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

SECOND SECTION

CASE OF OKYAY AND OTHERS v. TURKEY

(Application no. 36220/97)

JUDGMENT

STRASBOURG

12 July 2005

FINAL

12/10/2005

In the case of Okyay and Others v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 36220/97) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Turkish nationals, Mr Ahmet Okyay, Ms Derya Durmaz, Mr Rıfat Bozkurt, Mr Noyan Özkan, Mr Uğur Kalelioğlu, Ms Banu Karabulut, Mr Senih Özay, Mr Talat Oğuz, Mr Tamay Arslançeri and Mr İbrahim Arzuk ("the applicants"), on 9 December 1996.

2. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants complained under Article 6 of the Convention that their right to a fair hearing had been breached on account of the administrative authorities' failure to enforce the administrative courts' decisions and orders to halt the operation of the Yatağan, Gökova (Kemerköy) and Yeniköy thermal power plants in the Muğla province of south-west Turkey.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 17 January 2002, the Chamber declared the application admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

9. The case concerns the national authorities' failure to implement the domestic courts' order to shut down three thermal power plants which pollute the environment in the province of Muğla, in south-west Turkey.

10. The applicants are all lawyers who live and practise in İzmir, a city which is approximately 250 kilometres from the site of the power plants. Relying on Article 56 of the Constitution and section 3(a) of the Environment Act (see paragraphs 46 and 47 below), the applicants argued that it was their constitutional right to live in a healthy and balanced environment, and their duty to ensure the protection of the environment and to prevent environmental pollution.

11. The Yatağan, Yeniköy and Gökova thermal power plants have been operated for many years by the Ministry of Energy and Natural Resources and the public utility company Türkiye Elektrik Kurumu ("TEAŞ") in Muğla, in the Aegean region of Turkey. In the course of their operation, the poor-quality coal used by the plants to produce energy has caused pollution and harmed the region's biological diversity.

B. The proceedings before the administrative and judicial authorities to halt the plants' operation

1. *Application to the administrative authorities*

12. By petitions of 16 April 1993, 28 April 1993 and 11 February 1994, the applicants called on the Ministries of Health, of the Environment and of Energy and Natural Resources, TEAŞ and the Muğla provincial governor to take action to halt the operation of the Gökova, Yatağan and Yeniköy thermal power plants. They claimed that these three power plants had failed

to obtain the requisite licences and that their operation constituted a danger to public health and to the environment.

13. The above-mentioned administrative authorities did not reply to the applicants' request, which, under section 10(2) of the Administrative Procedure Act (Law no. 2577), amounted to a refusal.

2. *The proceedings before the Aydın Administrative Court*

14. On 16 July 1993, 18 July 1993 and 18 May 1994 the applicants brought three separate actions in the Aydın Administrative Court concerning the Gökova, Yatağan and Yeniköy power plants respectively, against the Ministries of Health, of Energy and Natural Resources and of the Environment, TEAŞ and the Muğla provincial governor's office. They requested that the administrative decision refusing to halt the power plants' operation be set aside. The applicants further asked the court to order an interim measure to suspend the activities of these power plants on the ground that they were causing irreparable harm to nature and to public health. As to their legal capacity to bring the proceedings in question, the applicants relied on Article 56 of the Constitution and sections 3 and 30 of the Environment Act (see paragraphs 46, 47 and 50 below).

15. The Aydın Administrative Court appointed a panel of experts, composed of three university professors who were experts in forestry, the environment and chemistry respectively, with a view to determining the effects of the three power plants' operation on the environment.

16. On 16 February 1996 the experts submitted their reports to the court. They concluded that the plants emitted considerable amounts of nitrogen dioxide and sulphur dioxide and were not equipped with the mandatory chimney filters. They found that the power plants constituted a danger to a zone measuring 25-30 kilometres in diameter. Accordingly, they recommended that the Gökova power plant be immediately shut down, that one unit in each of the Yeniköy and Yatağan power plants should cease to operate and that desulphurisation units should be installed in them.

