to the Constitutional Court became available. It does not appear that the applicant attempted to

use the new remedy, or that there existed special circumstances which absolved him from doing so.

124. It therefore follows that the complaints introduced by application no. 53870/09 under Article 6 of the Convention must be declared inadmissible for non-exhaustion of domestic remedies.

(iii) Application no. 21392/08

125. On the other hand, the Court notes that in the proceedings concerning Etibank, the impugned domestic decision regarding the proceedings becoming devoid of purpose (case no. 2008/192E.), which is the subject matter of application no. 21392/08, became final on 21 May 2009 – well outside the temporal jurisdiction of the Constitutional Court – and that the Government's preliminary objection in respect of that application cannot therefore be accepted.

126. The Court further notes that the applicant did not submit a waiver in respect of litigation costs and legal fees and that the Government's objections on those grounds are therefore irrelevant.

127. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

(b) Complaints under Article 1 of Protocol No. 1

128. As regards the second part of the preliminary objection raised by the Government, namely that the applicant failed to bring any civil action for damages against the Fund for the temporary injunctions which were eventually lifted, the Court makes the following observations. A civil action for a temporary injunction and its interpretation by the domestic courts, as shown in the example submitted by the Government (see paragraph 108 above), appears to be an avenue open specifically to defendants who have succeeded in defending their case and obtained a decision on the merits of the dispute brought against them. This was clearly not the case with the applicant. First of all, the condition for such a civil action to succeed is demonstration by the defendant that the placing of a temporary injunction was unjustified in the proceedings brought against him or her. To assess whether the placing of a temporary injunction was unjustified, the Court of Cassation requires the claimant to have been unsuccessful in his or her case on the merits in the main proceedings in which the injunction was placed. In the instant case, having regard to the fact that no examination on the merits was possible in the proceedings as they were withdrawn by the Fund on account of the settlements with third parties, the Court does not consider that a civil action for damages could have offered reasonable prospects of success for the applicant's grievances. Moreover, the Government have not

provided any examples of domestic cases where that remedy has been successfully used in a comparable situation against the Fund. It follows that the Government's objection of non-exhaustion of domestic remedies should be dismissed.

129. In conclusion, it follows that the Government's non-exhaustion objection, in so far as it concerns the complaints introduced by the applications under Article 1 of Protocol No. 1, must be rejected.

130. The Court further notes that no other ground for declaring the complaints inadmissible has been established and that they must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention concerning application no. 21392/08

131. The applicant maintained his arguments.

132. As regards the imposition of litigation costs on the applicant in the proceedings where the domestic courts decided that the lawsuit had become devoid of purpose following payment of the debt by the debtor, the Government put forward the following arguments. Firstly, they submitted that when a case became devoid of subject matter during the proceedings, the domestic courts were required to order that the costs of litigation be paid by the party who had been in the wrong at the time the lawsuit had been filed. In that connection, the courts would have to make a prima facie determination on the merits of the case and examine whether the actions of the defendant party had prompted the claimant to take legal action by filing the lawsuit. In the case at hand, the Government referred to the reasoning of the domestic courts which had established, on the basis of expert reports, that the conditions for ordering the applicant's bankruptcy had been satisfied on account of the fact that he had granted the impugned loans unlawfully and caused the bank financial loss. Thus, in the Government's view, the decision ordering the applicant to bear the litigation costs had not been arbitrary or unreasonable. Secondly, the applicant had been able to make submissions against the expert reports in question and his rights of defence had not been compromised. Lastly, the litigation costs in question had not been excessive and liability to pay them had not moreover fallen solely on the applicant, as the other defendants had been jointly responsible.

133. The Court observes that the determination of the costs of the trial in the present case falls within the purview of Article 6 § 1 of the Convention (see *Robins v. the United Kingdom*, 23 September 1997, §§ 28 and 29, *Reports of Judgments and Decisions* 1997-V; *Rotaru v. Romania* [GC], no. 28341/95, § 78, ECHR 2000‑V; and *Pyrobatys A.S. Restrukturalizacii v. Slovakia* (dec.), no. 40050/06, § 59, 3 November 2011), which is accordingly applicable.

134. The Court reiterates that the requirement to pay fees to civil courts in connection with claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention (see *Stankov v. Bulgaria*, no. 68490/01, § 52, 12 July 2007). However, the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed his right of access and had "a ... hearing by [a] tribunal" (see *Kreuz v. Poland*, no. 28249/95, § 60, ECHR 2001-VI).

