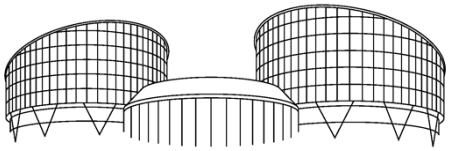

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF EFGAN ÇETİN AND OTHERS v. TÜRKİYE

(Application no. 14684/18)

JUDGMENT

Art 6 § 1 (civil) • Inability to challenge an administrative decision not requiring commissioning of an environmental impact assessment in respect of a geothermal plant in the vicinity of the applicants' olive grove and residences • Domestic authorities' failure to announce or serve decision on the applicants as required in domestic law • Excessively formalistic application of relevant-procedural time-limits precluding a full examination on the merits • Disproportionate burden on the applicants impairing very essence of right of access to court

STRASBOURG

3 October 2023

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

In the case of Çetin and Others v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 14684/18) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 March 2018 by five Turkish nationals, Mr Efgan Çetin, Ms Şermin Çetin, Ms Ayşe Çetin, Mr Hasanali Çetin and Ms Şerife Yıldız ("the applicants"), whose details are set out in the appended table;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning Articles 6 and 8 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 5 September 2023,

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

INTRODUCTION

1. The application essentially concerns the applicants' inability to have access to a court in order to challenge an administrative decision not requiring commissioning of an environmental impact assessment (EIA) in respect of a geothermal plant in the vicinity of the first applicant's olive grove and the remaining applicants' residences. The applicants complain of a violation of Articles 6 and 8 of the Convention.

THE FACTS

2. The applicants were represented by Mr A. Cangı, a lawyer practising in İzmir.

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

4. The Government informed the Court that the fifth applicant, Ms Şerife Yıldız, had died on 22 June 2021. By a letter of 3 January 2022, the Court

was informed that her children, Mr Abdurrahman Yıldız and Ms Türkan Arslan, had expressed their wish to pursue the application in her stead.

5. The facts of the case may be summarised as follows.

6. A case was brought in the Aydın Administrative Court by a group of claimants, including the applicants, requesting the setting-aside of decision no. 2012/01, dated 10 January 2012, issued by the Governorship of Aydın in respect of a private company's request to construct a geothermal energy plant in the vicinity of the claimants' olive grove and residences. The decision stated that an EIA was not required (hereinafter "EIA non-requirement decision"). The Administrative Court decided to commission an expert examination and an on-site inspection in order to resolve the dispute.

7. On 27 March 2015, as the parties arrived for the expert examination and on-site inspection with regard to the geothermal energy plant with licence number J-680, they noticed another geothermal plant that was being built not far from the plant already in dispute. Although according to the relevant record it appeared that only the lawyers for the parties and the experts had participated in the on-site inspection, the applicants and the Government have accepted that the date of the on-site inspection may be deemed to correspond to the date when the applicants learned about the second geothermal energy plant.

8. On 6 May 2015 some claimants, not including the applicants, submitted a request (hereinafter "a freedom of information request") to the Aydın Governor's Office under the Freedom of Information Act (Law no. 4982), asking whether the second geothermal energy plant had undergone an EIA procedure and the appropriate administrative process. In its reply of 18 May 2015, the Governor's Office stated that on 24 July 2014 it had issued an EIA non-requirement decision in respect of that plant also.

9. On 19 June 2015 the applicants lodged a claim with the Aydın Administrative Court against the Governor's Office, challenging its decision of 24 July 2014. They argued before the court that the right to live in a healthy environment was protected under the Constitution and international conventions to which Türkiye was a party, and although geothermal energy was a source of renewable energy, that did not mean that it would be exempt from the EIA procedure, in so far as such projects would lead to chemical pollution and a deterioration of water quality and would have consequences on people's health and the environment, both of which would be directly affected by the impact of the project. They therefore argued that the decision not to order an EIA had been unlawful.

