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| Meeting: | 1514th meeting (December 2024) (DH) |
| Item reference: | Action Plan (15/10/2024) |

Communication from Türkiye concerning the case of Genc and Demirgan v. Turkey (Application No. 34327/06) - *The appendices in Turkish are available upon request to the Secretariat.*

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| Réunion : | 1514e réunion (décembre 2024) (DH) |
| Référence du point : | Plan d'action (15/10/2024) |

Communication de la Türkiye concernant l'affaire Genc et Demirgan c. Turquie (requête n° 34327/06) ***(anglais uniquement)*** - *Les annexes en turc sont disponibles sur demande au Secrétariat.*

October 2024

# ACTION PLAN

***Genç and Demirgan*** Group of Cases, (no:34327/06)

(***Okyay and Others v. Türkiye,*** no:36220/97)

(***Bursa Barosu Başkanlığı and Others v. Türkiye***, no:25680/05)

## I. CASE DESCRIPTION

**1.** There are three cases in total examined under the Genç and Demirgan group of cases (see Table 1 below).

**2.** The Genç and Demirgan case concerns a violation of Articles 6 § 1 and 8 of the European Convention on Human Rights ("the Convention"). The European Court of Human Rights ("the Court") found a violation of Article 8 (right to respect for private and family life) of the Convention since the executive authorities decided the continuation of production at a gold mine in Bergama (İzmir) using a sodium cyanide leaching process, in contravention of decision of the Supreme Administrative Court which had annulled the operation permit on account of the risk to the local ecosystem and to human health and safety posed by the chemicals. The Court also found a violation of Article 6 § 1 (right to a fair trial) of the Convention on account of the failure of the national authorities to comply in practice and within a reasonable time with the judgment given by the domestic courts.

**3.** The Okyay and Others case concerns a violation of Article 6 § 1 of the Convention on account of the failure of the national authorities to comply with the domestic courts' decisions to shut down three thermal power plants which posed a threat to the environment and public health.

**4.** The Bursa Barosu Başkanlığı and Others case also concerns a violation of Article 6 § 1 of the Convention on account of the failure of the national authorities to comply with the domestic courts' decisions setting aside the administrative decisions authorising the construction and operation of a starch factory on a farmland.

## II. INDIVIDUAL MEASURES

**5.** In these cases, the Turkish authorities have taken individual measures to ensure that the violations at issue have ceased and that applicants were redressed for their negative consequences. The authorities are of the opinion that no further individual measures are necessary.

### A. Just Satisfaction

**6.** The Court awarded only non-pecuniary damages in the Okyay and Others, and Genç and Demirgan cases. The authorities would like to note that the sums of just satisfaction awarded in the said cases have been paid within the time-limit set by the Court (see Table 2 below).

**7.** Since the applicants did not submit a claim for just satisfaction in accordance with the procedure in the Bursa Barosu Başkanlığı and Others case, the Court did not make any award to the applicants in this respect.

### B. Other Individual Measures/Measures Taken Within Facilities

#### 1. Bergama Mining Cases

**8.** As regards the case of Genç and Demirgan the Turkish authorities would like to submit the following explanations on the background of the case and some of the issues underlying the Court's judgment of violation.

- Background of the case

**9.** The case concerns the granting of permits to operate a gold mine in Ovacık, in the district of Bergama (İzmir). The applicants were living in Bergama and the surrounding villages. In 1994 the Ministry of the Environment granted permission for the use of sodium cyanide leaching at a gold mine near İzmir, following a preliminary public consultation and on the basis of an impact study, as required by the Environment Act. Even though the case was dismissed by the İzmir Administrative Court, in May 1997 the Supreme Administrative Court ruled that the use of sodium cyanide presented dangers for the local ecosystem and for human health and safety; and therefore it concluded that the operating permit was not compatible with the public interest and that the safety measures which the mine’s owners had undertaken to implement were insufficient to overcome the risk inherent in such operations.

**10.** Complying with the said judgment, the İzmir Administrative Court ordered the annulment of the Ministry’s opinion dated 19 October 1994 that gave permission to the E.M. Eurogold Madencilik (“the company”), subsequently renamed Normandy Madencilik A.Ş. for carrying out activities in gold mine operations. This decision became final by being upheld by

the Supreme Administrative Court on 1 April 1998.

**11.** Following the said decision, the company contacted various ministries in order to obtain a new permit. Specifically, it claimed that it had taken additional measures to ensure better safety in the gold mine's operation and referred, *inter alia*, to a risk assessment report on this question drawn up by the British company Golder Associates Ltd.

**12.** Then the Ministry of Enviroment applied to the Supreme Administrative Court with regard to the company's request with a view to obtain the Supreme Administrative Court's advisory opinion. On 5 February 1999 the Supreme Administrative Court gave its advisory opinion and stated that the decision of Supreme Administrative Court dated 13 May 1997 could not be interpreted as an absolute prohibition on the use of cyanide in gold mining operations and that there were grounds for taking specific circumstances into consideration.

**13.** In a separate development, the Prime Minister instructed the Turkish Institute of Scientific and Technical Research ("TÜBİTAK") in March 1999 to prepare a report assessing the potential impact of cyanide use in the gold-mining operations. In October 1999 TÜBİTAK's report was submitted. It had been prepared by ten scientists who were experts in environmental issues, environmental law, chemistry, hydrogeology, geology, engineering geology and seismology.

**14.** The report concluded that the risks to human life and the environment set out in the Supreme Administrative Court's judgment had been completely removed or reduced to a level within the acceptable limits, given that the mine was to use environmentally friendly advanced technology based on the "zero discharge" principle and that the risk of adverse impact on the ecosystem was, according to scientific criteria, much lower than the maximum acceptable level.

**15.** Subsequently the company which had an operation permit for the gold mine filed new applications for permits, claiming that it had taken measures to ensure the site's safety. They relied on the report drawn up at the Prime Minister's request by a scientific institute which concluded that the threats to the ecosystem listed in the Supreme Administrative Court's 1997 judgment had been reduced to a level lower than the acceptable limits. Based on that report, the authorities granted permission for continued operations using cyanide leaching at the mine, on a provisional basis. However, the administrative judicial authorities overturned the report and cancelled or imposed stays of execution again on administrative decisions taken on its basis.

**16.** Afterwards, the Council of Ministers with its decision dated 29 March 2002 and

numbered 2002/4, decided “as a principle” that the gold mine could continue its activities. The decision of Council of Ministers stated that the leaching technique was not harmful to health provided certain precautionary measures were taken, and emphasised the mine’s contribution to the national economy and to employment.

**17.** However, on 23 June 2004 the Supreme Administrative Court ordered a stay of execution of that decision as well. In its reasoning the Supreme Administrative Court adjuciated that the decision taken by the Council of Ministers without conducting the Environment Impact Assessment (hereinafter referred to as “EIA”) process did not comply with the Law and the Regulation on Environment Impact Assessment (hereinafter referred to as "the Regulation”). It was also emphasized in the judgment that for operating the gold mine, a new EIA report should be prepared and a new process should be initiated by the Ministry in accordance with the provisions of Law No. 2872.

**18.** Following the notification of that decision on 30 July 2004, the İzmir provincial governor’s office ordered the mine to cease gold extraction within the context of enforcement of the Supreme Administrative Court’s judgment on 18 August 2004.

**19.** Afterwards on 22 March 2006 the Supreme Administrative Court annulled the decision of the Council of Ministers dated 29 March 2002.

**- 2004 EIA Report**

**20.** A new application was made by the operating company, based on the reasons stated in the above-mentioned decision of the Supreme Administrative Court and the obligation of the administration to take action according to the requirements of the judicial decisions. Furthermore, an EIA Report was prepared for the gold extraction activity and submitted to the Ministry of Environment and Forestry. On 27 August 2004, as a result of the examination made in accordance with the Provisional Article 6 of the EIA Regulation on this application, it has been decided that gold mining operations of the Normandy Madencilik A.Ş. was not detrimental. In the decision in question, it was also stated that the issues specified in the final EIA Report and its annexes regarding the activity and the Environmental Law no. 2872 and the relevant regulations that came into force on the basis of this Law should be complied with and the necessary permissions should be obtained from all relevant institutions and organizations in accordance with the legislation in force.

**21.** Some of the applicants initiated proceedings before the İzmir 3rd Administrative Court against the decision of the Ministry of Enviroment and Forestry dated 27 August 2004.

**22.** The Government wishes to provide information herein below on the outcome of

the appeal against the dismissing the request for the annulment of the new operation permit.

**23.** In the lawsuits filed for the annulment of the administrative act of the Ministry of Environment and Forestry, which was rendered on 27 August 2004, the İzmir 3rd Administrative Court dismissed the requests of the applicants with its decisions of 12 December 2007 (docket number 2006/297) and 27 November 2007 (docket number 2005/794). The domestic court relied on the report drawn up upon the expert examinations conducted in compliance with the Supreme Administrative Court order.

**24.** Another lawsuit was filed for the annulment of the provisional Article 6 of the Regulation on Environment Impact Assessment before the 6th Chamber of the Supreme Administrative Court. In its decision dated 31 October 2007 (docket number 2005/4294) the 6th Chamber of the Supreme Administrative Court annulled the provisional Article 6 of the Regulation.

**25.** At this point, the Government would like to draw the Committee's attention to the fact that provisional Article 6 of the Regulation enabled an exceptional procedure for EIA process under certain circumstances. With the amendment made in the aforementioned article, a regulation was brought into effect for existing active facilities that have started operations without completing the environmental impact assessment process. The same privison stipulated that the activities related to this regulation were not exempted from the environmental impact assessment process. However, a different method had been introduced for the activities in the planning stage.

**26.** In the lawsuit filed against the provisional Article 6 of the Regulation, the Supreme Administrative Court also reiterated that a different procedure had been introduced with the regulation in question for the activities that had started to operate before the EIA process was completed unlike the activities at the planning stage. In addition, the Supreme Administrative Court emphasized that with this regulation, inequality had been created between those who had started their activities by fulfilling the obligations stipulated in the Environmental Impact Assessment Regulation. Furthermore, in the judgment it was stated that a regulation against the public interest had been introduced on account of the possibility of carrying out an activity without taking environmental effects into consideration in contrary to public interest.

**27.** In its decisions dated 3 November 2008, the 6th Chamber of the Supreme Administrative Court also ordered the stay of execution on the decision of the İzmir 3 Administrative Court dated 12 December 2007 (docket number 2006/297) which found the

administrative act of the Ministry of Environment and Forestry allowing the gold mine be operated was lawful. The Supreme Administrative Court relied on the ground that it became devoid of legal basis given the annulment of provisional Article 6 of the Regulation.

**28.** The stay of the execution decisions dated 3 November 2008 were notified to the Ministry of Environment and Forestry on 10 December 2008. The Ministry was notified by the İzmir Provincial Directorate of Environment and Forestry that the operations of the gold mine were suspended on 28 January 2009 in accordance with the stay of the execution decisions and the activities of the mining operation were ceased again as per this stay of execution order.

