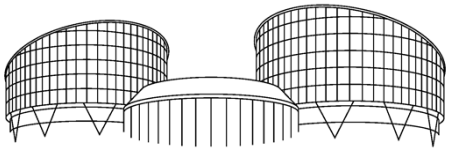

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF NALBANT AND OTHERS v. TURKEY

(Application no. 59914/16)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Excessive court fees in commercial proceedings, leading applicants to abandon their appeal • Domestic courts' lacking assessment of particular financial circumstances of applicants' company and fee exemption request • Failure to strike a fair balance between interests

STRASBOURG

3 May 2022

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 Nalbant and Others v. Turkey,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Branko Lubarda,
Gilberto Felici,
Saadet Yüksel,
Diana Sârcu, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 59914/16) 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 five Turkish nationals and three legal entities ("the applicants"), whose particulars are set out in the appended table;

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

the decision to grant leave to the applicants' representative to use the Turkish language in the written proceedings;

the parties' observations;

Having deliberated in private on 29 March 2022,

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

INTRODUCTION

1. The case concerns the alleged violation of the applicants' right of access to a court on account of excessive court fees.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicants were represented before the Court by Ms B. Giritligil Gökçen, a lawyer practising in Istanbul.

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

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

A. Enforcement proceedings against the applicants

5. On 1 November 2010 ORA A.Ş., a company registered in Turkey, signed a loan agreement with Ziraat Bank, a public bank in Turkey, for the amount of 270,000,000 euros (EUR) with respect to financing a commercial shopping mall. The applicants co-signed the loan as guarantors, assuming joint and several liability.

6. On 16 March 2012 Ziraat Bank ("the bank") sent a payment notice to ORA A.Ş. for the outstanding loan amount of EUR 266,969,788 to be paid within seven days.

7. On 28 March 2012 the bank applied to the Istanbul Commercial Court for a temporary injunction in respect of all the applicants' assets. The court granted the request on the same day.

8. On 4 April 2012 the bank sent a payment order through the enforcement office to the applicants in the amount of 649,183,468.82 Turkish liras (TRY – equivalent to EUR 273,536,202.26), which included the outstanding amount on the principal loan plus interest.

9. The applicants objected to the payment order, and thus the enforcement procedure was automatically suspended. The bank therefore brought an action in the Istanbul Commercial Court requesting that the court declare the applicants' objection void and order them to pay late-payment interest and up to 40% of the debt as a penalty for objecting to the payment order. In those proceedings, the bank was exempted from paying court fees (*karar ve ilam harcı*).

10. On 24 December 2013 the Istanbul Commercial Court granted the bank's claim almost in full and ordered the applicants to pay TRY 648,969,988 (approximately EUR 227,612,978) plus interest and TRY 260,759,277.88, corresponding to 40% of the debt, as a penalty for objecting to the payment order. The court also ordered the applicants to pay TRY 44,531,165 (approximately EUR 15,679,987) in court fees, that sum being calculated as a percentage of the admissible value of the dispute.

11. On an unspecified date, the applicants lodged an appeal against the decision of 24 December 2013 and requested to be exempted from paying the court fees, one-quarter of which was required to be deposited with that court when the appeal was lodged. The applicants who were natural persons submitted in that connection that their assets had been placed under a temporary injunction at the bank's request and that they had no income other than their monthly pension, which was in any event not sufficient to cover the court fees. They provided the court with copies of their social security payments. The applicant companies pleaded that as a result of the injunction order placed on their assets, they were unable to access their funds. Relying on the Court's findings in *Kreuz v. Poland* (no. 28249/95, ECHR 2001-VI), they submitted that requiring them to pay the fees in question would impair the very essence of their right of appeal.