10. After the claim had been lodged, the Aydın Administrative Court decided to conduct an on-site inspection on 20 November 2015 and an expert examination with regard to the geothermal plant with licence number J-700. According to the expert report of 18 December 2015, completed after the on-site inspection, the project description file prepared by the developer in relation to the geothermal activity had been in accordance with the procedural

rules but was lacking in various scientific, technical and legislative details. According to the experts, the generation of energy would have an adverse effect on the flora and fauna and air quality in the region. In particular, it could not be ruled out that there could be gas emissions that would pollute the environment, which might consequently have an adverse effect on human and animal health. The experts also noted that botanical features, especially olive groves, had already been irreversibly damaged and would continue to deteriorate. Moreover, it was noted that no alternative site survey had been carried out for the project and that construction had been commenced without the necessary legal permits having been obtained (and even before the EIA non-requirement decision in respect of that plant). Lastly, it was noted that as of the date of the on-site inspection, virtually the entire construction had been completed, and irreversibly so.

11. On 26 February 2016 the Aydın Administrative Court rejected the claim as lodged out of time, noting that the thirty-day time-limit for lodging an administrative fast-track action had started to run on 27 March 2015, the date on which the applicants had become aware of the plant at issue during an on-site inspection in relation to another case (see paragraph 6 above). In the decision, the Aydın Administrative Court stated:

> "... The relevant time-limits for bringing an action in administrative law begin on the date of the notification or the public announcement of the administrative act. However where neither is forthcoming, it is clear that the administrative courts will determine the date when the claimants learned of the administrative act in question on the basis of good faith and having regard to the circumstances and subject matter of the case.
>
> Moreover, the infringement of the principles of legal certainty and consistency of administrative acts may affect the [rights of third parties] who have made significant investments relying on those administrative acts. Such a state of affairs will result in more litigation, which is incompatible with the rule of law. It is observed in this connection that the Constitutional Court has noted that leaving administrative acts wide open to question for a long period of time would undermine the principle of legal certainty.
>
> In this connection, having regard to the fact that there was no information or document indicating that the impugned 'EIA non-requirement decision' had been notified to the claimants, that the construction of the plant in question had almost been completed by March 2015 and that – according to file no. 2015/8 before our court – the claimants and their lawyer were present during the on-site inspection performed in the project field on 27 March 2015, it should be accepted that they became aware of the project at issue and the [EIA non-requirement decision] as of this date at the latest; therefore, it has been concluded that the case should have been brought within thirty days from the date when they became aware of the relevant process; however, it was brought on 19 June 2015 following a request made under the Freedom of Information Act. Therefore, it was not possible to accept that the case was brought within the prescribed time frame and it should be dismissed owing to non-compliance with the time-limit.
>
> Furthermore, it is clear that the claimants live in the area in which the geothermal plants have been established and that their allegation that they were only informed of the plant at issue at the end of the construction work, which had lasted approximately two years, is improbable."

12. On 17 November 2016 the Fourteenth Division of the Supreme Administrative Court found the Administrative Court's decision to be in compliance with the law and dismissed the applicants' requests for leave to appeal on points of fact and of law by adding the following reasoning to the decision:

> "[The court has] had regard to the fact: that the respondent administration did not submit any document or information indicating that the [the EIA non-requirement decision] had been, as required by legislation, publicly announced in the village where the project would be carried out or in the area affected ...; that the Aydin Administrative Court's decision to dismiss the case owing to the expiry of the time-limit is in compliance with the law in so far as it was understood [by the first-instance court] during the on-site inspection of 27 March 2015; that the building of the relevant project had, to a great extent, been completed even though the EIA decision in respect of it had not been announced; and that it was not possible to accept the case, which had been brought in response to the Governor Office's reply of 18 May 2015 for the belated request of 6 May 2015 under the Freedom of Information Act (Law no. 4982), that is to say on 19 June 2015. ..."