**29.** By the way, on 25 June 2010, the 6th Chamber of the Supreme Administrative Court quashed the İzmir 3rd Administrative Court's decisions of 12 December 2007 (docket no. 2006/297) and 27 November 2007 (docket no. 2005/794). The Ministry of Environment and Forestry did not request for rectification against the judgment of the 6th Chamber of the Supreme Administrative Court dated 25 June 2010. Upon the remit of its decisions, the İzmir 3rd Administrative Court ruled on 16 February 2011 (docket nos. 2011/131 and 2011/132) that the administrative act of 27 August 2004 be annulled in line with the legal reasoning of the 6th Chamber's judgment. The Ministry did not appeal the above-mentioned decisions of the İzmir 3rd Administrative Court.

**- 2009 EIA Report**

**30.** According to the Supreme Administrative Court, after the provision in question was annulled, the administrative act of 27 August 2004 had become devoid of legal basis. However, it became legally possible for the Ministry of Environment and Forestry under the regular provisions of the Regulation to render a new decision by adopting the principle procedure for EIA process.

**31.** In the meanwhile, a new regulation on Environment Impact Assessment entered into force by being published in the Official Gazette dated 17 June 2008 and numbered 26939.

**32.** In compliance with the reasons given in the Supreme Administrative Court's judgment on stay of execution, a new application was submitted for the gold mine under the new Regulation on Environmental Impact Assessment. Upon this application, the EIA process was conducted in accordance with the main procedure laid down in the Regulation, which resulted in a decision of EIA Approval on 18 February 2009. Thus, the EIA decision dated 18 February 2009 was issued upon the application submitted by paying regard to the reasoning of

the Supreme Administrative Court's judgments dated 2008. The main EIA process set out by the Regulation on EIA was applied in the decision of EIA Approval dated 18 February 2009. The Ministry accordingly rendered its decision dated 18 February 2009 pursuant to the principles set above.

**33.** The Government would like to inform the Committee that in accordance with Articles 8 § 4; 9; 11 §§3,4 and 14 § 1 of the Regulation, the people of the district as well as third persons were duly included in the process of EIA.

**34.** In accordance with Article 8 § 4 of the Regulation, on 30 December 2008 a copy of the EIA Application Dossier that had been submitted within the gold mining project, was transmitted to the Office of the İzmir Governor to make it public. Furthermore, the Ministry notified on its web site that the EIA process had started. The Ministry also published the EIA Application Dossier on its web site to notify and include a broader circle of people in the process.

**35.** In accordance with Article 9 of the Regulation, on 3 January 2009, it was announced in daily newspapers "Sabah", "Vatan" and "Star" etc. which were published nationwide, as well as in the local newspapers "Habergama", "Çağdaş" and "Kardelen" that a Public Participation Meeting was on 14 January 2009 in the Ovacık Village to enable the participation of the local people in the EIA process.

**36.** Furthermore, in accordance with the instructions of the Office of the İzmir Governor, announcements were made on 5 January 2009 in the Office of the Presidency of Bergama Health Group as well as in the Office of the Head of the Ovacık Village. The meeting was also announced on the web sites of the Ministry and the Provincial Directorate of Environment and Forest operating under the Office of the İzmir Governor to enable a wider public participation. The minutes of the meeting was drawn up and it was forwarded to the Examination-Evaluation Commission composed of public administrations relevant to the gold mining project and the project field. In this way, the Commission was given the opportunity to evaluate the opinion of the local people that had been expressed in the Public Participation Meeting.

**37.** In accordance with Article II §§ 3. 4 of the Regulation, on 20 January 2009 a copy of the EIA Report of the gold mining project was submitted to the Office of the İzmir Governor to make it public. The EIA process was announced and a copy of the EIA Report was published on the web site of the Ministry to enable the widest possible public participation.

**38.** In accordance with Article 14§ l of the Regulation, the local people as well as the public in general were given the opportunity to participate not only in the Examination-Evaluation Process but also in the evaluation of the finalised EIA Report by the Examination-Evaluation Commission.

**39.** In accordance with Article 11 § 1 of the Regulation, the final EIA Report was submitted to the Office of the İzmir Governor to be announced. The final EIA Report was announced by the Office of the Governor between 2 February 2009 - 16 February 2009 as well as by the Ministry on its official website.

**40.** Consequently, from 24 December 2008, when the EIA Application Dossier was submitted to the Ministry, until 18 February 2009, when the EIA Positive Decision was rendered, in the Government's view, in accordance with the relevant laws and regulations, the local people as well as the public in general were effectively included in every stage of the EIA process and they were given the opportunity to submit their opinions, suggestions and complaints.

**41.** On the other hand, in the final EIA Report, which constituted basis for the decision on approval of EIA dated 18 February 2009 which was rendered by the Ministry of Environment and Urbanization for the project of "Gold and Silver Mining", it was indicated that additional environmental measures were taken in the facility. These measures are as follows:

- Apart from the natural degradation feature of cyanide, a Sodium Cyanide Chemical Degradation (INCO S02/HAVA) Unit was installed. By means of not discharging, in any case, process wastes of float leak detector and double-walled cyanide line in accordance with the principle of zero discharge; it was ensured that the wastes did not leak (clay+geomembrane), they were stored in tailings dam and water is returned from these dams to the facility following the chemical treatment of wastes.
- A control mechanism is continuously operated in order to prevent PH decrease in the tailings dam and during process operation, and caustic lines were established.
- A gas stripping unit was placed in the chimney of the carbon activation furnace in the facility.
- Observations wells were opened inside the mining area and around it in order to ensure continuous monitoring of quality of ground water.
- Within the facility, there are hydrogen cyanide and hydrogen sulfur measuring devices. Dust measuring device, blasting vibration and noise measuring devices were

also installed.

- Measurements and analysis performed and undertaken in the enterprise are reported to the Ministry of Environment and Urbanization, Provincial Directorate for Environment and Urbanization at the İzmir Governor's Office and the Presidency of Investment Monitoring and Coordination at the İzmir Governor's Office.
- The enterprise is supervised by a commission established by the İzmir Governor's Office every month. The samples taken are analyzed in accredited laboratories, and the results are shared with official institutions.
- Within the enterprise, water management plans were prepared. Interception channels were established for rain water and balancing pools were established for water coming from underground operation.
- Waste management plan was prepared for any kind of wastes in the enterprise. The wastes collected within the enterprise are delivered to companies with necessary licenses in line with the relevant Law and Regulations. Irrigation is performed on transport roads for prevention of dusting.
- It has been ensured that regular data is received from meteorology station which was authorized by the approval of the Regional Directorate of Meteorology for continuous monitoring of the area and field. Trees were planted with a view to preventing erosion in storage areas and other fill areas and with a view to enhancing rehabilitation studies. Within the scope of the monitoring program, measurement and analysis are still on-going in the enterprise. It has been undertaken that following the completion of mining activities, monitoring studies will be continued for 30 years.

**- Judicial Process Concerning the 2009 EIA Report**

**42.** As it was also explained in the previous Action Plans/Report, two cases were filed before the İzmir 3rd Administrative Court, in 2009 and 2010, for annulment of the decision of 18 February 2009 on approval of the EIA report. The İzmir Administrative Court dismissed both cases in 2011. These dismissals were appealed. In 2014, the 6th Chamber of the Supreme Administrative Court quashed the dismissals on the grounds that on-site inspection and expert review regarding the impugned decision of EIA Approval were necessary to be able to rule on the matter as the resolution of this dispute required specific and technical knowledge. The Supreme Administrative Court also dismissed the requests for rectification of these decisions.

**43.** Having re-examined the cases after the quash, on 25 April 2017 the İzmir 3rd

Administrative Court ruled in both cases to annul the impugned act. By the decision of the 3rd Chamber of the İzmir Administrative Court dated 25 April 2017 (docket no. 2015/726, decision no. 2017/525), on the basis of the relevant expert report, the decision on approval of EIA report was annulled on the ground that the relevant EIA report was prepared without taking into account the range of species in this area in terms of real flora, fauna (all the plant and animal life present in a particular region or time) and other groups of creatures, their distribution around Türkiye and the risk of their extinction.

**44.** 3rd Chamber of the İzmir Administrative Court did not find the EIA report insufficient in terms of geology, hydrogeology, environmental engineering, construction and mining engineering. However, based on the reasons on the expert report, the 3rd Chamber of the İzmir Administrative Court stated that the "fauna" and "flora" part of the EIA Report which was prepared without determining the species diversity, population richness, distribution and extinction situation in Türkiye and the EIA Positive decision based on this report was not complied with the law.

**45.** The Ministry of Environment and Urbanisation appealed both the judgments. On 26 April 2018 the 14th Chamber of the Supreme Administrative Court quashed the Administrative Court's judgments and definitively dismissed the cases. In its judgment of 26 April 2018, the Supreme Administrative Court did not adopt the assessment that an adequate field study had not been carried out in the section of the expert report on "flora" and "fauna". Conversely, the Supreme Administrative Court emphasized that an adequate field study had been carried out on "flora" and "fauna" during the preparation process of the EIA report. In addition, the Supreme Administrative Court concluded that the examination made according to international conventions (Bern Convention, European Red List) and other literature was sufficient. The Supreme Administrative Court stated that the endemism status, relative abundance and risk classes regarding the flora and fauna of the area in question were evaluated separately. Furthermore, the Supreme Administrative Court established that the experts failed to demonstrate which of the rare and endangered flora and fauna species were not included in the EIA report. The Supreme Administrative Court ignored this part of the expert report as it was concluded that flora and fauna species diversity, population richness, distribution in Türkiye, extinction and precautions were adequately addressed in the EIA report and concluded that there was no unlawfulness in the "EIA Positive" decision regarding the project in question and dismissed the case.

**46.** Following the appeal against this decision, the 6th Chamber of the Supreme

Administrative Court, with a definitive judgment, rejected the pleas of appeal on 24 September 2020.

– ***2017 EIA Report***

**47.** In the meantime, the storage capacity of the second waste storage facility (WSF) Ovacık Gold Mine which is currently in operation, was 90% full in the current situation. A third WSF was planned to be built in order to store the process waste that will be released as a result of the enrichment processes. In this scope, while the appeal review of the above-mentioned judgments was underway, on 3 August 2017 a decision of EIA approval was issued on the "Ovacık Gold Mine 2009/7 Project" that had been commissioned by the project owner. The EIA Report was mainly prepared for 3rd waste storage facility and included more detailed studies with regard to the issue of flora and fauna, which was the reasoning relied on by the Administrative Court for its above-mentioned annulment decisions. The EIA Report in question has a complementary quality that eliminates the deficiencies in the flora and fauna specified in the judicial decision, and also has the feature of being a report that examines the effects of the third WSF in terms of environment and human health.

**48.** At this point the Government considers that it is necessary to mention about the following issues. Pursuant to the Ministry's Circular dated 13 February 2009, if an annulment or stay of execution order on a decision of EIA Approval only concerns certain parts of the EIA Report and does not negatively affect other parts of the EIA Report, there is no need to repeat the whole process of preparing an EIA Report from scratch. In such cases, the reasoning of the annulment/stay of execution will be taken into consideration and only the parts that have been found incomplete or insufficient will be revised in accordance with the reasons given in the judicial decision. The duly revised EIA Report will be re-submitted to the Ministry and the EIA process will thus begin.