135. Furthermore, the Court considered in *Stankiewicz v. Poland* (no. 46917/99, § 60, ECHR 2006-VI) that there might be situations in which the issues linked to the determination of litigation costs could be of relevance for the assessment as to whether the proceedings in a civil case seen as a whole complied with the requirements of Article 6 § 1 of the Convention.

136. The Court considers that the central issue in the present complaint concerns the fact that the applicant was ordered to reimburse the litigation costs of the Fund despite the fact that there had been no determination on the merits of the dispute, the proceedings having become devoid of purpose on account of the settlement of the debt between the Fund and third parties. Having regard to the applicant's complaint, the Court does not consider that the present case concerns an alleged "excessive nature of costs" or an "access to a court" issue. Nor is the present case akin to the situation in *Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey* (no. 20577/05, 22 October 2013) in which the issue at stake was an automatic and excessive fine imposed on the applicant company for bringing unsuccessful proceedings against the bank taken over by the Fund where the courts had no discretion in the matter and the law did not provide for an upper-limit of the fine (ibid., §§ 27-33). Finally, while it is true that the proceedings in question did not terminate with a substantive decision on the merits, they did essentially end in the applicant's favour when the courts deemed them to be devoid of purpose (see, *mutatis mutandis*, *Pyrobatys A.S. Restrukturalizacii,* cited above, § 63). For this reason, the Court will examine the complaint from perspective of the fairness requirement.

137. The Court does not find it unreasonable that the domestic courts exercise a power of appreciation in the determination of which party pays litigation costs when the case could not be concluded on the merits. The Court further takes note of the domestic courts' interpretation of domestic law that where proceedings become devoid of purpose, the courts, in order to make a ruling as regards costs, would have to make a prima facie determination of who was in the right at the time the lawsuit was filed (see paragraphs 94-95 above). The Court also notes that no exceptions to that rule appear to exist either in law or judicial interpretation. That being so, it

is not the Court's task to review domestic law in the abstract, but to examine the manner in which that law has been applied to the applicant. In the particular circumstances of the case, that means that the Court has to determine whether the imposition of the litigation costs put the applicant at an undue disadvantage *vis-à-vis* the Fund.

138. In that connection, the Court notes that the domestic courts did not find the Fund's action against the applicant manifestly ill-founded. The expert reports carried out in the proceedings had determined that the issuing of the loans to the bank's majority shareholder's companies had not complied with domestic law and good banking practices. On that ground, the courts established that the conditions for the applicant's personal bankruptcy had prima facie been satisfied. The applicant was able to submit his arguments against these reports and did not encounter any procedural difficulties in doing so. Lastly, the Fund cannot be reproached for bringing a malicious or frivolous lawsuit against the applicant or considered to have been lacking in diligence in prolonging the proceedings. The Court therefore considers that in the circumstances of the case at hand, the responsibility for litigation costs were determined by the domestic courts in a fair and adversarial manner.

139. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 § 1 of the Convention in respect of those domestic proceedings.

2. Article 1 of Protocol No. 1 of the Convention

140. The applicant maintained his arguments.

141. The Government submitted that the temporary injunctions in question could not be said to constitute interferences within the meaning of Article 1 of Protocol No. 1 to the Convention. In any event, they noted that the measure had been based on precise and foreseeable rules, meant to prevent the enforcement of a possible decision in the Fund's favour from becoming ineffective through the disposal of the applicant's assets. As regards proportionality, the Government commented that the domestic courts had lifted the interim measures in the lawsuits where the Fund had succeeded in collecting the debts under the protocols. In others, the courts had gradually lifted the interim measures on the applicant's salary and later his receivables from the retirement fund.

142. The Court considers that the temporary injunctions ordered by the domestic court and their subsequent enforcement engage the responsibility of the State and amounted to an interference with the applicant's right to peaceful enjoyment of his possessions. Article 1 of Protocol No. 1 is therefore applicable (see *Maniscalco v. Italy* (dec.), no. 19440/10, § 54, 2 December 2014).

143. The Court reiterates that, according to its case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property,

comprises three distinct rules: the first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, among many other authorities, *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 289, 28 June 2018).