13. In their individual applications before the Turkish Constitutional Court, the applicants complained of an infringement of their right of access to a court on account of the Administrative Court's allegedly formalistic interpretation of time-limits. Relying on the expert report of 18 December 2015 completed during the proceedings, the applicants complained of the potential harm to their lives, health and home and the fact that they were not informed of the decisions taken concerning the setting-up of the plant in question. On 1 November 2017 the Constitutional Court dismissed the applicants' individual applications. It declared their complaints inadmissible: those concerning access to a court as manifestly ill-founded, those concerning the right to live in a healthy and balanced environment as incompatible *ratione materiae*, and those concerning the right to respect for their private and family life and their home inadmissible for failure to exhaust available remedies before the lodging of an appeal with the Constitutional Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Turkish Constitution

14. Article 125 of the Turkish Constitution provides, *inter alia*:

> "All actions or decisions taken by the authorities are amenable to judicial review. ...
>
> The time-limit for lodging a claim against an administrative act begins on the date of written notification of the act."

B. Administrative Procedure Act (Law no. 2577)

15. The relevant provisions of Law no. 2577 read as follows:

Section 2

"1. (a) Anyone whose personal interests have been violated as a result of an unlawful administrative act may bring an action for annulment of that act and request its review in terms of jurisdiction, procedure, reason, subject and purpose."

Section 3

"1. A claim lodged in administrative law shall be filed with a signed petition.

2. The petition shall include:

...

(b) the subject and reasons for the claim and the evidence on which the claim is based

(c) the date of notification of the [impugned] administrative act,

...

3. Originals or copies of the relevant decision and documents shall be added to the petition attached to the claim ..."

Section 7

"1. The time-limit for lodging a claim is sixty days before the Supreme Administrative Court and administrative courts, and thirty days in the tax courts, unless provided otherwise in the legislation.

2. These time-limits begin to run:

(a) on the date when the written notification is made in administrative disputes ..."

Section 20/A

1. The fast-track procedure shall be applied to disputes arising from the procedures listed below:

...

(e) decisions taken as a result of the environmental impact assessment pursuant to the Environment Act, Law no. 2872 dated 9 October 1983, except for decisions relating to administrative sanctions.

2. In the fast-track procedure:

(a) the time-limit for lodging a claim is thirty days ..."

C. Environment Act

16. The relevant provisions of the Environment Act, Law no. 2872 read as follows:

Section 3

"The general principles governing environmental protection and the prevention of environmental pollution shall be as follows:

(a) protecting the environment and preventing environmental pollution are the duty of individuals and legal entities as well as of all citizens, and they are required to comply with the measures to be taken and the principles laid down in reference to these matters. ..."

Section 10

"Establishments and commercial enterprises that propose to carry out activities which might cause environmental hazards shall draw up an environmental impact report. This report shall cover, *inter alia*, the measures proposed to reduce the detrimental effects of waste material and the necessary precautions to be taken to this end.

The types of projects for which such a report shall be required, its content and the principles governing its approval by the relevant authorities shall be determined by regulations."

17. The relevant provisions of the Regulation on Environmental Impact Assessments, published in Official Gazette no. 27784 of 3 October 2013, as in force at the time that the impugned EIA non-requirement decision was taken and in so far as relevant, read as follows:

Section 17

"(1) The Ministry shall examine and assess the project information files within the scope of the criteria set out in Annex 4. At this stage, the Ministry may request that the institutions and organisations authorised by the Ministry, if deemed required, give comprehensive information concerning the project, provide equipment and supplies, and perform analyses, experiments and measurements or have them carried out by suitably qualified organisations.

(2) The Ministry shall complete its examination and assessments within fifteen working days. The Ministry shall tender its decision 'EIA is required' or 'EIA is not required' in respect of the project within five working days and notify the Governorship, the project owner, and the institutions and organisations authorised by the Ministry of its decision. The Governorship shall inform the public of this decision through appropriate channels. ..."