**49.** During the preparation of the EIA Report, a Public Participation Meeting was held on 6 February 2014. Thereafter, Examination and Evaluation Meetings were held on 15 June 2015 and 18 April 2017. During the EIA Process related to the project, all institutions and organizations related to the project attended the meetings and made the necessary evaluations within the scope of their duties, powers and responsibilities and gave their opinions on the project.

**50.** The EIA Positive decision made in 2017, in accordance with the above-mentioned circular no. 2009/7, corrected the deficiencies stated in the administrative court decision. The Administrative Court stated that there were deficiencies in only the flora and

fauna part of an EIA report made in 2009. The EIA Positive decision was delivered after these deficiencies were corrected in the EIA Report.

**51.** Besides, subsequently, the Supreme Administrative Court also indicated that there were no deficiencies in the EIA Report regarding flora and fauna (see paragraph 45).

– ***Judicial Process Concerning the 2017 EIA Report***

**52.** Another case was then filed before the İzmir 6th Administrative Court for annulment of this new decision of EIA approval. On 28 September 2018 the İzmir 6th Administrative Court dismissed the case. The dismissal in question was appealed. On 14 March 2019 the 14th Chamber of the Supreme Administrative Court definitively upheld the decision.

**53.** In sum, the Supreme Administrative Court's decisions to dismiss the cases for annulment of the EIA approval of 18 February 2009 are final. Therefore, the EIA approval of 18 February 2009 is legally valid. The Ovacık Gold Mine is currently in operation.

**54.** As a consequence, the Turkish authorities would like to note that in view of the judicial decisions and public debate in between requisite measures have been taken and fresh EIA reports were prepared and revised since the administrative proceedings subject to the European Court's judgment, notably the İzmir Administrative Court on 15 October 1997 and subsequently upheld by the Supreme Administrative Court on 1 April 1998 (see the Taşkın case, § 137). The current EIA reports and permits have also been subjected to the judicial reviews by the administrative courts and ultimately by the Supreme Administrative Court. In this respect, the authorities would like to indicate that the current operation of the Ovacık Gold Mine is in line with the domestic administrative courts' judgments. All the necessities of administrative judicial bodies' stay of execution and annulment decisions were duly executed and the deficiencies indicated by the judicial authorities have been removed. Accordingly, necessary individual measures have been taken with respect to these cases. Furthermore, the Ministry of Environment and Urbanisation and the Monitoring Commission set by the İzmir Governor's Office will continue to monitor whether the said project is conducted in compliance with the undertakings specified in the EIA report in question

**55.** Under the Environment Act, companies which envisaged carrying out activities which were potentially harmful to the environment were obliged to draw up a preliminary impact study under the strict supervision of a group of experts; a decision to grant or refuse authorisation could be delivered solely on the basis of that study, to which the public had

access.

***–Whether the climatic and geographical features of the region were taken into taken in the most recent decisions***

**56.** In its last examination the Committee of Ministers requested detailed information on whether the climatic and geographical features of the region were taken into taken in the most recent decisions that allow gold mine operations. In response to this request, the Turkish authorities would like to note the following points:

**57.** The Environmental Impact Assessment process has been applied in Türkiye since 1993. Revision works of the Regulation was completed in 2013 and it entered into force by being published in the Official Gazette. Article 4 (ç) of the EIA Regulation defined which information should be included in the environmental impact assessment application file. Accordingly, in order to materialise projects specified in the Regulation, an EIA Application File, which includes the features, location, possible effects and predicted measures of these projects and introduces the project in general dimensions, should be prepared. The file in question is prepared by organizations that have a certificate of competency.

**58.** In the EIA file; the location of the project and the current environmental characteristics of the impact area are included. The EIA Report features such as population, fauna, flora, geological and hydrogeological characteristics, natural disaster situation, soil, water, air, atmospheric conditions and climatic factors of the project area and the environment that is likely to be affected by the proposed project.

**59.** The EIA report in 2009 was prepared by evaluating all these characteristics of the area where the gold mine is located, including the geographical and climatic characteristics.

**60.** As a result of the action brought against this report, the İzmir 3rd Administrative Court (docket no. 2015/726, decision no. 2017/525, dated 25 April 2017), considered the EIA report sufficient in terms of geology, hydrogeology, environmental engineering, civil and mining engineering. However, the administrative court only stated that in the certain part of the EIA report concerning “fauna” and “flora” (animal and plant population in a certain area), the species diversity, population richness, distribution in Türkiye and the extinction situation was not considered.

**61.** Conversely, contrary to the decision of the administrative court, with the judgment of 26 April 2018 (docket no. 2017/2168, decision no.2018/3236) it has been concluded by the Supreme Administrative Court, which conducted an appellate review, that the studies on “flora” and “fauna” in the EIA Report were also sufficient for the EIA decision.

In other words, the Supreme Administrative Court did not find any deficiencies in the EIA Report as a whole.

**62.** Moreover, after the administrative court's annulment decision on the grounds of deficiencies on "fauna" and "flora", a new detailed study on "flora" and "fauna" was carried out by the investor organisation in order to fulfill the requirements of the judicial decision. The said EIA Report was mainly prepared for the 3rd waste storage facility. However, it included more detailed studies with regard to the issue of "flora and fauna" which was the reasoning relied on by the Administrative Court for its above-mentioned annulment decisions. The EIA Report in question was prepared to avoid any hesitation with regard to the issue of "flora and fauna" and had a complementary quality that eliminates the deficiencies in the specified in the judicial decision. Also it had the feature of being a report that examines the effects of the third WSF in terms of environment and human health.

**63.** After these deficiencies were corrected, a new EIA application was made in 2017. Upon this application, the EIA positive decision was made.

**64.** The action brought against this decision was rejected by decision of the İzmir 6th Administrative Court dated 28 September 2018 (docket no.2017/1317, decision no. 2018/1216) and that decision was upheld by the Supreme Administrative Court with the judgment of 14 March 2019 (docket no.2018/5560, decision no.2019/2060).

**65.** Like in every EIA report, detailed studies and evaluations were made regarding the geographical and climatic characteristics of the gold mine in the EIA Report prepared in 2017. These studies and evaluations were examined by the judicial authorities and no deficiencies were found in terms of seismicity or other issues. As a result, the 2009 and 2017 EIA reports, which was prepared in accordance with the method and content stipulated in the Regulation and regarding the facility in question, continue to exist. For the time being, there are no pending cases on this matter.

**66.** In summary, the EIA process is a study that includes determining the positive and negative effects of the projects planned to be realized on the environment, measures to be taken to prevent adverse effects or to minimize them to the extent that they do not harm the environment and studies to be carried out under the monitoring and control of the implementation of the projects. After the projects are implemented, administrative fines are imposed to those who violate the undertaking they gave during the EIA process in accordance with the Environmental Law. In addition, those who pollute the environment and those who harm the environment are responsible for the damages arising from the pollution and

degradation they cause and in such situations condition of fault shall not be seeked. It is ensured by the Environmental Law that anyone who is harmed or aware of an activity that pollutes or disrupts the environment can apply to the relevant authorities and request the necessary measures to be taken or to stop the activity. Moreover, all citizens have the right to access environmental information within the scope of the Law on the Right to Information.

**67.** Therefore, the climatic conditions and geographic features of the Ovacik region were wholly taken into account by domestic courts in their final decisions allowing the operation of the gold mine which uses cyanide leaching in the gold extraction process.

**2. Power Plant Cases**

**68.** The case of Okyay and Others concern the failure of the national authorities to comply with administrative court decisions delivered in favour of the applicants between 1996 and 2004, annulling various permits required for the operation of three thermal power plants on grounds of risk to public health and environment. The applicants instituted proceedings in the Administrative Court against the authorities. Relying on the expert reports the administrative courts concluded that they had been operating without requisite permits for construction, gas emissions and discharge of waste water. As their continued operation could give rise to irreparable harm to members of the public, it ruled that the administrative decision refusing to halt the plants' operation had been unlawful. Despite the administrative courts' judgments, the Council of Ministers decided that the thermal-power plants should continue to operate, as their closure would give rise to energy shortages and loss of employment.

**69.** The Court considered that the national authorities had failed to comply in practice and within a reasonable time with the judgments rendered by both the Administrative Court and the Supreme Administrative Court and there had therefore been a violation of Article 6 § 1 of the Convention.

**70.** As it was indicated in the Action Report dated June 2021 with respect to the Okyay and Others case, filtering mechanism has been installed in three power plants. Within this scope, sulfur dioxide purification (flue gas desulphurisation) units were put on the chimney of each unit on various dates. For Kemerköy Thermal Power Plant on 14 March 2003, for Yatağan Thermal Power Plant on 28 March 2008 and for Yeniköy Thermal Power Plant on 11 July 2013. Furthermore, dust (particulate matter) filter mechanism was added to thermal plants in line with the legislation.

**71.** Until the installation, the power plants had been operating at minimum capacity without causing any danger to the environment. The authorities would like to note that the

power plants are not harmful for the environment any more. The Electricity Market Law (Law no. 6446, in force since 2013) stipulated that the installation of rehabilitation and filtration system on the thermal power plants included in the scope of privatization will be postponed for 3 years. Following the privatization of coal-fired thermal power plants, these power plants have been given until 2018 to complete their environmental investments. However, in 2014, the Constitutional Court decided that delaying environmental investments so much was unconstitutional and annulled the Provisional Article 8. Thereupon, the law was rearranged in 2016 and the time given for the completion of environmental investments was extended until December 2019.

**72.** After it was established that the Yatağan Thermal Power Plant fulfilled the requirements of the relevant Regulations, a Temporary Activity Certificate was issued. Under the regulation, the plant in question has continuous emission measurement and flue gas purification systems and electrofilters working with an efficiency of nearly 100%.

**73.** In the meantime, as a result of the inspections conducted throughout the country, environmental supervisions were carried out at 215 Thermal Power Plants in 2019 and 182 Thermal Power Plants in 2020 and criminal action was taken against 12 Thermal Power Plants and judicial fine in total was 2,589,229 Turkish liras was imposed in this respect. The operations of Afşin Thermal Power Plant, Seyitömer Thermal Power Plant, Tunçbilek Thermal Power Plant, Çatalağzı Thermal Power Plant and Kangal Thermal Power Plant, were completely suspended, and operations of Soma Thermal Power Plant was partially suspended due to their failure to obtain the necessary environmental permits until 1 January 2020. Units of the closed Thermal Power Plants, which were found to have completed the necessary environmental investments, were given a Temporary Operation Certificate.

**74.** Between 2015 and 2024, 19 inspections were carried out at the Yeniköy/Kemerköy Thermal Power Plant, resulting in administrative sanctions totaling TL 635,630. During the same period, 21 inspections were conducted at the Yatağan Thermal Power Plant, with administrative sanctions amounting to TL 604,413.

**75.** As all three thermal power plants became operational for the first time before the Regulation on Environmental Impact Assessment (EIA) entered into force after its publication in the Official Gazette dated 7 February 1993, there is no need to prepare an EIA Report. However, the EIA process has been carried out for a coal mine planned to be opened after the entry into force of the Regulation on EIA for the supply of lignite coal required for the Yatağan Thermal Power Plant and for a wastewater treatment facility planned to be newly

built. Separate cases were filed for the annulment of the decisions of "No EIA Required ("ÇED gerekli değildir" kararı)" issued at the end of the EIA process as regards these two facilities.

