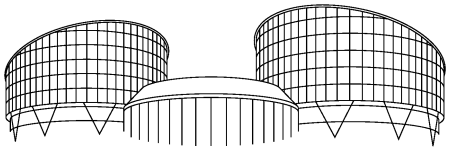

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF REISNER v. TURKEY

(Application no. 46815/09)

JUDGMENT
(Merits)

STRASBOURG

21 July 2015

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 Reisner v. Turkey,

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

András Sajó, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 46815/09) 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 German national, Mr Michael Reisner ("the applicant"), on 18 August 2009.

2. The applicant was represented by Ms J. Ertürk, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. On 4 September 2012 the application was communicated to the Government.

4. Further to notification under Article 36 § 1 of the Convention and Rule 44 § 1 (a), the German Government did not wish to exercise their right to intervene in the present case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Schrobenhausen, Germany. Through the German stock market, he purchased six hundred and fifty German Certificates in Demirbank, which at the time was identified as the fifth largest private bank in Turkey.

A. The background to the case

6. By a decision dated 6 December 2000 (no. 123), the Banking Regulation and Supervision Board (*Bankalar Düzenleme ve Denetleme Kurulu*, hereinafter referred to as "the Board") decided to transfer the management and control of Demirbank to the Savings Deposit Insurance Fund (*Tassarruf Mevduat Sigorta Fonu* – hereinafter "the Fund"), pursuant to section 14 (3) of the Banking Activities Act (Law no. 4389). In its decision the Board held that the assets of Demirbank were insufficient to cover its liabilities and that the continuation of its activities would threaten the security and stability of the financial system. Accordingly, Demirbank's management and control, and the privileges of its shareholders except for dividends, were transferred to the Fund. The Fund also confiscated all properties belonging to Demirbank.

7. On 31 January 2001 all equities of the bank were removed from its account at the Istanbul Stock Exchange and were transferred to the account of the Fund. Subsequently, on 20 September 2001 the Fund entered into an agreement with the HSBC bank, and sold Demirbank to the latter for 350,000,000 United States dollars (USD). As a result, on 14 December 2001 Demirbank's legal personality was extinguished and it was struck off the commercial register.

B. Proceedings brought by the main shareholders of Demirbank

1. Proceedings for the annulment of decision no. 123

8. On 2 February 2001, the main shareholder of Demirbank, namely Cıngıllı Holding A.Ş., brought administrative proceedings against the Banking Regulation and Supervision Agency (*Bankalar Düzenleme ve Denetleme Kurumu* – hereinafter referred to as "the Agency") before the Ankara Administrative Court, seeking the annulment of the decision of 6 December 2000 regarding the transfer of Demirbank to the Fund.

9. The Ankara Administrative Court found that it lacked jurisdiction, and transferred the case to the Supreme Administrative Court.

10. In its submissions before the Supreme Administrative Court, the plaintiff claimed that its property rights had been violated. It also raised a plea of unconstitutionality under section 14 of the Banking Activities Act. The company further stated that prior to November 2000 Demirbank had never encountered major financial problems. It was pointed out that pursuant to section 14 (2) of the Act, a bank with financial difficulties should first be given a warning to strengthen its financial structure and be allowed time to take specific measures. However, no such warning had been given in the instant case. Secondly, the Board had not claimed that Demirbank's financial situation was so weak that it could not be strengthened even if specific measures were taken. Lastly, the company

stated that following the transfer of the bank to the Fund, a General Assembly composed of the Fund's officials had exonerated the former managers of Demirbank, holding that they had not been at fault in the incident leading to the bank's transfer.

11. After examining the file, on 3 June 2003 the Supreme Administrative Court dismissed the case. It held that the takeover of the bank by the Fund had been in accordance with section 14 (3) of the Banking Activities Act.

12. On 18 December 2003 the Joint Administrative Chambers of the Supreme Administrative Court decided to quash the decision of 3 June 2003. In its judgment, the court held that prior to ordering the transfer of Demirbank to the Fund, the Board should have carried out an objective evaluation of the bank's financial situation. The court also concluded that the Board should first have ordered Demirbank to take specific measures in accordance with section 14 (2) of the Banking Activities Act before applying section 14 (3) of the Act.

13. On 29 April 2004 a request for rectification lodged by the Agency was refused.

14. The case was remitted to the Supreme Administrative Court, which delivered its decision on 5 November 2004, upholding the decision of the Joint Administrative Chambers of the Supreme Administrative Court. It accordingly annulled the Board's decision of 6 December 2000 ordering the transfer of Demirbank to the Fund, holding that the takeover had been illegal. A further appeal and a request for rectification lodged by the Agency were rejected on 14 April 2005 and 15 December 2005 respectively.