D. Relevant domestic case-law

18. As to judicial practice in respect of the application of section 3(2) and (3) of Law no. 2577, in which the formal requirements of a petition for an administrative-law action were set forth, the Court asked the parties to submit examples of case-law regarding the position taken by the administrative courts in the calculation of time-limits for bringing a case against an industrial project under the Environment Act where the intended project and the decision of the administrative authorities in relation to it have not been announced to the public or in compliance with the requirements of law. The parties were also requested to indicate, with examples from the

domestic case-law, whether, in the situations mentioned above, the domestic courts would accept an administrative-law motion lodged by a litigant when he or she was unable to submit the documents set forth in section 3 of Law no. 2577. The parties were unable to present examples, as requested by the Court. The Government merely supplied information and the general case-law of the Supreme Administrative Court concerning the practical interpretation and implication of sections 10 and 11 of Law no. 2577, being the rules governing time-limits.

THE LAW

II. PRELIMINARY ISSUE REGARDING *LOCUS STANDI* OF THE HEIRS OF THE FIFTH APPLICANT, MS ŞERİFE YILDIZ

19. The Court takes note of the death of the fifth applicant, Ms Şerife Yıldız, on 22 June 2021, after the lodging of the present application, and of the wish expressed by her children to continue the application before the Court in her name.

20. The Court has already ruled that the next-of-kin or an heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014).

21. The Court thus accepts that the applicant's children have a legitimate interest in pursuing the application in the late applicant's stead. However, for practical purposes, reference will still be made to Ms Şerife Yıldız as an applicant throughout the ensuing text.

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

22. The applicants complained that they had been denied access to a court on account of the administrative courts' formalistic interpretation of time-limit rules. They alleged that there had been a violation of Article 6 § 1 of the Convention, which provides in its relevant part as follows:

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

A. Admissibility

1. Victim status

23. The Government contested the applicants' victim status, arguing that the proceedings before the Aydın Administrative Court had not related to the direct and personal rights of the applicants and that their action had taken the form of an *actio popularis*, which fell outside the scope of the Convention guarantees. They submitted in that connection that, in accordance with the

practice of the Turkish administrative courts, an action for annulment could be lodged by anyone with a sufficient interest for the purpose of challenging the alleged unlawfulness of an administrative act and without having to prove that his or her rights were directly affected by it. Moreover, the first applicant Mr Efgan Çetin, was not a party to proceedings regarding the EIA non-requirement decision and was not directly affected by the plant in question. He had not been involved in the administrative proceedings at any stage; he lived in Istanbul, approximately 470 km away from where the plant was set up. Nor did he own any houses, land or fields near the project.

24. The applicants challenged this view, arguing that they had been concerned about how the environment in the area in which they lived would be affected. Mr Efgan Çetin submitted that although he lived in Istanbul, he owned orchards and fields that he had inherited from his father in Yılmaz, a village adjacent to the project area and presented the title deeds of those properties. Furthermore, the applicants maintained that all of them, including the first applicant Mr Efgan Çetin, had participated in the proceedings before the administrative courts and before the Constitutional Court.

25. The Court refers to the principles enunciated in its case-law with respect to victim status (see, for example, *Bursa Barosu Başkanlığı and Others v. Turkey*, no. 25680/05, §§ 106-12, 19 June 2018). It reiterates that in order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he or she was "directly affected" by the measure complained of.

26. The Court notes that all applicants were party to the proceedings before the Aydin Administrative Court, and that their standing in those proceedings was not called into question by the administrative courts. They have been directly affected by the domestic courts' ultimate ruling to dismiss their case as out of time, and as such they were directly affected by the interpretation of the time-limits for bringing their case. The Court further observes that in the present case the applicants complained about the EIA non-requirement decision in relation to a geothermal energy plant established in the vicinity of their olive groves or residences by relying on their right to a healthy environment.