**76.** A file was brought against the administrative act of "No EIA Required" before the Muğla 2nd Administrative Court. In the reasoning of its decision, the Administrative Court concluded that, considering all possible impacts of the project on the environment, wastes and residues that may cause environmental pollution can be made harmless and precautions that are taken in this regard may cause destructions in nature, the negative effects of the underground coal operation activity to be carried out on the environment of the project area should be examined in more detail and as the planned activity had to be subject to the EIA process, the impugned act was not in accordance with the law.

**77.** However, the decision in question was quashed by the Supreme Administrative Court on the grounds that a decision should be made by conducting on-site inspections and expert review. The administrative court complied with the quashing judgment and decided to carry out an on-site inspections and expert review within the scope of the decision of the "EIA is not required".

**78.** After carrying out an on-site inspection and expert review, on 10 January 2020, the Muğla 2nd Administrative Court ruled on the annulment of the administrative act on the grounds that the underground coal operation project must be subject to the EIA process. The said decision was upheld by the Supreme Administrative Court on 2 July 2020.

**79.** In its last examination the Committee of Ministers invited the authorities to provide comprehensive information on whether the Kemerköy, Yeniköy and Yatağan power plants are currently operating with the requisite filters with particular focus on the reasons for the latter power plant to receive a temporary operation permit.

**80.** In response to this decision the Turkish authorities would like to highlight the following points:

**81.** Initially, the authorities would like to note that in the Action Report dated June 2021 with respect to the Okyay and Others case, it was clarified that filtering mechanism had been installed in three power plants. Within this scope, sulfur dioxide purification (flue gas desulphurisation) units were put on the chimney of each unit. The filtering mechanisms were mounted on Kemerköy Thermal Power Plant on 14 March 2003, on Yatağan Thermal Power Plant on 28 March 2008 and on Yeniköy Thermal Power Plant on 11 July 2013. Furthermore, in line with the legislation, dust (particulate matter) filter mechanism was added to all thermal

plants.

**82.** The power plants had been operating at minimum capacity without causing any danger to the environment until the installation of filtering mechanism process. The Law no. 6446 which was put into force in 2013, stipulated that the installation of rehabilitation and filtration system on the thermal power plants included in the scope of privatization will be postponed for 3 years. Following the privatization of coal-fired thermal power plants, these power plants were given time until 2018 to complete their environmental investments. However, in 2014, the Constitutional Court annulled the Provisional Article 8. Thereupon, the law was rearranged in 2016 and the time given for the completion of environmental investments was extended until December 2019. After having confirmed that the Yatağan Thermal Power Plant fulfilled the requirements of the relevant Regulations, a "Temporary Activity Certificate" was issued for the power plant. The plant in question has continuous emission measurement and flue gas purification systems and electrofilters working with an efficiency of nearly 100%.

**83.** The authorities would like to note that the power plants are not harmful for the environment any more as of today.

**84.** In this sense, regarding the Okyay and Others case, the Turkish authorities would like to reiterate that all necessary individual measures have been taken and no other measures are required.

**85.** Information about the filters in the thermal power plants is enclosed in the Annex table below.

### 3. The Starch Factory Case

**86.** The Bursa Barosu Başkanlığı and Others case concerns a violation of Article 6 § 1 of the Convention on account of the failure of the national authorities to comply with the domestic courts' decisions setting aside the administrative decisions authorising the construction and operation of a starch factory on a farmland.

– ***Background of the case***

**87.** The company Cargill obtained an investment authorisation in 1997, then in June 1998 a building permit for the construction of a starch factory on farmland. In parallel the authorities amended the land-use plan on a number of occasions to allow the factory to be built. Other building permits were issued, together with an authorisation for waste production and management which was cancelled in 2004. Between 1998 and 2000 the starch factory was

built.

**88.** In this context, actions have been brought by both citizens and non-governmental organizations, claiming that the enterprise in question causing negative effects on the environment and public health. As a result of the actions brought on several dates, later on, administrative judicial authorities annulled decisions regarding granting investment permission to the relevant firm, the zoning plans in this regard, the construction license, the discharge and emission permits and the decisions regarding the continuity of the operation of the enterprise.

**89.** In its judgment, concerning Article 6 of the Convention, the Court concluded that the administrative procedural decisions were not enforced from 12 January 1999, until 21 November 2008, when the Bursa Governorship granted a new license for the company to continue its activities. As regards the factory's ability to continue its operations by obtaining new permits after the amendments made to Law no. 5751, the Court stated that the amendments in question could result in the neutralization of many final judicial decisions and the non-implementation of these decisions.

***-Permission to open a land for non-agricultural purposes pursuant to Law no. 5403***

**90.** At this point, the Government would like to make an assessment about the developments constituting the basis for the continuation of the company's activities.

**91.** Following the entry into force of Provisional Article 4 added to the Law on Soil Preservation and Land Utilization (Law no. 5403) on 26 March 2008, on 12 June 2008 the company Cargill made an application to the Governor's office of Bursa in order to benefit from this Law.

**92.** Provisional Article 4 of the Law no. 5403 provides as follows:

*"If, before 11 October 2004, the lands that have been opened for use for non-agricultural purposes without the necessary permissions do not deteriorate the agricultural integrity, permission shall be given for the intended use on the condition that it is applied to the Ministry within one year from the date of publication of this Law, that the soil conservation project to be prepared is complied with, and five New Turkish Liras are paid per square meter of the agricultural lands used for non-agricultural purposes.*

*The applicants continue their activities until the procedures such as licenses and*

*permits required to be taken from various institutions for the intended use of the land and facilities in question are completed within 2 years as from the date of application to the Ministry. Production activities of those who cannot obtain the necessary permissions within these periods are suspended by the relevant administrations.*

*The qualifications of the lands removed from the qualification of agricultural land shall be changed by the relevant institutions at the request of the applicant."*

**93.** As a result of the examination made on the application within this scope, Bursa Provincial Directorate of Agriculture decided that the facility in question did not impair the agricultural integrity and could be used for other than agricultural purposes. Considering this opinion, on 21 November 2008, Bursa Governorship allowed the company Cargill to continue its activities.

**94.** The action filed by some of the applicants for the rejection of the application lodged with the defendant administration, requesting the suspension of the business on the grounds that the business in question continues its activities despite the court decisions was rejected by the Bursa Administrative Court and this decision was upheld by the Supreme Administrative Court.

**95.** Subsequently, upon the application made by the company, which obtained the necessary permits and licenses from various institutions, on 16 March 2009 it has been decided that it is possible to use the land with corn processing facilities owned by the company for non-agricultural purposes in accordance with the Provisional Article 4 of the Soil Preservation and Land Utilization (Law no. 5403).

**96.** One of the applicants, the Presidency of the Bursa Bar Association, applied to the Bursa Administrative Court on 9 January 2009 for the annulment of the decision of the Bursa Governorship. In the decision of the Bursa 1st Administrative Court dated 27 December 2011 (E. 2011/1249, K: 2011/1839), it was decided to dismiss the decision due to the lack of standing on the grounds that it was concluded that the action subject to the case did not directly affect the legal personality, rights and interests of the claimant Bar Association.

**97.** Subsequent to the appellate review, although the said decision was quashed by the 10th Chamber of the Supreme Administrative Court's judgment dated 23 September 2005 (E.2005/1175, K.2005/4681); the Administrative Court did not comply with the quashing decision and maintained its previous ruling (direnme kararı) to dismiss the case due to a lack of standing.

**98.** Upon the annulment of the previously upheld decision by the Assembly of Administrative Law Chambers of the Supreme Administrative Court, this time the case was dismissed by the Bursa Administrative Court due to expiry of the statutory limitation.

**99.** The decision of dismissal rendered as a result of the case filed with the request for the annulment of the administrative act of the Bursa Provincial Directorate of Agriculture dated 16 March 2009 in respect of the use of the immovable property where the factory is located for non-agricultural purposes pursuant to the Provisional Article 4 of the Law No. 5403 was quashed by the Supreme Administrative Court on 21 November 2018.

**100.** However, upon the rectification request submitted by the administration, the first instance court's decision was upheld by the Supreme Administrative Court with a definitive judgment on 23 June 2020.

**101.** Accordingly, the decision allowing the area where the business in question is located to be used for non-agricultural purposes in accordance with Law no. 5403 was finalised.

- ***Zoning plans***

**102.** The company Cargill, by adding the opinions of other institutions, requested a zoning plan amendment regarding the corn processing plant located in Orhangazi District of Bursa Province, after it was allowed to be used for non-agricultural purposes pursuant to the Law on Soil Preservation and Land Utilization (Law no. 5403). On 7 July 2009, plan amendment request in question was accepted. The 1/1000 scale implementary zoning plan prepared in 2009 for the construction of a corn processing facility on the immovable in question was annulled by the decision of the 2nd Chamber of the Bursa Administrative Court dated 13 November 2019. The 6th Chamber of the Supreme Administrative Court upheld the judgment on 28 March 2022.

**103.** In the meanwhile, the proceedings initiated by some of the applicants against the 1/25.000 scaled İznik Lake Environmental Plan Revision approved on 5 March 2009 was dismissed by the Bursa Administrative Court on 18 March 2011. However, upon the appeal request, in its decision dated 29 May 2013, the 6th Chamber of the Supreme Administrative Court stated that it decided to quash the decision due to the said administration was not authorized to make the plan change in question. The authority to make the environmental plan essentially belongs to the Ministry of Environment and Forestry (Ministry of Environment and Urbanization). Afterwards, Bursa Administrative Court complied with the decision of the Supreme Administrative Court and decided to annul the plan, which was the subject matter of

the case. This judgment was upheld by the Supreme Administrative Court on 9 June 2020.

**104.** After the quashing judgement of the 6th Chamber of the Supreme Administrative Court, a new 1/25.000 scaled plan was made in the area in question by the decision of the Metropolitan Municipal Council of Bursa dated 29 December 2015. Once again, upon an action brought by some of the applicants for the annulment of this plan, the Bursa Administrative Court decided to annul this plan on 15 November 2018. Upon the request of an appeal on points of law and facts (istinaf) against this decision, the Istanbul Regional Administrative Court upheld the decision on 22 May 2019.

**105.** Lastly, considering the reasons in all these judicial decisions, a new master zoning plan with a scale of 1/25.000 at the Iznik Lake was prepared on 25 February 2020. The objections made to this plan during the public display period were evaluated and the plan was revised in line with these objections.

**106.** In this new plan, the land on which the said factory is located remains in the "agricultural area". However, as the non-agricultural use permit granted for the land in question on the basis of new regulations introduced in the above-mentioned Law no. 5403 continued to be in force, there was no harm in using the land for non-agricultural purposes. “The Agricultural Land” qualifaction has been removed from the land and it has been defined with the "industrial area (corn processing facility area)”. This amendment was made pursuant to the Article 4.16 of the plan provisions which is an undivided part of the 1/25.000 scaled plan. According to this article of 1/1.000 scaled plan prepared for the facilities located on the lands that are allowed for non-agricultural use in accordance with the Law No. 5403 will be approved by the relevant administration provided that opinion in favour and permission are obtained from the relevant institutions and organizations. The said area was planned as a corn processing facility area for the first time in the 1/1.000 scaled land development plan approved in 2009.