17. On 20 June 1996 the Aydın Administrative Court issued an interlocutory injunction for suspension of the power plants' operation. It found that TEAŞ had been operating the plants since 1994 under the guise of "test operations", without having obtained the requisite permits for construction, gas emissions and the discharge of waste water. On the basis of the experts' findings, the court noted that the plants had already caused pollution that was harmful to human health and the environment and that their continued operation could cause irreparable harm to the public. Consequently, it ruled that the administrative authorities' decision refusing to halt the plants' operation had been unlawful.

18. On 29 August 1996 the Regional Administrative Court in Aydın, an appellate body responsible for examining decisions given by a single judge

in the administrative courts, dismissed the defendant authorities' appeal against the injunction of 20 June 1996.

(a) The case of the Gökova power plant

19. The applicants alleged before the Administrative Court that the continued operation of the Gökova power plant would lead to environmental disaster. In particular, it would reduce the number of marine fish species, harm forests and agricultural areas and would have an adverse impact on tourism on account of the risk of hazardous emissions. In this connection, they claimed that the authorities had failed to prepare an environmental impact report and to obtain the necessary operating permits.

20. In its submissions to the Administrative Court, the Ministry of Energy and Natural Resources disputed the applicants' legal capacity to bring the action in question, alleging that they did not have a legal interest to bring such an action as required by section 5(2) of the Administrative Procedure Act (see paragraph 55 below). It further claimed, *inter alia*, that there was no requirement to obtain an environmental impact report and that the authorities had already applied for the requisite permits. It also noted that the authorities were taking the necessary steps to install a new flue gas desulphurisation system.

21. In addition to those submissions from the Ministry of Energy and Natural Resources, the Ministries of Health and of the Environment, TEAŞ and the Muğla provincial governor's office claimed that the case ought to be dismissed because the necessary equipment would be installed in the plant to prevent pollution.

22. On 30 December 1996 the Aydın Administrative Court set aside the defendant authorities' decision to refuse to halt the operation of the Gökova power plant. In its decision, the court first dismissed the objection concerning the applicants' alleged lack of a legal interest to bring an action to halt the plant's operation. Referring to section 2 of the Administrative Procedure Act, the court noted that there was no requirement to claim a violation of a personal interest in cases concerning the protection of the environment or the historical and cultural heritage, or which were closely related to issues of public interest (see paragraph 53 below). It further found that the thermal power plant was being operated as a "test operation" and did not have the requisite permits. In this connection, the court found, *inter alia*:

> "... Furthermore, in order to determine whether the thermal power plant caused damage to the environment, a survey of the area was conducted by three experts, namely Professor M. Doğan Kantarcı, Professor Ayşen Müzzinoğlu and Professor İlker Kayadeniz. The [aforementioned experts'] report, on which this judgment is based, noted that the Kemerköy (Gökova) thermal power plant consisted of three units, each capable of generating 210 megawatts of electricity. The plant uses poor-quality lignite coal to generate energy. It has no equipment for filtering sulphur dioxide and nitrogen oxide gases discharged through its chimneys ... Each of the three

units of the Kemerköy thermal power plant uses 1.4 million tonnes of coal. It is not possible to decrease air pollution by reducing the capacity of a thermal power plant which uses poor-quality coal. It appears that 110.5 million tonnes of coal are stocked on the thermal power plant's premises. Given that the annual amount of coal to be used by the three units is around 4.2 million tonnes, the thermal power plant would need to operate for twenty-six years to use up all the coal. If even one unit of the Kemerköy power plant were to operate, this would have a detrimental effect on the environment. The gas emitted from the chimneys disperses over an area measuring approximately 2,350 kilometres in diameter ... Should three units of the Kemerköy and two units of the Yeniköy thermal power plants be operated, the Datça and Betçe zones of the Reşadiye peninsula would be adversely affected by sulphur dioxide. The delivery of coal to the power plant by ship would also cause marine pollution. [It follows] that the operation of the Kemerköy power plant has a harmful effect not only on the areas in the vicinity but also on distant areas. [Accordingly], in order to remove the sulphur dioxide from the gas discharged through the chimneys, desulphurisation units must be installed. This would remove 95% of the sulphur dioxide.

Our country's electrical energy needs can never be disregarded. However, the electricity plants in operation, or to be constructed, must meet the requirements of the above-mentioned regulations, so that the public interest is respected. The public interest cannot be said to have been respected if irreparable harm is caused to the environment merely in order to generate electricity.