2. Proceedings for the annulment of the agreement to sell Demirbank to HSBC

15. On 20 September 2001 Ms S. Cıngıllıoğlu, the main shareholder of Cıngıllı Holding A.Ş., brought administrative proceedings against the Fund before the Ankara Administrative Court, seeking the annulment of the agreement to sell Demirbank to HSBC.

16. Given that the transfer of Demirbank to the Fund had been found to be illegal by the Joint Administrative Chambers of the Supreme Administrative Court, on 21 April 2004 the Ankara Administrative Court annulled the agreement entered into by the Fund and HSBC on 20 September 2001. An appeal and a request for rectification lodged by the Fund were rejected on 3 June 2005 and 24 February 2006 respectively.

C. Proceedings brought by the applicant

1. First set of proceedings

17. Following the transfer of Demirbank to the Fund, the applicant applied to the Board and claimed compensation. He did not receive any reply.

18. Subsequently, on 31 May 2002, the applicant brought compensation proceedings against the Agency before the Supreme Administrative Court. He argued that he had lost his shares in Demirbank as a result of its transfer to the Fund, and requested the annulment of the Board's implied rejection of his compensation claim.

19. On 24 June 2003 the Supreme Administrative Court dismissed the applicant's case. On the basis of a previous judgment it had rendered on 3 June 2003 (see paragraph 11 above), the court found that the takeover of the bank by the Fund had been in accordance with section 14 § 3 of the Banking Act.

20. The applicant lodged an appeal.

21. On 21 October 2004 the Joint Administrative Chambers of the Supreme Administrative Court decided to quash the judgment. It indicated that the previous judgment dated 3 June 2003, which had constituted the basis of the latter, had been quashed on 18 December 2003 (see paragraph 12 above).

22. The Agency's rectification request was rejected on 26 May 2005.

23. On 20 September 2005 the Supreme Administrative Court held that it lacked jurisdiction *ratione materiae,* as the applicant's case merely concerned an implied rejection by the Board, which should be assessed by the Ankara Administrative Court.

24. On 30 December 2005 the Ankara Administrative Court dismissed the case as out of time. The court held that the applicant should have initiated proceedings within sixty days following 31 January 2001, the date on which Demirbank's equities had been transferred to the Fund's account at the Stock Exchange (see paragraph 7 above).

25. The Supreme Administrative Court upheld the first-instance court's judgment on 12 September 2006.

2. Second set of proceedings

26. Following the annulment of the decision regarding the transfer of Demirbank to the Fund by the domestic courts (see paragraphs 8-14 above), on an unspecified date in 2006 the applicant initiated another set of administrative proceedings. Relying on the *restitutio in integrum* principle, he claimed that the Agency should enforce the above-mentioned judgment of the Supreme Administrative Court, and that his rights as a shareholder of Demirbank should be reinstated.

27. On 27 September 2007, after indicating the administration's obligation to execute judgments which are enforceable, the Ankara Administrative Court held that the enforcement of the Supreme Administrative Court judgment in the instant case was legally impossible as, following its sale to HSBC, Demirbank had been struck off the commercial register.

28. On 16 March 2009 the Supreme Administrative Court upheld that judgment. The court indicated that the execution of the judgment dated 5 November 2004 could be secured by the return of the supervisory and executive rights to Demirbank's shareholders, and did not require the restitution of the actual shares. It maintained that even if that was the case, the judgment could not be executed, as Demirbank's shares had ceased to exist as a result of the loss of its legal personality following its merger with HSBC.

29. The Supreme Administrative Court rejected the applicant's request for rectification of the judgment on 17 September 2009.

3. Third set of proceedings

30. Following the annulment of the agreement to sell Demirbank to HSBC (see paragraphs 15-16 above), on 30 April 2006 the applicant applied to the Fund for compensation for the loss of his shares resulting from the bank's unlawful sale to HSBC. The Fund rejected that request on 15 June 2006.

31. On an unspecified date in 2006, the applicant accordingly brought a third set of proceedings against the Fund, claiming compensation for his lost shares on the basis of the annulment of Demirbank's sale to HSBC.

32. On 15 April 2008 the Istanbul Administrative Court dismissed the case as out of time, indicating that the sixty-day time-limit for the initiation of administrative proceedings had started running on 31 January 2001, the date on which Demirbank's equities had been transferred to the Fund's account at the Stock Exchange.

33. The judgment of the first-instance court was upheld by the Istanbul Regional Administrative Court on 21 January 2009. The decision is final under national law.