12. On 27 May 2014 the Court of Cassation rejected the applicants' request to be exempted from paying court fees. It held in that connection that the documents concerning the financial situation of the applicants who were natural persons were not convincing, without indicating further reasons. As regards the applicant companies, the Court of Cassation held that they could not be granted legal aid in the form of an exemption from court fees since they were commercial legal entities and pursuant to Article 334 of the Code of Civil Procedure, only associations and foundations which were non-profit legal entities could benefit from such legal aid.

13. The applicants lodged an objection against that decision and argued that the requirement to pay court fees on a percentage basis was incompatible with the principle of equality of arms, especially since the bank had been exempted from paying the relevant fees when it had lodged the claim against them. In the alternative, they requested that the court reduce the court fees to a reasonable amount and submitted a decision of the Grand Chamber of the Court of Cassation's Civil Division (decision no. E.2010/10-550, K 2010/561) which had set out the principle that when a defendant party was exempted from paying court fees on a percentage basis (*nisbi harç*), the claimant would only be required to pay the court fees on the basis of the applicable fixed scale (*maktu harç*).

14. The Court of Cassation dismissed the applicants' objection on 18 December 2014. Reiterating the reasons given in the decision of 27 May 2014, it held, in respect of the applicants who were natural persons, that the supporting documents for their application for legal aid had not only been found to be unconvincing, but were also not originals. Following that decision, the applicants made another unsuccessful attempt to be granted legal aid. They were subsequently unable to pay the court fees and their appeal was therefore regarded as having never been lodged. The Istanbul Commercial Court's decision of 24 December 2013 thus became final on 24 December 2015.

15. On an unspecified date the applicants lodged an individual appeal with the Constitutional Court, complaining, *inter alia*, of a violation of their right of access to a court on account of excessive court fees.

16. On 10 May 2016 the Constitutional Court dismissed the applicants' complaint, holding that the court fees required from them had not been excessive in view of the value of the litigation and that therefore there had been no infringement of their right of access to a court. The Constitutional Court further noted that the legal provision providing for the payment of court fees on a percentage basis was sufficiently foreseeable. As regards the applicant companies, it held firstly that there was no legal basis in domestic law on which commercial entities could be granted legal aid, and secondly that there was no consensus among the member States of the Council of Europe as regards the granting of legal aid to legal entities. Regarding the

latter aspect, it referred to *Granos Organicos Nacionales S.A. v. Germany* (no. 19508/07, § 53, 22 March 2012).

B. Bankruptcy protection proceedings in respect of ORA A.Ş. and Ağaçkakan İnşaat Turizm San. ve Ticaret A.Ş.

17. In the meantime, that is to say, on 5 July 2012, ORA A.Ş., applied for bankruptcy protection (*iflas erteleme*) in the Istanbul Commercial Court with a view to restructuring its debt and avoiding bankruptcy. On 17 September 2013 the court dismissed the application and ordered the company's bankruptcy on the grounds that its business could not be saved and the restructuring plan with Ziraat Bank was not realistic. That decision was quashed on appeal and remitted for a fresh examination. On 2 February 2018 the Istanbul Commercial Court once again dismissed the application and ordered the company's bankruptcy mainly on account of the fact that the restructuring plan previously agreed with Ziraat Bank was no longer on the table.

18. On an unspecified date, one of the applicant companies, Ağaçkakan İnşaat Turizm San. ve Ticaret A.Ş. ("Ağaçkakan İnşaat"), applied for bankruptcy protection in the Istanbul Commercial Court with a view to preventing bankruptcy. The court granted that request on 19 July 2013, noting that the company's insolvency had been caused by the fact that it had co-signed ORA's loan and that the bankruptcy protection proceedings initiated by the latter, in particular the restructuring of the debt with Ziraat Bank, would be decisive for its financial situation. It further noted that the applicant company's assets were under a temporary injunction. In applying the benefit of bankruptcy protection to Ağaçkakan İnşaat, the Istanbul Commercial Court, among other measures, stayed the temporary injunction already placed on the company's assets and prohibited any further temporary injunctions in respect of claims against the company relating to its debts.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Court fees

19. In civil proceedings in Turkey, every claimant is obliged to pay a portion of the court fees at the time of lodging a statement of claim with a court. As the case proceeds, either party is obliged to pay further court fees at the time of lodging an appeal unless the party has been granted an exemption from such fees. In cases where a party which is required to pay court fees fails to do so within the relevant time-limit, and where no exemption has been granted by the court, the relevant judicial proceedings are considered not to have been initiated.