It appears that the requisite measures were not taken prior to the plant's construction and the start of operations. Despite the possibility of minimising the adverse environmental effects of the power plants, which represent a long-term State investment, it is obvious that the necessary steps were not taken or that little was done from the planning stage to the point of commencing operations.

The financial cost of installing a flue gas desulphurisation system must not be a deterrent. Discussion of the financial cost of the benefit that would accrue to the population from the measures to be taken by the administration is incompatible with the aim of a social State ...”

23. Given that the thermal power plant had caused environmental pollution, that no preventive measure had been taken and that the requisite permits for construction, operation, gas emission and the discharge of waste water had not been obtained, the court concluded that the refusal of the applicants' request to halt the plant's operation had been unlawful.

(b) The case of the Yeniköy power plant

24. The applicants contended before the Administrative Court that the operation of the Yeniköy power plant without the requisite permits and installations would lead to environmental disaster. They therefore asked the court to set aside the administrative authorities' decision to refuse to halt the plant's operation.

25. The Ministry of Energy and Natural Resources claimed that the power plant had received the requisite construction permit and that TEAŞ was taking the necessary steps to install flue gas desulphurisation equipment. However, it denied that the power plant was polluting the

environment and claimed that closure of the plant would give rise to energy shortages in the Aegean region.

26. The Ministry of Health submitted that the plaintiffs did not have a legal interest to bring such an action as required by section 5(2) of the Administrative Procedure Act (see paragraph 55 below). It contended, *inter alia*, that the relevant authorities were taking the necessary steps to prevent the plant from polluting the environment.

27. The Ministry of the Environment maintained that it did not have authority to issue an operating permit for power plants but was nonetheless required to submit its opinion on such permits. It noted that it had already sent an opinion to the Ministry of Health and to TEAŞ. In its view, no environmental impact report was required in respect of the power plant, since it had been constructed prior to the enactment of the Environment Act.

28. For its part, TEAŞ asserted that the plaintiffs did not have a legal interest in the action and that the case should therefore be dismissed. It alleged, *inter alia*, that the power plant had received the requisite permits from the authorities and that it had been equipped with electronic chimney filters. The company further claimed that there was no alternative energy supply, and that the power plant's closure would result in energy shortages in the region.

29. On 30 December 1996 the Aydın Administrative Court delivered a judgment similar to that in the case of the Gökova thermal power plant, and set aside the administrative authorities' decision to refuse to close the Yeniköy thermal power plant. Relying on the experts' report, the court noted that the Yeniköy plant did not have the necessary operating permits and that it had already polluted the environment. It therefore found that the administrative authorities' decision had been unlawful.

(c) The case of the Yatağan power plant

30. The applicants argued before the Administrative Court that the Yatağan power plant had been in operation since 1982 and that the damage it caused to the environment had been observed since 1985. They contended that the defendant authorities had failed to obtain the requisite permits for the power plant's operation. They therefore asked the court to set aside the administrative authorities' decision to refuse to close the plant.

31. As they had done in the cases of the Gökova and Yeniköy plants, the defendant administrative authorities challenged the applicants' legal interest to bring an action in the Administrative Court for the purpose of shutting down the Yatağan plant. They denied that the plant polluted the environment and claimed that the necessary permits would be obtained and that flue gas desulphurisation equipment would be installed. The administrative authorities also pointed out that there would be a significant energy shortage in the region if the plant's operation were to be halted. They asked the court to dismiss the action.

32. On 30 December 1996 the Aydın Administrative Court dismissed the defendants' objection concerning the applicants' alleged lack of legal interest and set aside the administrative decision to continue the plant's operation without obtaining the requisite permits. Referring to the experts' report, the court reasoned that the plant was polluting the environment and therefore concluded that the administrative decision to refuse to halt the plant's operation had been unlawful.

3. The proceedings before the Supreme Administrative Court

33. By decisions of 3 and 6 June 1998, the Supreme Administrative Court upheld the above-mentioned three judgments of the Aydın Administrative Court.

34. On 26 April 1999 the Supreme Administrative Court rejected the defendant authorities' requests for rectification.

C. Enforcement of the administrative courts' judgments

35. By virtue of section 28 of the Administrative Procedure Act and of Article 138 § 4 of the Constitution, the administrative authorities are obliged to comply with court decisions and to enforce them within thirty days following service of the decision (see paragraphs 57 and 58 below).