144. The Court notes that the temporary injunctions placed on the applicant's assets did not deprive him permanently of his possessions, but provisionally prevented him from using and disposing of them, with a view to securing a possible award of damages in favour of the creditor. It is thus comparable to the seizure of property for legal proceedings which normally relates to the control of the use of property, and thus falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see *Maniscalco*, cited above, § 55, and, *mutatis mutandis*, *Uzan and Others v. Turkey*, no. 19620/05 and 3 others, § 194, 5 March 2019).

145. In view of its finding that such a measure falls within the ambit of the second paragraph of Article 1 of Protocol No. 1, the Court must establish whether it was lawful and "in accordance with the general interest", and whether there existed a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for example, *Džinić v. Croatia*, no. 38359/13, §§ 61- 62, 17 May 2016).

146. There is nothing to suggest that the imposition of interim measures in the context of the civil proceedings was unlawful in terms of Turkish law. The domestic courts referred to sections 14(5)(bc) and 17 of Law no. 4389 as the legal basis for those measures.

147. It follows that the interference satisfied the lawfulness requirement. Furthermore, there is nothing to suggest that the applicable rules were insufficiently accessible or foreseeable. The question whether they provided enough safeguards against an arbitrary or disproportionate interference will be examined below, under the heading of proportionality.

148. As regards the legitimate aim, the Court has previously found that the application of provisional measures in the context of judicial proceedings aimed at anticipating a possible confiscation of property, is in the "general interest" of the community (see, in particular, *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 123, 2 June 2016, where the Court accepted that precautionary measures with a view to ensuring that the managers of a bank

which had fallen into insolvency would not dissipate their assets in anticipation of possible criminal charges or civil claims relating to the way in which they had run the bank before the insolvency had pursued a lawful and legitimate aim).

149. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 167, ECHR 2006-VIII). According to the Court's case-law, the character of the interference, the aim pursued, the nature of property rights interfered with, and the behaviour of the applicant and the interfering State authorities are among the principal factors material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 75, 9 October 2008).

150. The Court notes that seizure of property which belongs to one of the parties to proceedings is, by its nature, a harsh and restrictive measure. It is capable of affecting the rights of an owner to such an extent that his or her main business activity or even living conditions may be put at stake (see *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, § 129, 5 November 2013). Nonetheless, the Court has accepted that the stability of banks and the interests of their depositors and creditors deserve enhanced protection, and the national authorities enjoy a broad margin of appreciation in choosing how to deal with such matters (see, among other authorities, *International Bank for Commerce and Development AD and Others*, cited above, § 124). As regards the requisite balance to be struck between the means employed for the temporary seizure of the applicant's assets and the above-mentioned legitimate aim, the Court notes that the tenor of the applicant's submissions in this regard called into question the allegedly excessive duration of the measure.

151. The Court notes that in previous cases where lengthy precautionary measures gave rise to a violation of Article 1 of Protocol No.1, the finding of a violation was based on an accumulation of factors. While the length of time during which the restrictions remained in place is a crucial part of the

Court's assessment (see *Forminster Enterprises Limited*, cited above, § 77), the scope and nature of restrictions as well as the presence or absence of procedural guarantees are no less relevant.

152. For example, in the case of *JGK Statyba Ltd and Guselnikovas* (cited above, §§ 130-33), the violation was not only based on the fact that the restriction had remained in place for more than ten years but also because the domestic courts had not considered any alternative and less restrictive measures and had treated the matter in an inconsistent manner, especially since the applicant company's ownership rights had already been definitively established in a previous final and binding judgment.

In the case of *Džinić* (cited above, §§ 70-82), where the measures had lasted two and a half years in the context of criminal proceedings, the Court found the measure to be disproportionate because the value of the seized property had been almost nine times more than the pecuniary gain allegedly obtained through the commission of the offence and the domestic courts had made no assessment in that regard.