**107.** Subsequently, upon the annulment decision of the Bursa Administrative Court, the area in the 1/1.000 scaled implementary zoning plan made on 26 October 2020 was allocated as an "industrial area (corn processing facility area)". Therefore, this area has been legally excluded from the agricultural land qualification.

***-EIA process***

**108.** Upon the application made by the Company Cargill regarding the starch factory in question, firstly, on 22 September 1997, taking into account the opinion that the enterprise was out of the scope of the EIA Regulation, the “Corn Processing Factory EIA is Not

Required" decision no. 2009/524 dated 11 November 2009 and the EIA document were issued. Furthermore, on 14 February 2006, "EIA Not Required for Cogeneration Unit" decision and the EIA document were given. In that connection, both EIA Not Required Documents have not been the subject of any dispute and are continued to be in force.

**109.** In May 2018, a "No EIA Required" certificate was issued upon an application regarding "Bioethanol Production to be added to the Corn Processing Plant". However, the bioethanol plant did not begin production as a result of the annulment judgment of the Bursa 3rd Administrative Court.

**110.** As regards the case of Bursa Barosu Başkanlığı and Others, the "No EIA Required" certificate is still in effect since it has not been annulled by domestic courts.

– License

**111.** The license to open and operate a business, which was issued in 2010, was later renewed on 10 March 2014 due to the addition of new activities to the facility. Due to the new facilities added to the factory after 2014, new building licenses were issued on the basis of additional facilities in 2015. A license for opening a new business was issued on 2 January 2020.

**112.** In addition, upon the application of the company, documents related to building registration were drawn up on 28 August 2019 for the immovables on which the factory was located. Accordingly, there are no elements that are contrary to the domestic law regarding the land on which the said factory is located and the buildings belonging to the factory.

***-Information on Currently Pending Cases***

**113.** In its last examination the Committee of Ministers invited the authorities to provide comprehensive information on any proceedings pending before the domestic courts, including the Constitutional Court, concerning the operation of the Ovacık gold mine, the Kemerköy, Yeniköy, and Yatağan power plants, and the starch factory in the Bursa Barosu Baskanlığı case, including proceedings concerning their auxiliary facilities.

**114.** In Response to this decision the authorities would like to indicate that there is currently no pending case file regarding the gold mine located in Ovacık.

**115.** The last proceeding related to Ovacık gold mine before the administrative judiciary was the case which had been brought before the İzmir 3rd Administrative Court for the annulment of the "EIA Approval" decision by the Bergama Municipality and others. The "EIA Approval" decision in question was prepared for the Third Waste Storage Facility

Project of Ovacık Gold Mine and issued in 2017. The İzmir 3rd Administrative Court decided on 12 March 2020 that there was no need to make decision with regard to of the Bergama Municipality as it had withdrawn the proceedings, and dismissed the case in terms of other plaintiffs (docket no2017/1432, decision no.2020/373). Following the appeal of the said decision, the 6th Chamber of the Supreme Administrative Court rejected the appeal requests of the plaintiffs on 24 September 2020 (docket no.2020/4813, decision no. 2020/8251) and decision became final.

**116.** As regards the Okyay and others case, an action was brought against the EIA Positive Decision for the Turgut Underground Coal Mining Project, and the Muğla 3rd Administrative Court ruled to annul the decision. Upon appeal of the decision, the 4th Chamber of the Supreme Administrative Court quashed the case on the grounds that a new expert report should be obtained (Docket no. 2023/12414). In the retrial held by the first instance court, the EIA positive decision was annulled again (Docket no. 2024/227). The case is currently under appellate review before the 4th Chamber of the Supreme Administrative Court (Docket no. 2024/2863).

**117.** In a similar case, the Muğla 2nd Administrative Court ruled that it was not necessary to issue a new ruling since a previous annulment judgment (mentioned above) had already been rendered on the same issue (Docket no. 2024/164). The case is under the appellate review at the 4th Chamber of the Supreme Administrative Court (Docket no. 2024/2906).

**118.** In addition, another similar case concerns the "No EIA Required" decision issued for the underground coal mining project (Turgut Mahallesi, Civil ve Çaplıbağ Mevkii) planned to be constructed by the Yatağan Power Plant Company. In this case, an action was brought for the annulment of the "No EIA Required", and the proceedings are still pending at the Muğla 4th Administrative Court (Docket no. 2024/1000).

**119.** In another case, an action was brought against the "No EIA Required" decision dated 5 July 2021 for the Ova underground project in the mining site of the Yatağan Power Plant Company. The Muğla 1st Administrative Court ruled, on 3 November 2023, to annul the decision (Docket no. 2022/2144). The 4th Chamber of the Supreme Administrative Court upheld the judgment on 29 February 2024 and it became final (Docket no. 2023/13985).

**120.** In addition, another similar case concerns the "No EIA Required" decision issued for the underground coal mining project (eskihisar yeraltı işletmeciliği kömür ocağı) planned to be constructed by the Yatağan Power Plant Company. In this case, an action was

brought for the stay of execution and the annulment of the "No EIA Required" decision, and the proceedings are still pending at the Muğla 2nd Administrative Court (Docket no. 2024/255).

**121.** In the action brought against the "No EIA Required" decision regarding the Industrial Wastewater Treatment Plant project installed at Yatağan Thermal Power Plant, the Muğla 1st Administrative Court dismissed the case (Docket no. 2019/1675). The judgment was upheld by the 6th Chamber of the Supreme Administrative Court.

**122.** As regard to the Bursa Barosu Başkanlığı and Others case, the Turkish authorities would like to note that there is no pending case which was filed against the EIA reports, EIA Approval decisions of the starch factory in question.

**123.** With regard to the the cases concerning the city development plans covering the area on which the factory in question, the authorities would like to state followings. The first of those is the proceeding initiated by some of the applicants against the 1/25.000 scaled İznik Lake Environmental Plan which was approved on 29 December 2015 by the Bursa Metropolitan Municipality. On 15 November 2018 (docket no. 2016/791, decision no. 2018/1379) the Busa 1st Administrative Court decided the annulment of the city development plan in question. Afterwards, the decision was upheld by the İstanbul Regional Appeal Court. The Supreme Administrative Court also upheld the judgment on 28 March 2022 and judgment became final.

**124.** The other case is the lawsuit filed against the small-scaled city development plans including Master Zoning Plan with a scale of 1/5000 and the Implementary Zoning Plan with a scale of 1/1000 which were approved on 28 October 2018 and 23 October 2018 respectively by the Bursa Metropolitan Municipality. On 13 July 2020 the Bursa 1st Administrative Court (docket no. 2020/1323, decision no. 2021/48) set aside the said zoning plans. The decision was upheld by the İstanbul Regional Appeal Court on 27 Januray 2021. The decision has also been appealed and is still pending before the Supreme Administrative Court.

**125.** In addition, in another case, the Bursa 2nd Administrative Court annulled, on 8 March 2022, the 1/25.000 scale Iznik Lake Master Plan dated 25 February 2020 (Docket no. 2020/582). The judgment is currently under the appeallate review at the Bursa Regional Administrative Court.

**126.** In a similar case, taking into account the above judgment, the Bursa 2nd Administrative Court annulled the 1/1.000 scale implementation zoning plan on 8 March 2022

(Docket no. 2020/1196). The judgment is currently under the appeallate review at the Bursa Regional Administrative Court.

**127.** In the case filed based on the aforementioned annulment judgment, the Bursa 3rd Administrative Court decided, on 25 January 2023, to annul the building permits of the facility in question (Docket no. 2021/493). The judgment is currently under the appeallate review at the Bursa Regional Administrative Court.

**128.** In addition, the Government would like to state that Cargill Company applied for additional bioethanol production at its corn processing facility. The authorities issued a "No EIA Required" decision dated 7 August 2018. However, since this decision was annulled by the Bursa 3rd Administrative Court's decision (Docket no. 2018/1097), the bioethanol plant has not started production.

## III. GENERAL MEASURES

**129.** The Turkish authorities have taken a number of measures aimed at preventing similar violations. These measures include, in particular legislative measures, training and awareness-raising activities, and the publication and dissemination of the Court's judgments.

### A. Measures taken with respect to Article 8 of the Convention

**130.** The Turkish authorities would like to submit brief information on the preparation of the EIA reports. As can be seen below, the EIA reports are prepared in a transparent and participatory manner.

**131.** The questions of environment and EIA are governed, in general, by the Environment Act (Law no. 2872).

**132.** More detailed provisions regarding EIA are found in the Regulation on Environmental Impact Assessment dated 2022.

**133.** In respect of activities which become subject to court proceedings at the end of an EIA process, either the activities will be stopped in accordance with the court's order, i.e. annulment or stay of execution, or the activities will be resumed in line with the commitments made in the EIA report.

**134.** The EIA consulting firms prepare an EIA Application File by using the EIA General Format found in the Regulation on EIA and submit it to the Ministry of Environment, Urbanisation and Climate Change ("the Ministry"). Having regard to the information in the application file, the Ministry sets up a Commission comprising of representatives from relevant public institutions and organisations, Ministry officials.

**135.** The Ministry and the Governor's Office concerned announce to the public,

through Internet, that the application has been made for the project; that the EIA process has started; that the EIA Application File has been disclosed to the public and that opinions and suggestions concerning the project can be submitted to the Governor's Office or the Ministry by the end of the EIA process. The Regulation also stipulated that the project in question "...may be announced to the public through loudspeakers, public displays and similar means." However, an action was brought by an NGO against this statement on the grounds that it should read "shall be announced" instead of "may be announced". In this case, as an interlocutory decision, the Supreme Administrative Court decided to stay the execution of the phrase "may be" (Docket no. 2022/7428). The proceedings are currently pending.

**136.** The Ministry sends the EIA Application File drafted in line with the EIA General Format to the members of the Commission, along a letter indicating the date of the Public Participation Meeting and the deadline for submitting opinions for determination of the scope.

**137.** According to Article 9 of the Regulation on Environmental Impact Assessment, which entered into force on 29 July 2022 "The Public Participation Meeting is held with the participation of the Ministry-authorized establishments/institutions and the project owner with a view to informing the public on the investment and to receiving their opinions and suggestions on the project on a date to be determined by the Ministry. This meeting shall be held in a convenient place and time to be determined by the Governorship in order that the public who will be most affected by the project may easily attend". According to Article 8 § 4 of the same Regulation, the fact that the application was lodged in respect of the project, that the environmental impact assessment process has started and that the objections or suggestions concerning these procedures can be lodged with the Governor's office or the Ministry are to be announced by the Governor's office or Ministry through the Internet.

**138.** The Public Participation Meeting will be held with the participation of EIA consulting firms and the project owner with a view to informing the public on the investment and receiving their opinions and suggestions on the project on a date to be determined by the Ministry. This meeting shall be held in a convenient place and time to be determined by the Governor's Office so that the population who will be most affected by the project can easily attend.

**139.** The EIA consulting firms will have an announcement that indicates the date, time, place and subject of the meeting published in a local periodical circulating in the locality of the planned project and also in a newspaper qualified as a nationwide periodical at least 10

calendar days before the meeting date.