36. By a decision of 3 September 1996, the Council of Ministers, composed of the Prime Minister and other cabinet ministers, decided that the three thermal power plants should continue to operate, despite the administrative courts' judgments. The Council of Ministers reasoned that closure of the plants would give rise to energy shortages and loss of employment and would thus affect the region's income from tourism. Taking the view that the necessary measures were being taken by the authorities with a view to preventing the plants from polluting the environment, the Council of Ministers decided that the plants' operation should not be halted.

37. In letters of 6 and 14 September 1996, the applicants asked the defendant administrative authorities to enforce the judgments of the Aydın Administrative Court.

38. On 11 November 1996 the applicants filed criminal complaints with the offices of the Ankara Chief Public Prosecutor and of the public prosecutors in the jurisdictions in which the plants were situated. They asked the prosecutors to institute criminal proceedings against the members of the Council of Ministers and other relevant administrative authorities for failure to execute the court decisions.

39. In a letter of 20 November 1996, the Ministry of Energy and Natural Resources informed the applicants that the operation of the three thermal power plants would not be halted. It was noted that the power plants were responsible for 7% of the country's total electricity production and that their

contribution to the economy was estimated at around five hundred billion Turkish liras. The Ministry further argued that 4,079 people would lose their jobs and the region's tourist sector would be adversely affected if these plants were to cease to operate. It was further claimed that contracts had already been signed for the installation of new flue gas desulphurisation systems and that the necessary measures were therefore being taken to protect the environment and public health.

40. On 27 November 1996 the Ankara Chief Public Prosecutor issued a decision not to prosecute the Prime Minister and other ministers, having regard to Article 100 of the Constitution which stipulated that the prosecution of these authorities would require a parliamentary investigation.

41. On 25 December 1996 the Yatağan Chief Public Prosecutor issued a decision not to prosecute the director of the Yatağan thermal power plant, given that the Aydın Administrative Court's judgment had not been served on him, and that TEAŞ's directors were not responsible for taking action to comply with the court's judgment.

42. On 12 March 1997 the Milas Chief Public Prosecutor issued a decision not to prosecute the directors of the Yeniköy and Gökova thermal power plants. The Chief Public Prosecutor stated that the directors of the power plants were merely implementing the Council of Ministers' decision of 3 September 1996 and that there were no grounds for considering that they were deliberately refusing to comply with the administrative courts' judgments.

D. Subsequent developments

43. The applicants submitted a copy of nine judgments given by the Yatağan Magistrates' Court in civil matters (*sulh hukuk mahkemesi*). In these cases, brought against TEAŞ, the plaintiffs, who were farmers living in the vicinity of the Yatağan thermal power plant, alleged that the quality and quantity of their olive and tobacco production had been adversely affected by the poisonous gas and ash emitted by the power plant and that they had therefore suffered pecuniary damage (Files nos. 1998/80, 1998/81, 1999/68, 2000/225, 2000/226, 2000/499, 2001/72, 2001/73, 2001/76; and decisions nos. 1998/108, 1998/113, 1999/339, 2000/164, 2000/183, 2001/59, 2001/75, 2001/78, 2001/79).

44. The Yatağan Magistrates' Court acceded to the plaintiffs' claims and awarded each of them compensation. Relying on expert reports on the plaintiffs' land, the court found that the hazardous gas emitted by the power plant had caused considerable damage to cultivation in the region, in that olive trees and tobacco plants suffered from incomplete leaf growth and were unable to produce a sufficient yield.

45. The Court of Cassation upheld all nine judgments of the Yatağan Magistrates' Court.

II. RELEVANT LAW

A. Domestic law on environmental protection

1. The Constitution

46. Article 56 of the Constitution provides:

> "Everyone has the right to live in a healthy, balanced environment. It shall be the duty of the State and the citizens to improve and preserve the environment and to prevent environmental pollution. ... The State shall perform this task by utilising and supervising health and social welfare institutions in both the public and private sectors. ..."