27. Having regard to the foregoing, the Court is satisfied that the applicants have adequately demonstrated that they were directly affected by the decisions of the Administrative Court and finds that they may claim to be victims in respect of their Article 6 § 1 complaint (see, for a similar conclusion, *Çöçelli and Others v. Türkiye*, no. 81415/12, § 40, 11 October 2022).

2. Non-exhaustion of domestic remedies

28. The Government contended that the applicants had not brought an action within the time-limit when they had become aware of the situation in

respect of the EIA non-requirement decision, hence they had not exhausted the effective domestic remedies.

29. The applicants maintained that they had exhausted all domestic remedies.

30. The Court notes that after their administrative-law action had been rejected by the Administrative Court as out of time, the applicants claimed that they had been denied access to a court on account of that court's formalistic interpretation of time-limits, both before the Supreme Administrative Court, in appeal proceedings, and before the Constitutional Court in their individual application. However, their appeals were dismissed (see paragraphs 12-13 above). The Court considers that in this way the domestic authorities were afforded the opportunity to remedy the breach alleged. Accordingly, the Government's plea on non-exhaustion must also be dismissed.

3. *The Court's jurisdiction* ratione materiae

31. While the Government have not raised an objection as regards the applicability *ratione materiae* of Article 6 § 1, the Court considers that it has to address this issue of its own motion, (see *Grosam v. the Czech Republic* [GC], no. 19750/13, §107, 1 June 2023).

32. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("contestation" in French) regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, as a recent authority, *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022). Lastly, the right must be a "civil" right (ibid.).

33. The Court notes the domestic dispute concerned the lawfulness of the Ministry's EIA non-requirement decision in respect of the geothermal plant in question. The first applicant owns property and the remaining applicants live in the close vicinity of the plant. The dispute before the domestic courts related to the effects of this plant on their right to live in a healthy environment, the outcome of which - were it to be decided on the merits - would be directly decisive for the applicants. Furthermore, the Court has regarded the right to live in a healthy environment, when recognised as a right under domestic law, as "civil" for the purposes of Article 6 § 1 (see *Okyay and Others v. Turkey*, no. 36220/97, § 67, ECHR 2005-VII; *Taşkın and Others v. Turkey*, no. 46117/99, § 133, ECHR 2004 X; *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 91, 2 December 2010; and *Bursa Barosu Başkanlığı and Others*, cited above, §§ 126-28). It therefore follows that the

complaint is compatible *ratione materaie* with Article 6 § 1 of the Convention.

4. Conclusion as to admissibility

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

B. Merits

1. The parties' arguments

35. The applicants alleged that the domestic courts' approach to time-limits for bringing an action against the EIA non-requirement decision was excessively formalistic. They explained that, since the decision in relation to the impugned activity had not been made public, they were not in a position to be aware of the project. They had in fact become aware of the existence of the plant in question (J-700) by chance during the on-site inspection for another environmental case in the same area (see paragraph 7 above), but they first had to enquire with the Governor's Office about what type of decisions had been adopted by the administrative authorities in order to be able to bring a successful and informed claim. Moreover, since there were many geothermal projects within the vicinity of their olive groves and residences, it had been difficult to understand which decision applied to which project. They further argued that the fact of learning of the existence of a project and then of learning of the EIA non-requirement decision for that project had been entirely different situations. Therefore, the fact that their claim – which had been lodged on 19 June 2015 after the administration's reply to the "freedom of information request" made on 6 May 2015 – had been deemed out of time was an excessively formalistic approach for the purposes of Article 6 § 1 of the Convention.