**140.** The Public Participation Meeting will be chaired by the Provincial Director of Environment and Urbanisation or an official to be assigned by him/her. In this Meeting, the public will be informed on the project and they will have an opportunity to direct their opinions, questions and suggestions. The chair may ask participants to submit their opinions in writing. Minutes of the meeting will be sent to the Ministry whereas a copy of it will be kept by the Governor's Office. The EIA Report Special Format will be prepared by the Ministry in accordance with the opinions and suggestions of the members of the Commission, as well as the opinions and suggestions received from the public, and it will be communicated to the EIA consulting firms.

**141.** According to Article 11 § 4 of the Regulation, those who wish to examine the EIA report may submit their opinion to the Ministry or Governorship on the project after examining the report until finalization of the report as from the date of announcement. The opinions submitted to the Governorship are transmitted to the Ministry. These opinions are taken into account by the Commission and they are reflected on the EIA report by the Ministry-authorized institutions/organizations. The authorities would like to note that every stage of EIA process has become public.

**142.** The EIA consulting firms will submit their EIA report to the Ministry. The Ministry will examine within 7 business days the EIA report's compatibility with the Special Format and whether it was prepared by experts of the professions that had to be included in the working group. The Commission's members present their opinions within the framework of the authority, duty and responsibility assigned to the central and local institutions and organisations they represent.

**143.** If serious deficiencies or errors are found in the EIA report, the Commission requests the EIA consulting firms or relevant institutions to rectify them. In that case, the examination and assessment process stops. The EIA report to be examined and turned into a final draft by the Commission will be disclosed via public displays and Internet by the Ministry and/or the Governor's Office in order to collect opinions and suggestions from the public. Depending on the opinions received from the public and other institutions and organisations, the Ministry may request additional studies to be conducted or necessary corrections to be made to overcome shortcomings in the report or reconvene the Commission.

**144.** A commitment letter indicating that the final EIA report and its enclosures are undertaken by the project owner, along with a notarised list of authorised signatures, will be

submitted to the Ministry within 5 business days.

**145.** Taking into account of the Commission's studies and the opinions collected from the public and other institutions and organisations, the Ministry will decide to either approve (ÇED Olumlu Kararı) or disapprove (ÇED Olumsuz Kararı) the EIA for the project and inform the members of the Commission of this decision, the project owner and the Ministry-authorized institutions/organizations.

**146.** The Ministry and the Governor's Office announce the decision of "EIA Approval" or "EIA Disapproval" to the public via public display and Internet. The announcement in question shall be made on the website of the Ministry and the provincial directorate for an indefinite period of time and on the notice board for 30 calendar days from the date of the decision.

**147.** The project owner is obligated to notify the Ministry or the Governor's Office of any changes subject to the Regulation on EIA which may be made in the project after receiving a decision of "EIA Approval" or "No EIA Required".

**148.** Pursuant to Article 15 of the Environment Act (Law no. 2872), those who have acted in contravention to the Environment Act and the regulations issued by virtue of this Act may be granted time -up to 1 year- for one time only by the Ministry or the institutions or authorities vested with supervisory power to correct the wrongful activity. Such activity will be ceased immediately if no time is granted. In cases where time was granted but the wrongful activity has not been corrected within the set deadline, it will be ceased in part or in full, temporarily or indefinitely. Any activity that poses a risk to the environment or human health will be ceased immediately without granting any time. The activities commenced without an EIA will be ceased immediately by the Ministry while the activities commenced without preparation of a Project Introduction File will be ceased immediately by the highest civil administrator of the locality. The fact that such time has been granted or the activity has been ceased does not preclude imposition of sanctions prescribed by the Environment Act.

**149.** Article 20 (e) of the Environment Act provides that those who have begun construction or operation without initiating or completing the EIA process will be penalised with an administrative fine equal to 2% of the project cost. In cases resulting in fines, the investor is also liable to restore the scene of activity to its original state. Those who act in contravention to the commitment letter they submitted within the EIA process will also be penalised with an administrative fine for each violation.

**150.** Article 19 § 1 (a) of the Regulation on EIA provides that if the activities subject

to this Regulation have been commenced without having obtained a decision of "EIA Approval", the Ministry shall immediately cease such activities; if the activities have been commenced without having obtained a decision of "No EIA Required", they will be ceased immediately by the highest civil administrator of the locality. The decisions to cease activity will not be revoked unless a decision of "EIA Approval" or "No EIA Required" is obtained. In case of failure to obtain a decision of "EIA Approval" or "No EIA Required", the investor will be liable to restore the scene of activity to its original state. Within the scope of this sub-paragraph, further action will be taken under applicable provisions of the Environment Act.

**151.** Pursuant to sub-paragraph (b) of the same Article of the Regulation, in cases where the project owner is found to have not complied with the commitments made in the final EIA report or the Project Introduction File after a decision of "EIA Approval" or "No EIA Required" was issued, the Ministry or the provincial directorate may grant time (up to 1 year and non-renewable) for the project to be rendered compliant with the commitments in question. The investment will be ceased unless the commitments are met at the end of this time. The decision to cease will not be revoked unless the commitments are fulfilled. Within the scope of this sub-paragraph, further action will be taken under applicable provisions of the Environment Act.

**152.** As regards the projects issued a decision of "EIA Approval" or "No EIA Required", the Ministry monitors and supervises whether the commitments envisaged by the EIA report or the Project Introduction File and undertaken by the project owner are being fulfilled. Administrative sanctions will be imposed under applicable provisions where any infringements of legislation or violations are found during monitoring and supervision.

**153.** Therefore, the residents of the locality where the plant will be built and relevant institutions and organisations are informed in detail about the EIA procedure. Opinions are collected from those individuals, institutions and organisations during this process. These opinions are reviewed by the Ministry and the deficiencies discovered in the report are corrected, additional studies are conducted, or the Commission is reconvened.

**154.** The project owner, on the other hand, is required to comply with the commitments in the EIA report. In this regard, the project owner is monitored by the Ministry or the institutions or authorities vested with the supervisory power. In cases where supervision leads to the discovery of wrongful activity, the sanctions prescribed by the applicable laws are imposed.

**155.** In Article 20 of the Environment Law no. 2872 administrative penalties are

provided. In that, it is provided that those who establish and manage the facilities that are subjected to permission due to their vital effects on the air pollution without the permission of the authorities or who make changes thereafter without permission or who did not make the changes that are deemed necessary by the authorities within the due time shall be imposed fines.

**156.** Likewise, it is set out in Article 20 of the Environment Law (no. 2872) that the owners or the managers of the facilities that are subjected to permission shall be imposed fines if they do not take measures that are envisaged in the regulations or licenses. It is also provided in the same article that if they act contrary to the emission standards and limitations set out in the regulations when operating these facilities, administrative fine shall be imposed.

**157.** It is provided in the same article that at the places that have special importance in terms of air pollution or during the periods or at the places that the pollution is close to serious limits or under critical meteorological circumstances; those who do not take measures which are envisaged in the legislation, who act contrary to the prohibitions, or who do not obey the decisions taken by the local environment councils shall be fined with double the penalties provided for in this article.

**158.** It is provided that those who act contrary to the letter of undertaking submitted during the process of Environmental Impact Assessment, shall be imposed an administrative fine for each violation.

**159.** The authorities would like to indicate that the Administrative fines set out in the Environment Law no. 2872 are increased every year at the rate of revaluation in accordance with Article 17 of the Code of Misdemeanors no. 5326.

**160.** According to Article 138 of the Constitution, “Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution”. According to Article 28 § 1 of the Code of Administrative Procedure, “the administration must implement the acts and take the actions required by the judgments and stay of execution orders given by the Supreme Administrative Court, regional administrative courts, administrative and tax courts without delay. This period, under no circumstances, can exceed thirty days from the notification of the decision to the administration”. According to paragraph 4 of the same article, “if the public servants deliberately fail to execute the decisions of the Courts within due time, the action for compensation may only be filed against the relevant administration”.

**161.** When Article 138 of the Constitution is taken into account together with Article

28 of the Code of Administrative Procedure, it is out of question that execution of the decisions on merits and decisions on stay of execution rendered by administrative courts is obligatory, and acting in contrary would give rise to criminal and civil liabilities. A time-limit of 30 days has been introduced with a view to ensuring the compatibility with this obligation and preventing arbitrary conduct on the part of the administration. It is also set out that an action for compensation may be lodged against the administration in cases where the decision is not executed within due time.

**162.** On the other hand, in terms of protecting the environment and human health, the following Regulations have been put into force on various dates:

"The Regulation on Control of Water Pollution" was published in the Official Gazette no. 25687 on 31 December 2004,

"The Regulation on Soil Pollution Control and Point Source Contaminated Sites" was published in the Official Gazette no. 27605 on 8 June 2010,

"The Regulation on Waste Management" was published in the Official Gazette no. 29314 on 2 April 2015,

"The Regulation on Landfills (Regular Storage of Wastes)" was published in the Official Gazette no. 27533 on 26 March 2010,

"The Regulation on Waste Incineration" was published in the Official Gazette no. 27721 on 6 October 2010,

"The Regulation on Mining Waste" was published in the Official Gazette no. 29417 on 15 June 2015 and entered into force on the same date,

"The Regulation on Control of Industrial Air Pollution" which entered into force after being published in the Official Gazette no. 27277 on 3 July 2009.

**163.** A Monitoring Committee for Compliance with Environmental Legislation was established by Ministry of Energy and Natural Resources in accordance with the Implementation Regulation on Provisional Article 8 of the Electricity Market Law no. 6446, which was published in the Official Gazette no. 30113 on 03.07.2017.

**164.** In Article 5 of the regulation, the committee is defined as follows:

*(1) The commission consists of 8 members, 4 members from the Ministry of Energy and Natural Resources and 4 members from the Ministry of Environment and Urbanization.*

*(2) The secretariat of the committee is carried out by the Ministry of Energy and Natural Resources. Production companies submit their first business deadline plans and reports to the Ministry of Energy and Natural Resources within the period specified in*

*Provisional Article 1. Business deadline plans and reports are forwarded to the members of the Committee.*

*(3) The Committee determines the working procedures and decision-making processes at its first meeting.*

**165.** The duties and responsibilities of the committee are defined in Article 6 of the Regulation as follows:

*(1) The Committee shall fulfill the following duties, without prejudice to the other provisions of this Regulation:*

*a) to examine the business deadline plans prepared by the production companies.*

*b) to request rectification/change and/or additional information/document by expressing opinion on the business deadline plans prepared by the production companies. To set a deadline for the requested rectification/change and/or additional information/document to be submitted.*

*c) to evaluate and approve the technical suitability by evaluating the business deadline plans prepared by the production companies.*

*ç) to follow the progress in the business deadline plans prepared by the production companies.*

*d) to make or have done on-site inspection in order to follow the business deadline plans. If deemed necessary, Committee can request a specialist from public institutions and organizations for on-site inspection.*

**166.** The thermal power plants, which were privatized and included in the scope of privatization in the Provisional Article 8 of the Electricity Market Law no. 6446, have been given a deadline until 31 December 2019 in order to make investments for compliance with environmental legislation and to complete the necessary permits in terms of environmental legislation. The procedures and principles to be applied in this context was established by the "Implementation Regulation on Provisional Article 8 of the Electricity Market Law No. 6446".