2. The Environment Act

47. Section 3 of the Environment Act (Law no. 2872), published in the Official Gazette on 11 August 1983, reads:

> "The general principles governing environmental protection and the prevention of environmental pollution shall be as follows:
>
> (a) Protecting the environment and preventing environmental pollution are the duty of individuals and legal entities as well as of all citizens, and they are required to comply with the measures to be taken and the principles laid down in reference to these matters. ..."

48. Section 10 provides:

> "Establishments and concerns which propose to carry out activities which might cause environmental problems shall draw up an environmental impact report. This report shall concern, *inter alia*, the measures proposed to reduce the detrimental effects of waste materials and the necessary precautions to this end.
>
> The types of project for which such a report shall be required, its content and the principles governing its approval by the relevant authorities shall be determined by regulations."

49. Section 28 reads:

> "Whether or not negligence has occurred, a person who pollutes and harms the environment shall be responsible for the damage resulting from that pollution or the deterioration of the environment.
>
> This liability is without prejudice to any liability which may arise under general provisions."

50. Section 30 provides:

> "Individuals and legal entities that suffer damage from or have information regarding an activity which pollutes or harms the environment may request that the activity be stopped by applying to the administrative authorities."

B. Relevant international texts on the right to a healthy environment

51. In June 1992 the United Nations Conference on Environment and Development, meeting in Rio de Janeiro (Brazil), adopted a declaration ("the Rio Declaration on Environment and Development", A/CONF.151/26 (vol. I)) intended to advance the concept of States' rights and responsibilities with regard to the environment. "Principle 10" of this Declaration provides:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

52. On 27 June 2003 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1614 (2003) on environment and human rights. The relevant part of this recommendation states:

> "9. The Assembly recommends that the Governments of member States:
>
> i. ensure appropriate protection of the life, health, family and private life, physical integrity and private property of persons in accordance with Articles 2, 3 and 8 of the European Convention on Human Rights and by Article 1 of its Additional Protocol, by also taking particular account of the need for environmental protection;
>
> ii. recognise a human right to a healthy, viable and decent environment which includes the objective obligation for States to protect the environment, in national laws, preferably at constitutional level;
>
> iii. safeguard the individual procedural rights to access to information, public participation in decision making and access to justice in environmental matters set out in the Aarhus Convention;
>
> ..."

C. Filing of an administrative court action

53. Section 2 of the Administrative Procedure Act (Law no. 2577) provides that anyone whose personal interests have been violated as a result of an unlawful administrative act can bring an action for annulment of that

act. An administrative court suit can also be brought on account of a violation of a personal right by an administrative act or action.

54. In its judgment of 2 February 1990 (File no. 1989/430, decision no. 1990/18), the Supreme Administrative Court distinguished a personal interest from a personal right:

> "... the violation of an interest does not have the same meaning as the violation of a right. It indicates a relation which is serious and reasonable. The interest violated does not necessarily need to be of an economic or pecuniary nature. ..."

55. Section 5(2) of Law no. 2577 reads:

> "The filing of an action by a common petition by more than one person requires a common right or interest on the part of the plaintiffs and similarity in respect of the facts and legal reasons."

56. Section 10(2) of Law no. 2577 provides:

> "[If the administrative authorities] do not respond [to a petition] within sixty days [after its receipt], the request shall be considered to have been rejected."

D. Enforcement of court decisions by the authorities

57. Article 138 § 4 of the 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 enforcement thereof."

58. The relevant parts of section 28 of Law no. 2577 read:

> "(1) The authorities shall be obliged to adopt a decision without delay or to take action in accordance with the decisions on the merits or a request for a stay of execution issued by the Supreme Administrative Court, the ordinary or regional administrative courts or the courts dealing with tax disputes. Under no circumstances may the time taken to act exceed thirty days following service of the decision on the authorities.
>
> ...
>
> (3) Where the authorities do not adopt a decision or do not act in accordance with a decision by the Supreme Administrative Court, the ordinary or regional administrative courts or the tax courts, a claim for compensation for pecuniary or non-pecuniary damage may be brought before the Supreme Administrative Court and the relevant courts against the authorities.
>
> (4) In the event of deliberate failure on the part of civil servants to enforce judicial decisions within the thirty days [following the decision], compensation proceedings may be brought both against the authorities and against the civil servant who refuses to enforce the decision in question."