II. RELEVANT DOMESTIC LAW

34. Section 14 of the Banking Activities Act (Law no. 4389) reads:

> "1. Without prejudice to the Agency's right to institute legal proceedings against liable persons, if the results of supervision reveal any transactions that are contrary to this Act or to decisions taken and legislation introduced under this Act or to the principles and customary practices of banking, and which could jeopardise the secure operation of the bank in question, the Agency shall warn the bank to correct the transactions in question within a period of time specified by it and to take such

measures as are necessary to ensure that similar transactions are not allowed in the future. The bank must, within the periods specified, take the measures required by the Agency and notify it of the consequences of the actions it has taken. In the event that the required measures are not taken or that transactions jeopardising the secure operation of the bank are repeated, the Board shall be authorised, depending on the nature and significance of the transactions in question, to take and implement all such measures as are necessary for the secure operation of the bank and for the protection of depositors, including but not limited to the following:

(a) to appoint new members to the Board by dismissing or replacing all or some of the members of the Board of Directors or by increasing the number of seats thereon;

(b) to restrict the operations of the bank in such a manner as to cover its whole organisation or only those of its relevant branches or its relations with correspondent banks;

(c) to increase the deposit insurance premium payable by the bank or to require provisions at the rate of up to one hundred percent for deposits it accepts.

The remuneration of any member of the Board of Directors to be appointed to the bank pursuant to the present section shall be determined by the Board and paid from the Fund.

2. (a) If the Agency, at its sole discretion, determines that the assets of a bank are insufficient, or are about to become insufficient, to cover its liabilities in terms of maturity or if the bank does not adhere to regulations governing liquidities, the Agency may instruct the bank to put in place a plan of action approved by the Agency to remedy the failure and may also, for the purpose of strengthening its liquidity, grant an appropriate period of time to the bank and require it:

(aa) not to invest in long-term or fixed assets;

(ab) to dispose of fixed assets such as real estate and equity holdings;

and to take such other measures as may be deemed appropriate.

(b) If the Agency, at its sole discretion, determines that a bank is about to fail or that it is failing to meet the minimum level of capital required to be maintained by the bank pursuant to the applicable regulations, the Agency may instruct the bank to put in place a capital restoration plan approved by the Agency to resolve the situation, and require the bank to increase its capital or to obtain funds that qualify as capital. The Agency may also, for the purpose of strengthening the capital, require it:

(ba) not to pay dividends, or to cease additional payments such as honorary payments, bonuses, premiums, or in-kind or in-cash social assistance to members of the Board of Directors, general managers and assistant general managers,

(bb) to limit or end operations which have caused losses,

(bc) to liquidate assets which have poor returns or are inefficient,

and to take such other measures as may be deemed to be appropriate.

3. If the Agency at its sole discretion determines that

(a) a bank has not taken the measures in part or in whole stated in subsection (2) above, the financial structure of the bank cannot be strengthened even though the measures have been taken in part or in whole, or the financial structure has become so weak that it could not be strengthened even if those measures were taken, or

(b) a bank cannot honour its liabilities as they fall due, or

(c) the value of the liabilities of the bank exceeds the value of the assets, in accordance with the valuation standards determined by the Board for the implementation of this section, or

(d) the continuation of the bank's activities would threaten the rights of depositors and the security and stability of the financial system,

the Board may transfer the management and control and the privileges of shareholders, except dividends, of the bank to the Fund or revoke the licence of the bank to perform banking operations and/or to accept deposits, with an affirmative vote of at least five Board members."

Article 138 § 4 of the Turkish Constitution provides:

"The bodies of executive and legislative power and the authorities must comply with court decisions; they cannot in any circumstances modify court decisions or defer the enforcement thereof."

Article 28 § 2 of the Code of Administrative Procedure reads:

"Decisions and judgments in administrative law actions concerning a specific amount shall be enforced ... in accordance with the provisions of the ordinary law."

Under section 82(1) of the Enforcement and Bankruptcy Act (Law no. 2004), State property cannot be seized.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

35. The Government submitted that the applicant had failed to indicate his profession on the application form. They therefore asked the Court to reject the application for failing to meet the requirements of Rule 47 of the Rules of Court.

36. The Court notes that pursuant to Rule 47 of the Rules of Court, in its version in force at the relevant time, an application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. The application form should contain all the information requested in the relevant parts of the form to enable the Court to determine the nature and scope of the application without recourse to any other document. The Court observes that in his application form, the applicant clearly described the facts and the alleged violations of the Convention. It further notes that the requirement in question is not one of the inadmissibility grounds set out in Article 35 of the Convention. It is therefore not necessary to consider the Government's argument on this point (see, *mutatis mutandis*, *Öner Aktaş v. Turkey*, no. 59860/10, § 29, 29 October 2013, and *Yüksel v. Turkey* (dec.), no. 49756/09, § 42, 1 October 2013).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

37. The applicant complained that his right to peaceful enjoyment of his property had been violated, in that he had been illegally deprived of his shares in Demirbank and could not receive any compensation for his loss. In this connection, he relied on Article 13 and Article 1 of Protocol No. 1 to the Convention.