In the case of *Uzan and Others* (cited above, §§ 212-15), temporary injunctions had been imposed on the applicants on the grounds that their relatives, or their managers, were being prosecuted for misuse of public funds concerning the activities of a bank. For some applicants, these measures had lasted ten years, while for others they were still being maintained by the domestic courts at the time of the Court's judgment. The Court took into account several factors in its finding of a violation. While it remarked that the initial implementation of those measures could have been considered proportionate, it found that the extent of the restrictions had been too broad and had become disproportionate over time. In that connection, the Court emphasised that the applicants had not benefited from any individual review of the measures, which had been automatic, general and inflexible and had lasted even after the criminal proceedings had been discontinued or terminated with acquittal and the payment orders had been overruled by the competent courts. Moreover, the applicants had not benefited from any procedural safeguards to effectively challenge those measures, which had been imposed on them in criminal proceedings to which they had not been parties. Lastly, the Court remarked that there was no evidence in the case file indicating that the applicants themselves had been implicated in the commission of the offences.

153. In the application of these principles to the present case, the Court observes at the outset that overall duration of the temporary injunctions in the impugned proceedings against the applicant was of a significant length. While the Court accords particular significance to this fact, it must also take into consideration other relevant factors in order to determine whether the aggregated length of temporary injunctions on the applicant's assets was offset by countervailing interests in the case. In that connection, the Court notes that the scope of the temporary injunctions against the applicant were

not disproportionate *vis-a-vis* the pecuniary losses claimed by the Fund against the applicant. Since the applicant could, had the proceedings terminated in his disfavour, be declared bankrupt and have all his assets seized in order to satisfy the claims of the Fund, the value of his frozen assets did not exceed the financial risks he faced (see, *mutatis mutandis*, *Apostolovi v. Bulgaria*, no. 32644/09, § 102, 7 November 2019, and contrast with *Džinić*, cited above, § 80). What is more, the domestic courts gradually reduced the scope and extent of the measures in question so as to enable the applicant to enjoy his movable assets and use his salary and retirement pension. More importantly, the domestic courts did not delay in their review of the scope and extent of those measures, given the complexity of the case. The impugned measures which were subject to an individual review at the request of the applicant could not therefore be said to have been applied in an automatic or inflexible fashion (contrast with *Uzan and Others*, cited above, § 215). Lastly, the Court also considers it relevant that the temporary injunctions were ordered in proceedings which concerned the applicant's responsibility in his former role as general manager of the banks for approving a significant number of loans to the banks' majority shareholders' companies and that the domestic courts found certain elements in the case file pointing to his culpability (contrast with *Uzan and Others*, cited above, § 212, and *Lachikhina v. Russia*, no. 38783/07, § 63, 10 October 2017, where the Court noted in its assessment of proportionality that there was no indication that the applicants had been involved in the offences for which their assets had been confiscated or frozen).

154. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present case, the temporary injunctions concerned did not amount to a disproportionate interference with the applicant's right to the peaceful enjoyment of his property.

There has accordingly been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint concerning litigation costs under Article 6 § 1 introduced by application no. 21392/08 and the complaints concerning the temporary injunctions under Article 1 and Protocol No. 1 introduced by all applications admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been no violation of Article 6 of the Convention in respect of litigation costs;

4. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention in respect of the temporary injunctions;

Done in English, and notified in writing on 16 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Jon Fridrik Kjølbro
Deputy Registrar	President

Appendix

No.	Application no.	Lodged on	Applicant Date of birth Place of residence	Date and details of the initial proceedings	Case No. of the Final Proceedings	Interim Injunction	Date and Reasoning of the Final Court Decision	Ruling on Lawyers' fees/ Litigation Costs	Appeal Proceedings against the Decision on Merits	Complaints Communicated to the Parties
A. PROCEEDINGS CONCERNING SÜMERBANK										
1.	32844/17	21/04/2008	**Şükrü KARAHASANOĞLU** 01/02/1947 Istanbul	**14/08/2000** 2000/973 E. 1st Commercial Court of Istanbul **Amount claimed:** 248,569,000,000,000 old Turkish liras (TRL)[1] (equivalent to approximately EUR 425,579,380)	**2012/291 E.**	**18/09/2000:** Dismissal of the request for an injunction	**31/12/2012:** Lawsuit became devoid of subject matter on the grounds that the payments under the protocol of 12 August 2004 covered the bank's losses	No reason to rule any lawyers' fees in favour of any party	The applicant did not appeal and the decision of 31 December 2012 became final on 3 May 2013.	**Article 6:** Absence of any ruling on lawyers' fees in favour of the applicant
				11/07/2000 2000/846 E. 2nd Commercial Court of Istanbul (three lawsuits under the case nos. 2001/14-539-940 E. were joined to this case)	**2008/271 E.** **(Separate under case no. 2011/293 E.)**	**18/05/2000:** Injunction on all assets (Decision of 6th Commercial Court of Ankara) **21/09/2000:** Lifting of the injunction on the movable assets and maintaining of the injunction on the remaining assets **23/01/2001:** Reinstatement of the injunction on the movable assets **09/05/2006:** Lifting of the injunction on the salary **09/05/2011:** Lifting of the injunction on account of the withdrawal of the lawsuit	**25/05/2011:** Dismissal of the lawsuit on account of its withdrawal by the Fund	**25/2/2011:** The applicant's waiver of his right to lawyers' fees **25/5/2011:** No request by the parties for lawyers' fees and therefore no reason to rule on lawyers' fees	**25/02/2011:** The Fund's waiver of its right to appeal	**Article 1 of Protocol No.1:** Placing of an injunction on assets for almost eleven years
				06/07/2000 2000/825 E. 9th Commercial Court of Istanbul	**2011/399 E.** 33rd Commercial Court of Istanbul	No request for an injunction	**13/03/2012:** Lawsuit became devoid of subject matter on the	The applicant was awarded a fixed amount of TRY 1,200	**14/04/2014:** The Court of Cassation upheld the judgment dismissing	**Article 6:** Awarding of a fixed sum in

1. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000.

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				Amount claimed: TRL 151,400,000,000 (equivalent to approximately EUR 254,682)			grounds that the payments under the protocol of 12 August 2004 covered the bank's losses	(equivalent to approximately EUR 512 at the time of the decision) in lawyers' fees	the appeal and the decision became final	lawyers' fees instead of awarding of lawyers' fees on a *pro rata* basis
				04/08/2000 2000/957 E. 2nd Commercial Court of Istanbul	**2009/650 E.**	**07/09/2000:** Injunction on all assets **21/09/2000**: Lifting of injunction on all assets except for immovable properties **09/03/2011:** Lifting of the injunction on account of the withdrawal of the lawsuit	**09/03/2011:** Dismissal of the lawsuit on account of its withdrawal by the Fund	**28/02/2011:** The applicant's waiver of his right to lawyers' fees **09/03/2011:** No reason to rule on lawyers' fees	**28/02/2011:** The applicant's waiver of the right to appeal	**Article 1 of Protocol No.1:** Placing of an injunction on assets for almost eleven years
B. PROCEEDINGS CONCERNING ETİBANK										
2.	21392/08	06/08/2009	**Şükrü KARAHASANOĞLU** 01/02/1947 Istanbul	**27/06/2001** 2001/1200 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 3,185,455,000,000 (equivalent to approximately EUR 2,963,536)	**2008/192 E.**	**29/06/2001:** Injunction on all assets **23/05/2011:** Lifting of the injunction on the grounds that it had automatically lapsed	**30/06/2008:** Lawsuit became devoid of subject matter on account of the repayment of the loan by the borrower	The court ordered the applicant to pay the Fund TRY 11,678.43 (equivalent to approximately EUR 7,116 at the time of the decision) in litigation costs	**21/05/2009:** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** Ordering of the applicant to pay litigation costs even though the lawsuit had become devoid of subject matter **Article 1 of Protocol No. 1:** Placing of an injunction on assets for ten years
3.	53870/09	07/08/2009	**Şükrü KARAHASANOĞLU** 01/02/1947 Istanbul	**19/10/2001** 2001/2193 E. 1st Commercial Court of Istanbul **Amount claimed:** TRL 2,309,320,672,346 (equivalent to approximately EUR 1,562,343)	**2008/509 E.**	**26/10/2001:** Injunction on all assets **21/11/2001:** Request for the lifting of the injunction **27/12/2001:** Dismissal of the request	**31/12/2008:** Suspension of the proceedings pursuant to the protocol of 28 November 2008	No reason to rule on lawyers' fees since there is no decision on the merits	**15/06/2009:** The Court of Cassation upheld the judgment dismissing the appeal and the decision became final	**Article 6:** - Suspension of the proceedings at the unilateral request of the Fund - Absence of

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						23/05/2011: Lifting of the injunction on the grounds that it had automatically lapsed				any ruling on lawyers' fees in favour of the applicant **Article 1 of Protocol No. 1:** Placing of an injunction on assets for almost ten years