**167.** All thermal power plants within this scope and the business deadline plans prepared by the mentioned thermal power plants for compliance with environmental legislation were examined and evaluated by the Committee established within the framework of the “Implementation Regulation on Provisional Article 8 of the Electricity Market Law No. 6446”. The audits regarding the implementation, the environmental impact assessment of the said facilities and the permit and license processes were carried out by the General Directorate of Environmental Impact Assessment, Permit and Inspection.

**168.** Studies conducted for ash storage areas where ashes originating from thermal power plants are stored within the scope of Provisional Article 8 of the Electricity Market Law no. 6446 are as follows:

**169.** For ash storage areas where ashes originating from thermal power plants are

stored within the scope of Provisional Article 8 of the Electricity Market Law no. 6446, which entered into force after being published in the Official Gazette no. 30113 on 3.7.2017, improvement work done by the committee established in accordance with the Implementation Regulation on Provisional Article 8 of the same Law has been closely monitored, the content of the institutional academic reports to be prepared for the fields in question has been determined and the necessary field studies have been carried out within this scope. In the institutional academic reports prepared by the faculty members of the environmental and civil engineering departments of the universities, suggestions were made on environmental measures and landfill management, and within the scope of professional disciplines, scientific research and evaluations in terms of seismicity, stability, environmental pollution and dusting have been included. The reports in question has been submitted to the Ministry by stating that there is no harm in continuing the ash storage process in waste height and coordinates.

**170.** Institutional academic reports submitted to the Ministry were prepared separately for each ash storage area and signed by the relevant university rectorate/dean.

**171.** In conclusion, the authorities carry out the studies, informing activities, public announcements and assessments necessary for the resolution of complex environmental issues. Individuals or institutions and organisations concerned have available and accessible avenues to bring any allegations before judicial authorities.

**172.** Environmental Impact Assessment Report, which is one of the most important tools of sustainable development, is important in determining the positive and negative effects of the planned projects on the environment. The EIA process covers the measures to be taken in order to prevent the negative effects of the activities to be carried out or to minimize them to the extent that they do not harm the environment, the determination and evaluation of the alternative technologies with the chosen location, and the monitoring of the implementation of the projects. In the Environmental Impact Assessment Reports prepared within the scope of the Regulation, the determination of the area to be affected by the project and the existing environmental characteristics in this area are explained.

**173.** Environmental Impact Assessment has been applied in our country since 1993 and the legislation, which is the basis of this process, has been prepared by taking into account the European Union EIA Directive and has been updated for new situations emerging over time.

**174.** The EIA Report is prepared specifically for the relevant project by natural or legal persons planning to realize a project within the scope of the Regulation. Investors are

obliged to have the EIA Application File, EIA Report, Project Introduction File prepared by the institutions that have been given a certificate of competence by the Ministry, ensure that they are submitted to the relevant authority and comply with the undertakings they have made within the scope of the project.

**175.** It is not possible to prepare a prospective EIA Report and obtain an EIA Certificate for projects and facilities that are not yet planned and are likely to be realized in the future. The EIA Certificate is issued only for investments and projects that had already been undertaken. However, the Provincial Environmental Status Reports, which are regularly published every year by the Ministry of Environment, Urbanization and Climate Change, and the Türkiye Environment Status Report, which is prepared and published every four years, guide both the investor and the public on sectoral basis. Environmental Status Reports constitute a resource for the preparation of EIA Reports.

**176.** Regarding the projects for which "EIA Positive" decision or "EIA Not Required" decision is made, the administrative authorities always monitor and control whether the issues stipulated in the Project Introduction File prepared in the EIA Report and undertakings by the project owner are fulfilled.

### B. Measures Taken with respect to Article 6 § 1 of the Convention

**177.** Article 125 of the Constitution guarantees that recourse to judicial review is available against all actions and acts of the administration and that the administration is liable to compensate for damages resulting from its own actions and acts.

**178.** The last paragraph of Article 138 of the Constitution stipulates that legislative and executive organs and the administration must comply with court decisions; these organs and the administration may neither alter them in any respect nor delay their execution.

**179.** According to Article 28 § 1 of the Code of Administrative Procedure (Law no. 2577), the administration must implement the acts or take the actions required by the judgments and stay of execution orders given by the Supreme Administrative Court, regional administrative courts, administrative courts and tax courts as soon as possible which, under any circumstances, may not exceed 30 days from the notification of the ruling to the administration. Furthermore, paragraph 3 of the same Article provides that an action for compensation may be brought before the Supreme Administrative Court or before the relevant administrative court for any pecuniary or non-pecuniary damage due to the administration's failure to implement acts and take actions required by rulings of the courts listed in the first

paragraph of the same Article.

### C. Execution of a Court Decision

***Fulfillment of decision of administrative judiciary***

**180.** According to the Article 28 of the Law no. 2577 on Administrative Trial Procedure, proceedings in accordance with the decisions on merits and stay of order of the Supreme Administrative Court, regional administrative courts, administrative courts and tax courts, have to be carried out without any delay. In this regard, the proceedings have to be carried out by the relevant administration within 30 days from the notification date without exceeding the said period.

**181.** On July 10, 2013, with the annulment decision (docket no. 2012/107, decision no. 2013/90) of the Constitutional Court, the condition of finalizing for the decisions regarding the relevant cases of the practice of distraint and precautionary distraint in order to start proceedings by the administration, was found to be contrary to the Constitution. Therefore, this condition was removed from the text of the said Article.

**182.** In case of not fulfilling the administrative judicial decision by an administration, the third paragraph of the Article 28 provides that a pecuniary and non-pecuniary compensation lawsuit can be filed against relevant administration before the Supreme Administrative Court and relevant administrative courts.

**183.** With the amendment made in the fourth paragraph of the Article 28 by the Law no. 6526 (dated 21 February 2014), it was determined that the interlocutor in the compensation lawsuit can be the relevant administration instead of the public officials.

**184.** In practice, filing a compensation lawsuit is an effective way in case of not fulfillment of the administrative judicial decision by an executive body. Many decision constituting case law have been given requiring compensation for those acts such as the General Assembly on the Unification of Judgments of the Court of Cassation (docket no. 1978/7, decision no. 1979/2 and dated 22 October 1979), 4$^{th}$ Civil Chamber of the Court of Cassation (docket nos. 2001/3884 and 2000/6948, decision nos. 2001/8478 and 2000/7454, respectively), 2$^{nd}$ Civil Chamber of the Supreme Administrative Court (docket no. 2007/1297, decision no. 2007/3247 and dated 13 July 2007).

**185.** At this point, the Government would like to clarify the following points regarding the approach of the judicial authorities in similar disputes.

**186.** The failure of the execution of the administrative judicial authorities' decisions

by public officials is regarded as their own personal fault through judicial jurisprudence. In addition, it is also acknowledged that public officials, through such behavior, have not only committed a wrongful act but have also committed a crime. As a matter of fact, according to the well-established case-law and the doctrine, this kind of acts carried out by officials who do not enforce administrative judicial decisions constitute the offence of negligence or abuse of office. In this case, it is pointed out that a criminal prosecution should be initiated against the public officials acting on behalf of the administration.

**187.** The Government is of the opinion that it would be useful to refer other judicial decisions on this matter.

**188.** In its many decisions, the Court of Cassation has ruled that the pecuniary and non-pecuniary damages suffered by the relevant individuals due to non-enforcement of judicial decisions must be compensated. It has also ruled that the public officials, who did not implement the decision on annulment given by the administrative judicial authorities, be convicted of "abuse of office".

**189.** As a matter of fact, the Plenary Session of the Court of Cassation in Criminal Matters has stated that acting in a way that disregards or renders the judicial decision inapplicable, constitutes the crime of arbitrary behavior. (Decision of Plenary Session of the Court of Cassation in Criminal Matters, docket no. 2003/63 and dated 11 March 2003)[1].

***Sample decisions of the Supreme Administrative Court***

**190.** On the other hand, the Supreme Administrative Court has decided that the public official who failed to assign the relevant person to his duty by not implementing the annulment decision given by the administrative court should be tried (Decision of 2nd Chamber of the Supreme Administrative Court, docket no. 1988/2101 and dated 26 January 1990).[2]

**191.** An action for damages was brought before the İstanbul 6th Administrative Court against the administration on the grounds that it had made a new plan for the same area, despite the fact that previous zoning plan amendments had been annulled by a court decision, ruling that the administration had not had authority over the area in question. The İstanbul 6th Administrative Court found that the administration had failed to comply with the judicial decision and awarded compensation in favor of the claimant (see annex 1). Upon appeal, the

[1] https://dergipark.org.tr/tr/download/article-file/13841, p.223

Supreme Administrative Court upheld the decision on 21 June 2023, and the decision became final (see annex 2).

**192.** An action was brought before the Şanlıurfa 2nd Administrative Court on the grounds that the administration had failed to comply with the court decision. The Administrative Court found that in the previous case against the dismissal of the plaintiff's request for a zoning plan amendment, permit and license, the administrative court had annulled this administrative act, but the administration had not implemented the judgment. Therefore, the Şanlıurfa 2nd Administrative Court and the 2nd Chamber of the Gaziantep Regional Administrative Court awarded compensation in favor of the plaintiff (see annex 3). Upon appeal, the Supreme Administrative Court upheld the decision on 28 December 2022, and it became final (see annex 4).

**193.** In a decision dated 6 March 2014, the 6th Chamber of the Supreme Administrative Court similarly quashed the administrative court's decision on the grounds that the case concerning the administration's failure to execute an earlier annulment order of the administrative court had been filed within the prescribed time-limit and that no account had been taken of the claimant's requests related to the municipal council decision, which had the same characteristics with the previously-annulled municipal council decision (see Annex 5).

**194.** In a decision dated 13 May 2015, the 6th Chamber of the Supreme Administrative Court indicated that, in the framework of the binding rules of the Constitution and laws, the administration's avoidance from executing as is and without delay a judicial decision, which is enforceable under material and legal circumstances, would constitute a "gross service fault" (ağır hizmet kusuru). It added that the non-pecuniary damage originating from any grievance and sorrow suffered by the individual because of the administration's gross service fault had to be redressed (see Annex 6).

**195.** In a decision dated 22 May 2007, the 6th Chamber of the Supreme Administrative Court found that the administration had failed to execute a judicial decision by allowing a construction to resume while it should have sealed the building upon notification of the stay of execution ordered by an administrative court. Furthermore, the Supreme Administrative Court held that it had been obligatory to seal the construction by virtue of the judicial decision. The administration's failure to fulfil this obligation had given rise to an acquired right (kazanılmış hak) for the claimant; however, this acquired right was not

[2] https://dergipark.org.tr/tr/download/article-file/13841, p.222

compatible with rules of equity and did not rely on a legal basis. Thus, it ruled that there had been no contravention to law in the demolition of the building at issue (see Annex 7).