38. The Government contested that argument.

39. The Court considers that this complaint should be examined under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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

40. The Government stated that this complaint should be rejected for non-exhaustion of domestic remedies, as the applicant had failed to bring compensation proceedings before the domestic courts pursuant to Article 12 of the Administrative Procedure Code and Article 125 of the Constitution.

41. The Court recalls that an applicant must have made normal use of domestic remedies which are likely to be effective and sufficient and that, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009). In the present case, the applicant sought the enforcement of the court decisions, but no action was taken by the administrative authorities, which were constitutionally bound to take all necessary measures to restore the *de facto* and *de jure* situation that was likely to have prevailed had Demirbank not been unlawfully transferred to the Fund. In these circumstances, the applicant could not have been expected to bring further actions against the State. It therefore concludes that the applicant has complied with the requirement of exhaustion of domestic remedies. It consequently rejects the Government's objection in this respect.

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

43. The applicant complained that he had been deprived of his shares in Demirbank as a result of the illegal actions of the State and that he had not been compensated for his loss.

44. The Government firstly argued that the applicant, as a minor shareholder, did not have any "possession" within the meaning of Article 1 of Protocol No. 1. They further maintained that it had been impossible *de jure* and *de facto* to enforce the court decision in question, because Demirbank had been struck off the register and its legal personality had therefore ceased to exist. They also submitted that it had been impossible to revive Demirbank or the shares, as the authorities had had no authority to do so.

45. The Court notes in the first place that the Government do not dispute that the applicant was the owner of the shares concerned. It reiterates in that respect that a share in a company is a complex object. It certifies that the holder possesses a share in a company together with the corresponding rights. The Court further notes that the shares held by the applicant had an economic value and thus constituted "possessions", and as a result of the measures complained of the shares lost their entire value. Article 1 of Protocol No. 1 is therefore applicable in the present case (see *Olczak v. Poland* (dec.), no. 30417/96, § 60, ECHR 2002-X (extracts)).

46. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 98, ECHR 2014).

47. The Court observes that the applicant was a shareholder in Demirbank before it was taken over by the State authorities. His shares in Demirbank became null and void when Demirbank's legal personality was extinguished and it was struck off the commercial registry following its sale to HSBC. In the Court's view, there has therefore been an interference with his right of property (*Süzer and Eksen Holding A.Ş. v. Turkey*, no. 6334/05, § 143, 23 October 2012). The Court further observes that the Board's decision to take over the bank was adopted as a measure to control the

banking sector in the country. It is true that it involved a deprivation of property, but in these circumstances the deprivation formed a constituent element of a scheme for controlling the banking industry. It is therefore the second paragraph of Article 1 of Protocol No. 1 which is applicable in the present case (*Süzer and Eksen Holding A.Ş.*, cited above, §§ 146-147). However, as stated above, that provision must be construed in the light of the general principle enunciated in the opening sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore determine whether the interference in question was lawful, and "in the public interest", and whether it struck a fair balance between the owner's rights and the interests of the community. The Court will examine whether those three conditions have been fulfilled in the present case.

48. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Microintelect OOD v. Bulgaria*, no. 34129/03, § 38, 4 March 2014). In this connection, the Court notes that in the present case, the domestic courts annulled the decision pertaining to the takeover of Demirbank to the Fund and its subsequent sale to HSBC bank. In doing so, the courts respectively held that the administrative acts had been unlawful. By these decisions, the administrative acts in question were declared null and void with retrospective (*ex tunc*) effect. That being so, the Court considers that the interference with the applicant's right to enjoyment of his possessions cannot be considered as lawful within the meaning of Article 1 of Protocol No. 1 to the Convention (see *Süzer and Eksen Holding A.Ş*, cited above, § 148)

49. The Court has also had due regard to the procedural guarantees provided to the applicant to defend his interests. It notes in this regard that although the applicant was able to initiate proceedings before the Ankara Administrative Court, at the end of the proceedings it was concluded that the execution of the judgment annulling the takeover of Demirbank was impossible. The Court notes that the complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. Nor is it open to a State authority to cite lack of funds or other resources as an excuse for not honouring a judgment debt (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 70, ECHR 2009, and *Süzer and Eksen Holding A.Ş.*, cited above, § 116). In this case the applicant, whose shares had been removed from his possession on the basis of an administrative action that was subsequently found to be unlawful, received no compensation for his loss.