59. Section 52(4) of Law no. 2577 provides:

> "The setting aside of a judgment gives rise *ipso facto* to a stay of execution of the decision."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. The applicants alleged that their right to a fair hearing had been breached on account of the national authorities' failure to implement the administrative courts' judgments. They relied on Article 6 § 1 of the Convention, the relevant part of which reads:

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

A. Applicability of Article 6 § 1

61. The Government argued that Article 6 § 1 was not applicable in the present case. Referring to the Court's considerations in *Balmer-Schafroth and Others v. Switzerland* (judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1359, § 40) and *Athanassoglou and Others v. Switzerland* ([GC], no. 27644/95, § 55, ECHR 2000-IV), as well as *Ünver v. Turkey* ((dec.), no. 36209/97, 26 September 2000), they submitted that there was no connection between the impugned power plants' conditions of operation and the alleged infringement of the applicants' civil rights. In particular, the applicants had failed to show that the power plants' operation exposed them personally to a danger which was serious, specific and imminent. On the contrary, the applicants admitted that they had not been personally affected but that they were concerned about their country's environmental problems and wished to live in a healthy environment. Nor had they claimed at any stage of the proceedings that they had suffered any economic or other loss. Accordingly, the result of the proceedings in issue was not directly decisive for any of their civil rights.

62. The Government further noted that under Turkish law only those whose "rights" had been violated could claim to be victims, whereas in the instant case the applicants merely alleged a violation of their "interests" before the domestic courts. With reference to the Supreme Administrative Court's jurisprudence on the subject, the Government pointed out that the concept of "victim" entailed a violation of a right (see paragraph 54 above) and not that of an interest. Accordingly, although the applicants were

entitled to bring an action to set aside an administrative act violating their interests, this did not in itself qualify them as victims (see paragraph 53 above). Thus, in the absence of a right at stake, the applicants' complaints did not concern "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention.

63. The applicants disputed the Government's submissions and argued that they had been concerned for the protection of the environment in the Aegean region of Turkey, where they lived. They also contended that the Government's failure to implement the domestic courts' decisions had caused them emotional suffering and contravened the principle of the rule of law.

64. The Court reiterates that, for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question; tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, among other authorities, *Taşkın and Others v. Turkey*, no. 46117/99, § 130, ECHR 2004-X; *Balmer-Schafroth and Others*, cited above, p. 1357, § 32; and *Athanassoglou and Others*, cited above, § 43).

65. The Court notes that it is clear from the applications lodged by the applicants with the administrative authorities and the proceedings before the domestic courts that the applicants challenged the operation of the three thermal power plants on account of the damage they had caused to the environment and the risks they posed for the life and health of the Aegean region's population, to which they belonged. While the applicants did not claim to have suffered any economic or other loss, they relied on their constitutional right to live in a healthy and balanced environment (see paragraph 14 above). Such a right is recognised in Turkish law, as is clear from the provisions of Article 56 of the Constitution (see paragraph 46 above) and has been acknowledged by the decisions of the administrative courts. Having regard to the foregoing, the Court is satisfied that the applicants could arguably claim that they were entitled under Turkish law to protection against damage to the environment caused by the power plants' hazardous activities. It follows that there existed a genuine and serious "dispute".

66. It therefore remains to be determined whether the right in issue was a "civil right". In this connection, the Court notes that the environmental pollution caused by the Gökova, Yeniköy and Yatağan thermal power plants through the emission of hazardous gas and ash, and the risk involved for public health, were established by the Aydın Administrative Court on the basis of an expert report. It appears from the findings of the Administrative

Court that the hazardous gas emitted by the power plants might extend over an area measuring 2,350 kilometres in diameter (see paragraph 22 above). That distance covers the area in which the applicants live and brings into play their right to the protection of their physical integrity, despite the fact that the risk which they run is not as serious, specific and imminent as that run by those living in the immediate vicinity of the plants.