20. Depending on the nature of the case, court fees may be fixed or may be calculated as a percentage (6.831% at the relevant time) of the value of the sum claimed. In either scenario, one-quarter of the calculated fees must be deposited by the claimant up front. The court fees incurred by either party may, depending on the outcome of the litigation, ultimately be repaid by the losing party. Furthermore, in disputes where the court fees are calculated as a percentage of the value of the sum claimed, there is no upper limit on the court fees which a party may be required to pay. One exception to this rule is when the claim is entirely dismissed. In that event, the fees are calculated on the basis of a fixed scale and the claimant is reimbursed for any fees which he or she has paid in excess.

21. There are categories of litigants which are exempted from court fees by virtue of statutory provisions. Among those categories of exempted litigants are certain banks which are subject to the banking reconstruction and amelioration processes under Law no. 4603, which provides for their full exemption from the requirement to pay court fees when they initiate proceedings for collecting on defaults on commercial loans.

22. An application for legal aid, which includes an exemption from court fees, is subject to the relevant Articles of the Code of Civil Procedure (Law no. 6100). As a general rule, legal aid implies only a deferment of the obligation to pay court fees, given that, if the party which is granted legal aid loses the case, that party will be required to pay the court fees at the end of the proceedings. That being so, the court may waive the payment of those fees, in part or in full, if it determines that their payment will risk putting the losing party in severe financial difficulty.

23. In accordance with Article 334 of the Code of Civil Procedure, a request for legal aid may be granted if the claim cannot be regarded as prima facie manifestly ill-founded and if the party requesting the legal aid is unable to pay, in part or in full, the procedural costs and expenses without incurring a significant financial burden. While the same Article contains similar conditions for non-commercial legal entities, it appears that no reference is made to commercial legal entities' eligibility for legal aid. Lastly, the party requesting legal aid must submit relevant documents attesting to that party's inability to pay the procedural costs (Article 336 § 2).

B. Case-law of the Court of Cassation submitted by the applicants

24. According to a decision of the Court of Cassation's General Assembly of Civil Proceedings Divisions of 3 November 2010 (E.2010/10-550 K. 2010/561), in cases where the defendant is exempted from court fees, and despite the fact that the type of the dispute may be subject to court fees calculated on a percentage basis, the court fees collected from either party may not exceed the applicable fixed scale. This is derived from the fact that no fees can be collected from the defendant if the claimant's action is granted,

and the fees collected from the latter at the time of bringing the action would have to be reimbursed in any event. In the reverse situation, that is, where the claimant loses the case, the fees charged may not exceed the amount of court fees calculated on the basis of the applicable fixed scale.

The above exception only concerns the calculation of court fees and does not apply to the cost of legal representation borne by the losing party.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

25. In their observations dated 17 April 2019, the Government argued that the applicants' observations had not been submitted in one of the official languages of the Court as required by Rule 34 § 1 of the Rules of Court and that there was nothing in the case file demonstrating that they had been granted leave to use the Turkish language in the proceedings before the Court. They invited the Court not to take into account the applicants' observations and claims for just satisfaction.

26. The Court notes that, by a letter dated 17 January 2019, the applicants were informed that the President of the Section had decided, in accordance with Rule 34 § 3, to grant them leave to use the Turkish language in the written proceedings before the Court. The Court further notes that it has already examined and dismissed similar objections by the respondent Government (see, for example, *Şakir Kaçmaz v. Turkey*, no. 8077/08, § 62, 10 November 2015).