36. The Government submitted that the right to a court was not absolute and was in any event subject to limitations. They contended that the Contracting States enjoyed a margin of appreciation in this connection. They stated that the main objective for setting a time-limit for lodging a claim against an administrative act was to ensure the legal certainty of the administrative acts, and to allow the smooth functioning of public services. They further submitted that it was primarily for the domestic courts to interpret the legislation and determine the time-limit for the bringing of an administrative-law claim. Moreover, the method used for calculating the time-limits for bringing a claim was clear, foreseeable and well established. The Government argued that at the time when the application to the Governorship of Aydın regarding the plant in question (J-700), and in particular its EIA status, had been lodged (see paragraph 8 above), the

applicants were already aware, following the on-site inspection of 27 March 2015 concerning the adjacent geothermal plant with licence number J-680, that construction of the plant had almost been completed. This, in their view, implied that the applicants and their lawyer had been in a position to know that an EIA non-requirement decision had already been taken and that they were aware of the situation. The Government pointed out that the applicants had an obligation to act with due diligence and apply immediately to the national authorities, as any delay would have jeopardised the relevant time-limits. In that connection, even though the applicants had become aware of the geothermal energy plant at issue during the on-site inspection, they had not brought an action within a reasonable time. Therefore, the domestic courts' interpretation had not been excessively formalistic.

2. The Court's assessment

37. The Court refers to the general principles on the subject of access to a court, as set out in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

38. It is well enshrined in the Court's case-law that "excessive formalism" can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention. This usually occurs in cases involving a particularly strict construction of a procedural rule, which prevents an applicant's action from being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed (ibid., § 97). Any assessment of a complaint of excessive formalism in the decisions of the domestic courts will usually be the consequence of an examination of the case taken as a whole, having regard to the particular circumstances of that case (ibid., § 98). In making that assessment, the Court has often emphasised the issues of "legal certainty" and "proper administration of justice" as two central elements for drawing a distinction between excessive formalism and an acceptable application of procedural formalities. In particular, it has held that the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice, and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Gil Sanjuan v. Spain*, no. 48297/15, § 31, 26 May 2020).

39. The Court further reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of procedural rules, such as time-limits for filing documents or lodging appeals (see, among other authorities, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). The Court's role is to verify the compatibility with the Convention of the effects of the domestic courts' interpretation of the rules applied (see, among other authorities, *Inmobilizados y Gestiones S.L. v. Spain*, no. 79530/17, § 35, 14 September 2021). This is particularly true as regards the interpretation of rules of a

procedural nature, such as those relating to the formalities and time-limits for bringing an action; since such rules are intended to ensure the proper administration of justice and respect, in particular, for the principle of legal certainty, the persons concerned must be able to expect them to be applied (see *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 33, ECHR 2000-I). However, although time-limits are in principle legitimate procedural limitations on access to a court, their interpretation in disregard of relevant practical circumstances may result in violations of the Convention (see *Kurşun v. Turkey*, no. 22677/10, § 103, 30 October 2018, with further references).

40. Lastly, the Court reiterates that the risk of any mistake made by a State authority must be borne by that State, and errors must not be remedied at the expense of the individual concerned (see *Šimecki v. Croatia*, no. 15253/10, § 46, 30 April 2014, with further references).

41. In the instant case, the Court notes that there is a divergence of opinion between the parties over the *dies a quo* in respect of the thirty-day period for bringing the claim concerning the EIA non-requirement decision in relation to the plant in question (J-700): firstly, despite being a requirement in the domestic law (see paragraph 17 above), the decision in question was not publicly announced; and secondly, despite construction of the plant having almost been completed, the applicants were allegedly delayed in lodging the claim with the administrative courts. The Court further notes that there is no dispute between the parties as to the date on which the applicants became aware of the energy plant itself, namely 27 March 2015, which is when the above-mentioned on-site inspection took place. However, the parties' views differ in particular as to the date on which the applicants could have been deemed to have "known" about the impugned EIA non-requirement decision concerning the plant in question – the issue being whether the applicants were expected to have acted earlier against the decision in order to be considered to have displayed special diligence in protecting their interests.