**196.** Similarly, in a decision dated 27 April 2007 the 6th Chamber of the Supreme Administrative Court pointed out that, if the new plans prepared by the administration in respect of an immovable property were incompatible with the reasoning given by the courts in the judgments which had annulled earlier plans and permits, this would result in a case of non-execution of judicial decisions (see Annex 8).

**197.** The Supreme Administrative Court has rendered numerous decisions with regard to cases of compensation claims due to non-execution or delayed execution of judicial decisions within the scope of Article 28 of the Code of Administrative Procedure. As evidenced by these decisions, the judicial authorities attach great importance to ensuring the enforcement of administrative judicial decisions.

***Criminal consequences of non-execution or delayed execution***

**198.** According to the Article 257 of the Law no. 5237 on Turkish Penal Code, any public official who furnish an unjust financial benefit for another, or causes any loss to the public or an individual by acting contrary to his/her duty shall be sentenced to a penalty of imprisonment for a term of six months to two years.

**199.** Furthermore, according to the second paragraph of the said Article, where those acts have been committed through failure or delay of his/her duty, the accused shall be punished with a penalty of imprisonment for a term of three months to one year.

**200.** In practice, in its judgment dated 18 May 2023, the 5th Criminal Chamber of the Court of Cassation upheld the judgment of the Bitlis 2nd Criminal Court of First Instance (see annex 9). In this case, the Criminal Court convicted the accused, under Article 257 of the Turkish Criminal Code on the grounds that the accused, a deputy governor, failed to implement the court order regarding the appointment of an officer (see annex 10).

**201.** Similarly, in its judgment dated 21 February 2023, the 5th Criminal Chamber of the Court of Cassation upheld the judgment of the Gölköy Criminal Court of First Instance (see annex 11). In this case, the Criminal Court convicted the accused of misconduct in public office, under Article 257 of the Turkish Criminal Code on the grounds that the mayor, failed to implement the administrative court order regarding a stay of execution decision issued in relation to a construction project (see annex 12).

**202.** In a similar case, in its judgment dated 28 January 2019, the 5th Criminal

Chamber of the Court of Cassation quashed the acquittal decision of the Criminal Court of First Instance. In the reasoning of the quashing decision, the Court of Cassation stated, *inter alia*, that the decision of the administrative courts should have been implemented within 30 days; however, in the instant case, the title deed procedures ordered by the administrative court had been carried out 10.5 months after the decision (see annex 13).

**203.** As seen in the sample judgments, the public official who did not fulfill the judicial decision was punished, and the decision became final following the ruling of the Court of Cassation.

### D. Remedy of Individual Application to the Constitutional Court

**204.** As repeatedly indicated by the Court, starting from the judgment of Hasan Uzun (no. 10755/13), individual application to the Constitutional Court is an effective remedy as of 23 September 2012. The Constitutional Court follows the principles set forth by the Court in its decisions with respect to the individual applications. The jurisprudence of the Constitutional Court is followed by the first instance courts and high courts. Accordingly, the Constitutional Court contributes improvement of the case-law of the Convention in Türkiye in respect of all rights guaranteed under the Convention and Constitution including the right to a fair trial and the right to respect for private and family life.

**205.** In the same way as the Court's case-law, the Constitutional Court considers "the right to live in a healthy environment" as a right that must be protected within the context of physical and mental integrity.

**206.** The Constitutional Court rendered a judgment in the case of *Ali Su and Mersin Environment and Nature Association* (no. 2019/13383)[3] on 13 September 2022. The application concerns the dismissal of the case filed for the annulment of the EIA positive decision regarding the Capacity Increase in a Cement Plant project. The Constitutional Court considered that the Administrative Court failed to provide sufficient reasoning to eliminate the contradictions between the administration's response and the expert report, which contained contradictory information on whether there was an olive grove in the vicinity of the project site. The Constitutional Court concluded that the public authorities did not respond to the incident with due diligence, failed to fulfil their positive obligations in the context of the right to respect for private life, and that this right, guaranteed under Article 20 of the

[3] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/13383

Constitution, had been violated.

**207.** The Constitutional Court delivered a judgment in the case of *Ahmet Kardam and Others* (no. 2019/29604)[4] on 13 December 2023. The application concerns the dismissal of the case lodged for the annulment of the EIA positive decision regarding a power plant project. The Constitutional Court considered, *inter alia*, that the first-instance court failed to provide sufficient reasoning as to whether the waste storage area of the facility would cause damage to the olive grove. The Constitutional Court concluded that the public authorities did not respond to the incident with due diligence, failed to fulfil their positive obligations in the context of the right to respect for private life, and that this right, guaranteed under Article 20 of the Constitution, had been violated.

**208.** The Constitutional Court issued a judgment in the case of *Eşref Demir* (no. 2020/12802)[5] on 1 November 2023. The application concerns the dismissal of the case brought for the annulment of the EIA positive decision regarding the revision and capacity increase project in a mining facility. The Constitutional Court considered that, despite the applicant's substantive allegations that agriculture and animal husbandry would be damaged by the project, the expert report had included insufficient assessment in this regard. The Constitutional Court therefore found that the applicant's claims and objections, which could affect the outcome of the dispute, were not sufficiently assessed by the courts of first instance. The Constitutional Court concluded that the right to respect for private life, guaranteed under Article 20 of the Constitution, had been violated.

## E. Awareness Raising Activities

***Preparation of the "new Human Rights Action Plan" and the "new Judicial Reform Strategy Paper"***

**209.** In their previous submissions, the authorities provided information on the Human Rights Action Plan announced in March 2021 and the Judicial Reform Strategy of 2019. The authorities would like to note that preparation of "the new Human Rights Action Plan" and "the new Judicial Reform Strategy Paper" has started and the process is ongoing. The Committee of Ministers will be provided with information on further developments in this respect.

***Consideration of Judgments of the Court and the Constitutional Court in Assessments on the Promotion of Judges and Public Prosecutors***

**210.** On 15 January 2020 an amendment to Article 6 entitled "Principles of

[4] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/29604
[5] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/12802

Promotion" of the "Principle Decision on the Grade Promotion of Judges and Prosecutors" was promulgated in the Official Gazette. According to this amendment, in the promotion of judges and prosecutors, on the basis of the principles of independence of the judiciary and security of tenure of judges, account will be taken of whether the persons concerned caused a finding of violation by the European Court of Human Rights or the Constitutional Court, as well as the nature and gravity of the violation, and the efforts of the persons concerned to safeguard the rights enshrined in the European Convention on Human Rights and the Constitution.

**211.** As judges and public prosecutors will employ more diligence and effort with regard to the present findings of violations by the Court and the Constitutional Court and, in general, the protection of the rights guaranteed under the Convention and the Constitution, this amendment is also intended to be used for measuring professional sensitivity and professional competence.

### F. Publication and Dissemination of the Judgments

**212.** The judgments in the Genç and Demirgan group of cases were translated into Turkish and published at HUDOC.

**213.** The judgments have been circulated together with an explanatory note on the European Court's findings to the relevant authorities, such as the Constitutional Court, the Court of Cassation, the Supreme Administrative Court, the Ministry of Environment, Urbanisation and Climate Change, the Council of Judges and Prosecutors, the Turkish Institution of Human Rights and Equality and the Ombudsman Institution as well as relevant courts.

## IV. CONCLUSION

**214.** The Turkish authorities will maintain submitting further information on the individual and general measures taken or envisaged to be taken in due process. In this respect, the CM will be kept informed on further developments.

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TABLE 1 - LIST OF CASES

| | Case Title | Application Number | Final Judgment Date |
|---|---|---|---|
| 1 | OKYAY AND OTHERS | 36220/97 | 12/10/2005 |
| 2 | BURSA BAROSU BAŞKANLIĞI AND OTHERS | 25680/05 | 03/12/2018 |
| 3 | GENÇ AND DEMİRGAN | 34327/06 | 10/10/2017 |

TABLE 2 - INFORMATIVE TABLE AS TO THE PAYMENT OF JUST SATISFACTION

| | Case Title | Application Number | Pecuniary Damage Awarded | Non-pecuniary Damage Awarded | Costs and Expenses Awarded |
|---|---|---|---|---|---|
| 1 | OKYAY AND OTHERS | 36220/97 | | X | |
| 2 | BURSA BAROSU BAŞKANLIĞI AND OTHERS | 25680/05 | - | - | - |
| 3 | GENÇ AND DEMİRGAN v. | 34327/06 | | X | |

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## ANNEXES

Table

| Number | Plant Name | Emission Source | Emission Reducing Measures | Explanation |
|---|---|---|---|---|
| **1** | The Yatağan Thermal Power Plant | **The 1st Unit**<br>**The 2nd Unit**<br>**The 3rd Unit** | Electrostatic Filter (ESP) | The filter system that holds the particulate matter in the flue gas by electromagnetic field is available separately for each unit. |
| | | **The 1st Unit**<br>**The 2nd Unit**<br>**The 3rd Unit** | Desulphurisation (FGD) | The filter system, in which the SO2 gas in the flue gas is washed out by means of a wet filter, is available separately for each unit. |
| **2** | The Yeniköy Thermal Power Plant | **The 1st Unit**<br>**The 2nd Unit** | Electrostatic Filter (ESP) | The filter system that holds the particulate matter in the flue gas by electromagnetic field is available separately for each unit. |
| | | **The 1st Unit**<br>**The 2nd Unit** | Desulphurisation (FGD) | The filter system, in which the SO2 gas in the flue gas is washed out by means of a wet filter, is available separately for each unit. |
| **3** | The Kemerköy Thermal Power Plant | **The 1st Unit**<br>**The 2nd Unit**<br>**The 3rd Unit** | Electrostatic Filter (ESP) | The filter system that holds the particulate matter in the flue gas by electromagnetic field is available separately for each unit. |
| | | **The 1st Unit** | | The filter system, in |

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| Number | Plant Name | Emission Source | Emission Reducing Measures | Explanation |
|---|---|---|---|---|
| | | **The 2nd Unit** | Desulphurisation (FGD) | which the SO2 gas in the flue gas is washed out by means of a wet filter, is available separately for each unit. |
| | | **The 3rd Unit** | | |

1. Judgment of the İstanbul 6th Administrative Court, dated 22 October 2020
2. Judgment of the 6th Chamber of the Supreme Administrative Court, dated 21 June 2023
3. Judgment of the Şanlıurfa 2nd Administrative Court, dated 20 October 2017
4. Judgment of the 6th Chamber of the Supreme Administrative Court, dated 28 December 2022
5. Judgment of the 6th Chamber of the Supreme Administrative Court, dated 13 May 2015
6. Judgment of the 6th Chamber of the Supreme Administrative Court, dated 22 May 2007
7. Judgment of the 6th Chamber of the Supreme Administrative Court, dated 27 April 2007
8. Judgment of the 4th Chamber of the Court of Cassation in Criminal Matters, dated 28 March 2014
9. Judgment of the 5th Criminal Chamber of the Court of Cassation, dated 18 May 2023
10. Judgment of the Bitlis 2nd Criminal Court of First Instance, dated 17 February 2016
11. Judgment of the 5th Criminal Chamber of the Court of Cassation, dated 21 February 2023
12. Judgment of the Gölköy Criminal Court of First Instance, dated 24 February 2015
13. Judgment of the 5th Criminal Chamber of the Court of Cassation, dated 28 January 2019