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

27. The applicants complained under Article 6 § 1 of the Convention that they had been deprived of their right of access to a court on account of the court fees imposed on them in respect of their appeal against the judgment of 24 December 2013. The relevant part of Article 6 § 1 reads as follows:

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

A. Admissibility

28. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The Government, referring to the Court's case-law, noted in the first place that the requirement to pay fees to civil courts in connection with claims or appeals was not incompatible *per se* with Article 6 § 1 of the Convention. They further noted that both the requirement to pay court fees and the method of their calculation had a basis in law, fulfilling the accessibility and foreseeability criteria within the meaning of the Convention. The Government argued that the imposition of court fees served the legitimate aim of contributing to the financing of the judicial system and preventing claimants from making manifestly ill-founded applications. The Government also submitted that the applicants had had access to a court, as their arguments on the merits had been examined by the first-instance court and they had encountered no hindrance in that respect. In their view, therefore, the case concerned the issue of the applicants' inability to appeal rather than that of their right of access to a court.

30. The Government also pointed out that the applicants had all agreed to co-sign the loan as guarantors, and by doing so they had accepted the risk of a lawsuit and the imposition of the relevant court fees in the event of a dispute. This was especially true for the applicant companies, which by virtue of their commercial activities were not only in a position to assess the risks but were also required to act prudently. In the Government's view, since the applicants' financial position had been good enough to guarantee the principal loan jointly and severally, it had to be accepted *a fortiori* that they could have paid the appeal fees, which had only amounted to a fraction of that loan. They pointed out that, at the time when the appeal fees were due, no restriction had been imposed on the assets of the applicant company Ağaçkakan İnşaat, since it had obtained a decision to postpone its bankruptcy (see paragraph 18 above). The Government added in that connection that it would have been sufficient for the Court of Cassation to carry out its appellate review in respect of all the applicants if even only one applicant – or all the applicants collectively – had paid the fee in question. The Government argued that the applicants and the bank had been parties to several other disputes in which the applicants had been able to pay the court fees.

Lastly, referring to *Granos Organicos Nacionales S.A.* (cited above, § 79), the Government argued that the fact that no provision had been made in the domestic law for granting legal aid to commercial legal entities was not in itself contrary to the requirements of a fair trial under Article 6 § 1 of the Convention.

31. In response, the applicants maintained that the court fees had been excessive and had rendered void their right of access to a court. They stressed that having access to a cassation appeal had been crucial to their dispute, not only because of the value of the claim against them, but also because of the

substantial amount of the court fees and the penalty imposed on them by the first-instance court at the end of the proceedings. The applicants disagreed with the Government that the amount of the court fees in question had served a legitimate aim. Pointing out the fact that the court fees required to lodge their appeal had amounted to almost EUR 4 million, they argued that such an excessive amount could hardly be deemed reasonable or necessary to fund the proceedings in question. As to the Government's argument that the applicants should have anticipated the cost of litigation when they had decided to co-sign the loan, the applicants replied that those grounds had not been put forward by the domestic courts when they had decided to dismiss the applicants' request for an exemption from costs. For the same reason, the applicants disagreed with the Government's suggestion that the applicant company Ağaçkakan İnşaat could have paid the court fees alone, as it had been granted the benefit of protection from bankruptcy. The applicants noted that the domestic courts had rejected their request for exemption from court fees in a wholesale manner without examining their individual financial situations. Despite the fact that it had been evident that they had no means to pay the court fees in question because their assets had been subjected to a temporary injunction, and since the courts had had every means to verify the authenticity of the situation through the National Judicial Network Server, the courts had not given convincing reasons for their decision to reject the applicants' exemption request. Lastly, the applicants argued that there was no obligation under domestic law to submit originals of supporting documents in respect of exemption requests.