42. In its decision, the Aydın Administrative Court of 26 February 2016 found that the applicants should be deemed to have "known" about both the existence of the construction and the EIA non-requirement decision in respect of the geothermal plant with licence number J-700 on 27 March 2015. In other words, this was the very same date when the on-site inspection took place in relation to the EIA non-requirement decision of the geothermal energy plant with licence number J-680 in the same area. Thus they had been in a position to "be aware of" the EIA non-requirement decision from as early as that date, when it had been observed that construction of the energy plant had almost been completed. In addition, the Administrative Court considered that in the ordinary course of events, it could not be accepted that the applicants became aware of the plants at the end of the construction phase, which had lasted approximately two years, in so far as the applicants lived in the area in which the geothermal plants were located. Therefore, the Aydın Administrative

Court rejected the case as out of time, noting that the thirty-day time-limit for lodging an administrative fast-track claim had started to run from 27 March 2015, and that being so, the court considered that the applicants' "freedom of information" request had not interrupted the running of the time-limit for bringing a case.

43. Although the Aydın Administrative Court pointed to 27 March 2015, the date of the on-site inspection, as the *dies a quo* for the calculation of the time-limit, the Supreme Administrative Court dismissed the appeal by adding in its reasoning that even though the EIA non-requirement decision in respect of the plant at issue had not been publicly made known, it was impossible to accept the case as being within the prescribed time-limit, as it had been brought before the court on 19 June 2015, namely after the administration's reply to the applicants' "freedom of information" request made on 6 May 2015, that being "a very long time after" 27 March 2015, the date on which it had been observed that the construction of the project was largely completed. The Court notes that the Supreme Administrative Court accepted that the applicants had not acted against the plant in question within a reasonable time, albeit without establishing a specific date for the *dies a quo*.

44. The Court observes that the Administrative Procedure Act (see paragraph 15 above) did not offer any guidance as to how the "knowledge" requirement would be interpreted for the purposes of establishing the *dies a quo* for the calculation of a time-limit when the impugned decision had been neither served nor announced. Nor did the Government rely on any precedent in support of their interpretation of that requirement in respect of the applicants' claim. More importantly, the Government were unable to refer to any case-law examples in which litigants had been able to directly lodge an administrative-law claim without specifying in their petition the administrative decision of which they were complaining (see paragraph 18 above).

45. The Court notes that going beyond the discussion as to the possible ambiguities surrounding the interpretation of the start of the limitation period at issue, the first-instance court's interpretation to the effect that the thirty-day time-limit to bring a case started to run from the same day when the applicants accidentally discovered the existence of the plant in question, was clearly formalistic. It is evident that the applicants would have needed more information, in particular, the decision of the Governor with respect to the plant, regard being had to that decision not having been publicly announced.

46. As to whether the applicants took too long to bring a case after discovering the plant in question (J-700), and whether they could be reproached for lodging their claim only after a "freedom of information" request had been made, the Court notes that, although the applicants were not within the group of claimants who sought information from the Aydın Governor's Office on 6 May 2015, the domestic courts did not make a distinction between the claimants who had lodged a request with the

Governor's Office and those, including the applicants, who had not, and considered that such a request had no bearing on the time-limits. In addition, neither the applicants nor the Government submitted arguments in this regard. In these circumstances, the Court cannot attach any importance to the fact that the applicants were not among those claimants who had lodged the request with the Aydın Governor's Office.

47. The Court further notes that the relevant principles concerning the matter of notification of administrative and judicial decisions were recently summarised in *Stichting Landgoed Steenbergen and Others v. the Netherlands* (no. 19732/17, §§ 42-45, 16 February 2021). It has held, in particular, that the right of access to a court under Article 6 § 1 of the Convention entails an entitlement to receive adequate notification of administrative and judicial decisions, which is of particular importance in cases where an appeal may be sought within a specified time-limit (see, *mutatis mutandis*, *Šild v. Slovenia* (dec.), no. 59284/08, § 30, 17 September 2013, and *Marina Aucanada Group S.L. v. Spain*, no. 7567/19, § 45, 8 November 2022).