67. Be that as it may, it is to be noted that the applicants, as individuals entitled to live in a healthy and balanced environment and duty bound to protect the environment and prevent environmental pollution (see paragraphs 46 and 47 above), had standing under Turkish law to ask the administrative courts to issue injunctions for the suspension of the power plants' environmentally hazardous activities, and to set aside the administrative authorities' decision to continue to operate them (see paragraphs 22 and 53 above). In addition, the judgments delivered by the administrative courts were favourable to the applicants and any administrative decision to refuse to enforce these judgments or to circumvent them paved the way for compensation (see paragraphs 57 and 58 above and *Taşkın and Others*, cited above, § 133). Accordingly, the outcome of the proceedings before the administrative courts, taken as a whole, may be considered to relate to the applicants' civil rights.

68. That being so, the Court notes that the concept of a “civil right” under Article 6 § 1 cannot be construed as limiting an enforceable right in domestic law within the meaning of Article 53 of the Convention. It is in this respect that the present case differs from the authorities relied on by the Government, notably *Balmer-Schafroth and Others* and *Athanassoglou and Others*, cited above, where the applicants had been unable to secure a ruling by a tribunal on their objections to the extension of the operating permits of nuclear power plants, and *Ünver*, cited above, where the right relied on by the applicant was a procedural right under administrative law and was not related to the defence of any specific right which he may have had under domestic law.

69. In sum, Article 6 of the Convention is applicable in the instant case.

B. Compliance with Article 6 § 1

70. The Government asserted that the administrative authorities had obtained all the necessary licences for the power plants subsequent to the decisions by the administrative courts and, accordingly, had not failed to enforce the decisions in question.

71. The applicants challenged the Government's assertions and contended that the non-enforcement of the administrative courts' decisions was incompatible with the rule of law and contravened the requirements of Article 6 § 1 of the Convention. They also noted that the power plants still posed a threat to the environment and public health, as demonstrated by the

recent judgments given by the administrative courts (see paragraphs 43-45 above).

72. The Court reiterates that the execution of a judgment given by a court is to be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, pp. 511-12, § 40). The right of access to a court guaranteed under that Article would be rendered illusory if a Contracting State's legal system allowed a final binding judicial decision or an interlocutory order made pending the outcome of a final decision to remain inoperative to the detriment of one party. This principle is of even greater importance in the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant's civil rights (ibid.).

73. The Court notes that the administrative authorities failed to comply with the Aydın Administrative Court's interlocutory order of 20 June 1996 suspending the activities of the three thermal power plants (see paragraph 17 above). Furthermore, the decisions of the Supreme Administrative Court upholding the Aydın Administrative Court's judgments of 30 December 1996 were not enforced within the prescribed time-limits. On the contrary, by a decision of 3 September 1996, the Council of Ministers decided that the three thermal power plants should continue to operate despite the administrative courts' judgments. This latter decision had no legal basis and was obviously unlawful under domestic law (see paragraph 57 above). It was tantamount to circumventing the judicial decisions. In the Court's opinion, such a situation adversely affects the principle of a law-based State, founded on the rule of law and the principle of legal certainty (see *Taşkın and Others*, cited above, § 136).

74. In the light of the foregoing, the Court considers that the national authorities failed to comply in practice and within a reasonable time with the judgments rendered by the Aydın Administrative Court on 30 December 1996 and subsequently upheld by the Supreme Administrative Court on 3 and 6 June 1998, thus depriving Article 6 § 1 of any useful effect.

75. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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."

77. The applicants did not claim compensation for either pecuniary damage or for costs and expenses. However, they claimed compensation for non-pecuniary damage in respect of the emotional suffering and distress

caused by the non-enforcement of the administrative courts' decisions. They left the sum to be awarded to the discretion of the Court.

78. The Government did not comment on the applicants' claims.

79. The Court considers that the applicants must have suffered distress on account of the authorities' failure to comply with the administrative courts' judgments. The applicants, who had already been involved in complex proceedings to obtain favourable decisions from the administrative courts, were compelled to pursue further proceedings in order to ensure that the authorities would comply with those decisions, in violation of the fundamental principles of a State governed by the rule of law (see *Taşkın and Others*, cited above, § 144). While it is difficult to assess damage of this sort, the distress suffered by the applicants cannot be compensated by the mere finding of a violation. Accordingly, making its assessment on an equitable basis, the Court awards each applicant the sum of 1,000 euros.

80. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*

   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the sum of EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State on the date of settlement, plus any tax that may be chargeable;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 12 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ — J.-P. COSTA
Registrar — President