2. The Court's assessment

(a) General principles

32. The Court reiterates that the right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals. The limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the Convention if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Pasquini v. San Marino*, no. 50956/16, § 156, 2 May 2019).

33. The Court further reiterates that, where appeal procedures are available, Contracting States are required to ensure that physical and legal persons within their jurisdiction continue to enjoy the same fundamental guarantees of Article 6 before the appellate courts as they do before the courts

of first instance (see, *inter alia*, *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 45, 20 December 2007).

34. The Court reiterates that the requirement to pay fees to civil courts at the time of bringing a claim cannot be regarded as a restriction on the right of access to court that is incompatible *per se* with Article 6 § 1 of the Convention, provided that the very essence of the right of access to court is not impaired and the measures applied are proportionate to the aims pursued in the light of Article 6. In that connection, the Court has noted that such features as the applicant's ability to pay the court fees and the stage of proceedings reached at the time the fees are imposed are taken into account in the assessment of whether access to court has been impaired (see, among many other authorities, *Kreuz v. Poland*, no. 28249/95, §§ 52 et seq., ECHR 2001-VI).

35. The Court has held in that connection that restrictions of a purely financial nature which are completely unrelated to the prospects of success of the claim should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice (see *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 July 2005; *FC Mretebi v. Georgia*, no. 38736/04, § 47, 31 July 2007; and *Paykar Yev Haghtanak Ltd*, cited above, § 45).

36. Furthermore, the Court has considered it excessive, and therefore an impairment of the very essence of the right of access to a court, where high court fees were not justified by the applicant's financial situation but were instead calculated on the basis of a set statutory percentage of the sum at stake in the proceedings (see *Weissman and Others v. Romania*, no. 63945/00, §§ 39-42, ECHR 2006-VII (extracts), and *Laçi v. Albania*, no. 28142/17, § 52, 19 October 2021).

37. The Court further notes that despite the absence of a consensus, or even a consolidated tendency among the States Parties to the Convention, as regards the granting of legal aid to legal persons, it has applied the same principles on the right of access to a court without making a distinction between natural and legal persons (see, for example, for the application of those principles to legal persons, *Teltronic-CATV v. Poland*, no. 48140/99, §§ 45-49, 10 January 2006; *FC Mretebi*, cited above, §§ 39-41; *Agromodel OOD and Mironov v. Bulgaria*, no. 68334/01, §§ 34-37, 24 September 2009; and, *mutatis mutandis*, *Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey*, no. 20577/05, § 28, 22 October 2013).

38. The Court reiterates that in *Granos Organicos Nacionales S.A.* (cited above), which concerned the denial of a foreign company's request for free legal assistance and exemption from court fees for bringing an action in the German courts against two German companies, its finding of no violation did not stem from the fact that the applicant was a legal person, but rather from the relevant grounds put forward by the domestic courts, namely that domestic law made no provision for the granting of legal aid to foreign legal persons and that this was justified by the principle of reciprocity (ibid., §§ 48-

50). The Court additionally noted that the applicant company had not made use of the possibility, provided in German law, of requesting temporary exemption from court fees, which was open to natural and legal persons alike (ibid., § 51). The Court concluded, having regard to the absence of a consensus, or even a consolidated tendency, among the States Parties to the Convention as regards the granting of legal aid to legal persons, that the restriction of the applicant company's right of access to the German courts had not been disproportionate in the light of the particular circumstances of the case.

39. It is therefore apparent from its case-law that the Court has never categorically excluded commercial legal persons from the guarantees of Article 6 § 1 in respect of excessive court fees. In cases arising from individual petitions the Court's task is not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself, as far as possible, without losing sight of the general context, to examining the issues raised by the case before it (see, *mutatis mutandis*, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 69, 20 October 2011).