50. Having regard to the above considerations, the Court finds that the interference on the applicant's right to enjoyment of his possessions cannot

be considered as lawful within the meaning of Article 1 of Protocol No. 1 and that the applicant was made to bear a disproportionate individual burden.

51. Consequently, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

52. In connection with the third set of proceedings (see paragraphs 30-33 above), the applicant complained that he had been deprived of his right of access to a court on the ground that the Istanbul Administrative Court had rejected his case as out of time. He relied on Article 6 of the Convention, the relevant passages of which provide as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] tribunal."

53. The Government challenged that assertion. Referring to the reasoning of the Istanbul Administrative Court, they argued that the applicant should have initiated compensation proceedings within the time-limits foreseen in the Administrative Procedure Code, namely within sixty days following 31 January 2001, when all equities of Demirbank, including the applicant's shares, were removed from the Istanbul Stock Exchange.

54. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

55. The Court reiterates at the outset that the right to a fair trial, guaranteed by Article 6 § 1 of the Convention, must be construed in the light of the rule of law, which requires an effective judicial remedy enabling [litigants] to assert their civil rights (see *Běleš and Others v. the Czech Republic*, no. 47273/99, § 49, ECHR 2002-IX). Everyone has the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18, and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 43, ECHR 2001-VIII).

56. The "right to a court" is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II, and

Mortier v. France, no. 42195/98, § 33, 31 July 2001). However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (see *Guérin v. France*, 29 July 1998, § 37, *Reports of Judgments and Decisions* 1998-V, and *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 50, *Reports* 1996 IV).

57. Furthermore, it is in the first place for the national authorities, and notably the courts, to interpret domestic law. The Court's role is limited to verifying compatibility with the Convention of the effects of such an interpretation. This applies in particular to the interpretation by courts of rules of a procedural nature, such as time-limits governing the lodging of appeals (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII). The rules governing the time-limits for appeals are intended to ensure a proper administration of justice. That being so, the rules in question, or their application, should not prevent litigants from using an available remedy. Furthermore, the Court must make its assessment in each case in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see, *mutatis mutandis*, *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 36, ECHR 2000-I).

58. In accordance with those principles, while the right to bring an action is of course subject to statutory requirements, the courts are bound to apply the rules of procedure avoiding both excessive formalism that would impair the fairness of the proceedings and excessive flexibility such as would render nugatory the procedural requirements laid down in statutes (see *Walchli v. France*, no. 35787/03, § 29, 26 July 2007). In fact, the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Efstathiou and Others v. Greece*, no. 36998/02, § 24, 27 July 2006).

59. The Court notes that the applicant had to bear a disproportionate individual burden following the illegal takeover of the Demirbank (see paragraphs 45-47 above). It further observes that the restitution of the applicant's shares proved to be impossible due to the absorption of Demirbank by HSBC, which was also found to be illegal and annulled by a final decision on 24 February 2006 (see paragraphs 15-16 above). The applicant initiated compensation proceedings after that date, as it was only on that date that the transfer was annulled. It would have been unreasonable

to expect the applicant to lodge a compensation claim before that date, because the illegality of the action was finally determined only in 2006.

60. In the light of the above, the Court concludes that the domestic court's strict interpretation of the time-limit precluded a full examination of the merits of the case, and impaired the very essence of the applicant's right of access to a court.

61. It follows that the applicant's right of access to court, in the third set of proceedings, has been breached and that there has therefore been a violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. Lastly, the applicant complained that the first set of proceedings had been unfair. He also alleged that the length of proceedings had been unreasonable.

63. An examination by the Court of the material submitted to it does not disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

65. The applicant requested compensation for pecuniary damage. To calculate his financial loss, he relied on three different calculation methods, the results of which differed (2,371 Euros (EUR), EUR 4,189.93, and EUR 1,196.97 respectively). He further claimed EUR 1,000 in respect of non-pecuniary damage.

66. The applicant also requested EUR 745 for lawyers' fees and EUR 1,252 for costs and expenses.

67. The Government contested the claims.

68. In the particular circumstances of the present case, the Court considers that the question of application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 1 of Protocol No. 1 and Article 6 in respect of the third set of proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. Holds that there has been a violation of Article 6 § 1 of the Convention in respect of the third set of proceedings;

4. *Holds* that the question of just satisfaction under Article 41 of the Convention is not ready for decision, and accordingly:

(a) *reserves* the said question in whole;
(b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 21 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

András Sajó
President