48. In this connection, the Court notes that it is undisputed between the parties and the domestic courts that the EIA non-requirement decision of 24 July 2014 was not announced to or served on the applicants despite this being a requirement under the Regulation on Environmental Impact Assessments (see paragraph 17 above). Moreover, there appears to be no reason for the omission of the obligation to make an announcement or any information as to whether there was indeed an announcement later. Furthermore, it transpires from the case file that the same developer was involved in more than one project within the same area, which could have made it difficult for anyone to follow which plant related to which project and which decision had been taken in respect of what. Accordingly, in view also of the period between the date of the applicants' becoming aware of the project and the reply of the Aydın Governor's Office in connection with the right to information, it cannot be said that there had been a serious unjustified delay on the part of the applicants once they had become aware that there was more than one project in the vicinity.

49. Therefore, the Court finds that what mainly brought about this situation was an omission by the State authorities. In the same vein, the amount of time that the applicants took to lodge their claim is not decisive when weighing up on the one hand their obligation to act with due diligence, and on the other the failure of the Governor's Office to comply with its legal obligation to announce the EIA non-requirement decision along with the number of projects managed by the same company within a small area. In these circumstances, the applicants cannot be faulted for not having acted with due diligence.

50. The Court observes that the domestic courts did not strike a balance between the failure of the Governor's Office to comply with its legal

obligation to announce the decision with respect to an EIA and the time-limits for a claim in respect of the activity in question in order to ensure the legal certainty of the administrative act; the applicants were made to bear an excessive burden by the particularly strict application of procedural time-limit rules.

51. Consequently, the domestic courts' strict interpretation of the time-limits in question precluded the applicants from having a full examination of the merits of the case. Thus, by imposing a disproportionate burden on the applicants, the domestic courts impaired the very essence of their right of access to a court (see *Miragall Escolano and Others*, cited above, § 37).

52. In the circumstances of the present case, the Court considers that the applicants' right of access to a court has been breached and that there has therefore been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. Relying on Article 8 of the Convention, the applicants submitted that the expert report of 18 December 2015, completed during the proceedings (see paragraph 10 above) had established the potential harm that would be caused to the environment by the operating of the plant. However, given that the Governor's decision to exempt the project from the EIA procedure had not been announced, and that the administrative courts had dismissed their case without an examination on the merits, the applicants had been completely excluded from the decision-making process which concerned their right to respect for their home and health under Article 8 of the Convention. That provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

54. However, having regard to the same factual background and its findings under Article 6 of the Convention, concerning notably the excessively formalistic approach of the domestic courts which prevented the applicants from having access to a review procedure before the courts to challenge the legality of the EIA non-requirement decision as a result of which the project was excluded from EIA process, thus denying them any chance of being informed of or consulted about the project (see paragraphs 41-51 above), the Court considers that in the circumstances of the present case it is not necessary to examine separately the admissibility and merits of the applicant's complaint under Article 8 of the Convention (see, *mutatis mutandis*, *Tinnelly & Sons Ltd and Others and McElduff and Others*

v. the United Kingdom, no. 20390/92, §§ 84-87, 10 July 1998; *Orha v Romania*, no. 1486/02, § 39, 12 October 2006; and *Moisei v. Moldova*, no. 14914/03, §§ 34-35, 19 December 2006).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

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

56. The applicants did not submit a claim for just satisfaction or for costs and expenses, either for the Convention proceedings or for the proceedings in the domestic courts.

57. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Ms Şerife Yıldız's heirs have standing to continue the present proceedings in her stead;

2. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

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

4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 8 of the Convention.

Done in English, and notified in writing on 3 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

APPENDIX

List of applicants in application no. 14684/18:

No.	Applicant's name	Year of birth/registration	Nationality	Place of residence
1.	Efgan ÇETİN	1968	Turkish	Istanbul
2.	Ayşe ÇETİN	1949	Turkish	Aydın
3.	Hasanali ÇETİN	1974	Turkish	Aydın
4.	Şermin ÇETİN	1970	Turkish	Aydın
5.	Şerife YILDIZ	1945	Turkish	Aydın