40. In that connection the Court has accepted that it falls within the State's margin of appreciation to establish its court fee system in such a way as to link court fees for pecuniary claims to the amount in dispute. The system, however, has to be sufficiently flexible to allow a party to benefit from full or partial exemption from the payment of court fees or a reduction in the court fees (see *Urbanek v. Austria*, no. 35123/05, §§ 60-65, 9 December 2010, and, more recently, *Chorbadzhiyski and Krasteva v. Bulgaria*, no. 54991/10, § 64, 2 April 2020).

(b) Application of the above principles to the present case

41. The Court notes at the outset that the proceedings in question were of a commercial nature, involving parties acting in a private capacity in respect of a debt related to the financing of a commercial shopping centre. The Court has recently held that access-to-court guarantees apply with equal strength to private disputes as they do to those involving the State. This is because in both types of proceedings a party can be forced to bear a disproportionate financial burden in the form of costs of proceedings, which can ultimately result in a breach of that party's right of access to court (see *Čolić v. Croatia*, no. 49083/18, § 53, 18 November 2021, with further references). The Court nevertheless takes the nature of the dispute into account as one element among others in assessing the proportionality of an applicant's right of access to court (ibid.).

42. Against this background, the Court further notes that the applicants had to abandon their cassation appeal, as they were unable to pay the court fees, which were calculated on the basis of a set percentage, laid down by law, of the amount claimed against them. The court fees imposed on the applicants for lodging their appeal amounted to approximately

TRY 11,132,791 (almost EUR 4 million at the relevant time), representing one-quarter of the court fees in total. The Court considers that the fees in question were excessive, given their amount. The Court also observes that the domestic law makes no provision for flexibility in the calculation of the court fees, and neither are such fees capped at a maximum amount (compare *Stankov v. Bulgaria*, no. 68490/01, § 64, 12 July 2007; *Agromodel OOD and Mironov*, cited above, § 47 and *Urbanek*, cited above, §§ 64-65).

43. The Court further notes that at the time of the dispute, all the applicants' assets, except for those of the applicant company Ağaçkakan İnşaat, which had been granted the benefit of bankruptcy protection, were under a temporary injunction order and that, therefore, the applicants had no funds available to them. The applicant company Ağaçkakan İnşaat's financial situation was clearly precarious, in view of the fact that it sought bankruptcy protection, and therefore it is reasonable for the Court to assume that that applicant company likewise lacked the requisite liquidity to cover the court fees. That being so, it has not been shown that domestic courts carried out an individual assessment of the particular circumstances of the applicants' ability to pay the court fees in question.

44. Moreover, as regards the applicants who were natural persons, the domestic courts refused their request, finding the documents submitted by them unconvincing, without further reasoning. The Court of Cassation upheld that conclusion and added that the supporting documents were not originals. The Court reiterates that the admissibility and assessment of evidence are the province of the domestic courts, as required by the principle of subsidiarity. Thus, it is not appropriate for the Court to rule on whether the documents submitted by the applicants were sufficient or convincing for the courts to grant them exemption from paying the court fees in question. That being so, the Court notes that the applicants' assets were under temporary injunction at the time and therefore the domestic courts could have explained in what aspect they considered the supporting documents to be unconvincing given their particular situation.

45. As regards the applicant companies, the Court observes that the domestic courts refused their exemption request without carrying out a sufficiently thorough assessment by simply referring to the absence of any provision in domestic law for the granting of legal aid to commercial entities. In other words, they treated the absence of a provision in domestic law for legal aid as an indiscriminate restriction of court fee exemptions to be applied across the board for all legal persons with a commercial purpose. However, the Court has already held that a blanket prohibition on granting court fee exemptions raises of itself an issue under Article 6 § 1 of the Convention (see *Paykar Yev Haghtanak Ltd*, cited above, § 49).

46. Lastly, the Court reiterates its fundamentally subsidiary role in the supervisory mechanism established by the Convention, whereby the Contracting Parties have the primary responsibility of securing the rights and

freedoms defined in the Convention and the Protocols thereto. That puts the national authorities and courts under an obligation to interpret and apply domestic law in a manner that gives full effect to the Convention (see *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022). As a corollary to the subsidiarity principle, where an applicant's pleas relate to the "rights and freedoms" guaranteed by the Convention, the courts are required to examine them with particular rigour and care (see *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2017). In the present case, the Court attaches importance to the fact that the Court of Cassation when examining the applicants' request for exemption did not address their argument based on the Convention, notably their express reliance on the Court's judgment in *Kreuz* (cited above) on excessive court fees (see paragraph 11 above).

47. Accordingly, the Court concludes that the State failed to strike a fair balance between, on the one hand, its interest in recovering the costs of proceedings and, on the other, the applicants' interest in having their claims examined by the courts.

Consequently, there has been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

48. The applicants further complained under Article 14, in conjunction with Article 6 § 1, of the Convention that the imposition of such a disproportionate and excessive amount of court fees – which in the reverse situation would not have been imposed on the bank – had amounted to a discriminatory infringement of their right of access to a court. Lastly, they submitted under Article 6 § 1 of the Convention that the Court of Cassation's decision of 18 December 2014 had not been adequately reasoned because it had failed to address their essential arguments concerning the domestic case-law, in particular the decision of the Grand Chamber of the Court of Cassation's Civil Division (E.2010/10-550, K.2010/561).

49. The Court considers that these complaints should be examined under Article 6 § 1 of the Convention only. It further considers that they are closely linked to the applicants' main complaint under Article 6 § 1 and must therefore likewise be declared admissible. In view of its findings in paragraph 47 above, the Court considers that it is unnecessary to examine separately the other complaints under Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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."

A. Damage

51. The applicants each claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government contested the claims on the grounds that they were excessive.

53. The Court considers that where, as in the present case, an individual has been the victim of proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if he or she so requests, represents in principle an appropriate way of redressing the violation (see *Cudak v. Lithuania* [GC], no. 15869/02, § 79, ECHR 2010, and the cases cited therein).

54. Accordingly, the Court finds that in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction and makes no award under this head (see *Sace Elektrik Ticaret ve Sanayi A.Ş.*, cited above, § 39).

B. Costs and expenses

55. The applicants claimed 500 Turkish liras (TRY) for postal expenses without submitting documents to that effect and TRY 18,000 for costs and expenses related to their legal representation before the Court. In support of the latter claim, the applicants referred to an oral agreement concluded between them and their representative on the basis of the Istanbul Bar Association's scale of hourly fees.

56. The Government contested those claims.

57. In accordance with the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court notes that the applicants merely referred to the Istanbul Bar Association's scale of fees and failed to submit any supporting documents in respect of their claims. In those circumstances, and bearing in mind the terms of Rule 60 §§ 2 and 3 of the Rules of Court, the Court makes no award in respect of costs and expenses (see, *inter alia*, *Hasan Döner v. Turkey*, no. 53546/99, §§ 59-61, 20 November 2007, and *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, § 57, 14 October 2014).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to access to a court on account of excessive court fees;

3. *Holds* that no separate examination is necessary of the applicants' other complaints under Article 6 § 1 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Jon Fridrik Kjølbro President

APPENDIX

Applicant's Name	Year of birth/ registration	Place of residence
Enver Nalbant	1940	Istanbul
Ağaçkakan İnşaat Turizm San. ve Tic. A.Ş.	1996	Istanbul
Ağaçkakan Yatırım Organizasyonu ve Danışmanlığı Tic. Ltd. Şti.	1989	Istanbul
Duruhan Yatırım Organizasyon Danışmanlık ve Turizm Tic. A.Ş.	1996	Istanbul
Elif Döne Nalbant Okyay	1970	Istanbul
Fatma Müberra Rizo	1964	Istanbul
Vladko Rizo	1955	Istanbul
Ahmet Sabri Uluğ	1967	Istanbul