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

SECOND SECTION

CASE OF MEHMET AND SUNA YİĞİT v. TURKEY

(Application no. 52658/99)

JUDGMENT

STRASBOURG

17 July 2007

FINAL

17/10/2007

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 Mehmet and Suna Yiğit v. Turkey,

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

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mr V. ZAGREBELSKY,
Mrs D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 52658/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mr Mehmet Yiğit and Mrs Suna Yiğit ("the applicants"), on 4 August 1999.

2. The applicants were represented by Mr Tanrıkulu, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. On 24 November 2004 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

3. The applicants were born in 1970 and 1969 respectively and live in the District of Ergani, in Diyarbakır.

4. On 27 June 1997 the applicants' daughter, Esra Yiğit, then aged seven months, underwent surgery at the Dicle University Medical Faculty Hospital for a congenital hip dislocation. During the operation, she had a cardiac arrest and lapsed into a coma. On 13 July 1997 Esra Yiğit came out of the coma, but she was unable to move her arms and legs. On

15 July 1997 she was admitted to the neurosurgery department and was diagnosed as suffering from "hypoxic brain syndrome". On 21 July 1997 she was discharged from the hospital.

5. On 13 May 1998 the applicants filed a compensation claim with the Rectorate of the Dicle University for the pecuniary and non-pecuniary damage caused by the alleged negligence of the medical staff who performed the operation. No response was given to the applicants within the sixty day period prescribed in the Code of Administrative Procedure.

6. On 11 August 1998 the applicants filed an action with the Diyarbakır Administrative Court, requesting compensation. They also requested legal aid for the court fees.

7. On an unspecified date Mehmet Yiğit obtained a certificate from the office of the headman *(muhtarlık)* attesting to his indigence.

8. On 26 August 1998 Mehmet Yiğit further applied to the Office of the District Governor in Ergani, requesting an official certificate as to whether he owned property in Ergani.

9. On the same day, the Office of the District Governor, the Directorate of Land Registration and the Ergani Municipality drafted attestations stating that Mehmet Yiğit did not own any immovable property in Ergani.

10. On 27 August 1998 the Ergani Revenue Department informed the District Governor's Office that it had no records indicating that Mehmet Yiğit paid tax.

11. On an unspecified date the Diyarbakır Administrative Court dismissed the case on procedural grounds. The domestic court stated that the applicants could lodge a new case within one month following the rectification of the defects in their application.

12. On 19 October 1998 the applicants applied to the Diyarbakır Civil Court of General Jurisdiction, requesting exemption from paying the court fees. The court granted their request.

13. On 23 October 1998, after rectifying the procedural shortcomings in their first petition, the applicants lodged another case with the Diyarbakır Administrative Court. In their petition, they repeated their request for legal aid for the court fees.

14. On 17 November 1998 the Diyarbakır Administrative Court dismissed the applicants' request for legal aid. The court held that, since the applicants were represented by a lawyer, they could not be considered to be in need of legal aid. (The applicants had had a contingency fee arrangement with their lawyer.) In its decision, the court referred to the case-law of the Supreme Administrative Court and the provisions of the Civil Procedure Code.

15. On 1 December 1998 and 4 February 1999, the Diyarbakır Administrative Court notified the applicants that they were required to pay 180,000,000 Turkish liras (TRL)[1] in respect of the court fees.

16. On 8 March 1999 the applicants lodged a petition with the administrative court requesting the annulment of the decision dated 17 November 1998. In their petition, they stated, *inter alia*, that they did not have sufficient means to pay the court fees and that the rejection of their request for legal aid was in violation of their right of access to a court.

17. On 16 April 1999 the Diyarbakır Administrative Court discontinued the proceedings because the applicants had not paid the necessary legal fees.

18. On 16 October 2001 the Supreme Administrative Court upheld the decision of 16 April 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Procedure

19. Article 31 of the Code of Administrative Procedure provides that when administrative court judges determine a legal aid request, they should apply the relevant provisions of the Code of Civil Procedure (Articles 465-472, below).

B. Code of Civil Procedure

20. Article 465 states that a request for legal aid may only be granted if the claimant submits evidence in support of his/her request.

21. According to Article 468, in order to determine whether or not the person applying for legal aid has sufficient means, he/she shall be required to submit a certificate attesting to his/her indigence; another certificate indicating whether or not the individual owns any property and an attestation regarding how much, if any, tax he/she had paid. These certificates should be obtained from the appropriate domestic authorities.

22. Article 469 provides that decisions regarding legal aid are binding.

C. Relevant economic data

23. In November 1998, the minimum wage in force was 47,839,500 Turkish liras (approximately 158 US Dollars) a month.

[1] Approximately 514 euros

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicants complained that they had been denied access to a court, invoking Article 6 §1 of the Convention which, in so far as relevant, reads as follows:

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

25. The Government contested that argument.

A. Admissibility

26. In their observations, the Government submitted two preliminary objections. In the first place, they maintained that the applicants have not exhausted the domestic remedies and argued that they could have initiated criminal proceedings against the medical staff that operated on their daughter. Secondly, the Government asked the Court to reject the application for non-compliance with the six months time-limit. In their view, the applicants should have lodged their application with the Court following the decision of the Diyarbakır Administrative Court dated 17 November 1998, since decisions regarding legal aid are binding pursuant to Article 469 of the Code of Civil Procedure.

27. As regards exhaustion of domestic remedies, the Court observes that the domestic law provided administrative and criminal remedies to the applicants in respect of their allegation that their daughter had been paralysed because of medical malpractice. The Court recalls at this point that it is for the individual to select which legal remedy to pursue for obtaining redress for the breaches alleged (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, § 23). In the present case, the applicants' main complaint is the suffering that they had to endure because of their daughter's illness, which in their view was the result of a medical malpractice. As they chose to seek reparation by initiating compensation proceedings, the Court is of the opinion that they were not required to bring the criminal proceedings as suggested by the Government.

28. As regards the Government's second objection, the Court observes that the applicants have lodged their application within six months of the decision of the Diyarbakır Administrative Court, dated 16 April 1999, by which it was decided to discontinue the compensation proceedings because of the applicants' failure to pay the court fees. This judgment was subsequently upheld by the Supreme Administrative Court on 16 October 2001. In the present case, as the main legal problem is the applicants' right of access to a court, the Court concludes that they have filed their application within the six months time-limit as required by Article 35 § 1 of the Convention.

29. In view of the above, the Court rejects the Government's objections.

30. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The applicants maintained that they had been denied access to court as the court fees were set at a level far beyond their means. They further stated that the administrative court's decision rejecting their legal aid request had been unfair. In this connection, they stated that, although they had submitted the relevant documents which attested to their indigence, the Administrative Court had refused to grant legal aid because they were being represented by a lawyer.

32. The Government contested this claim. They stated that the decisions of the domestic courts had been delivered in accordance with the domestic law and did not breach the applicants' right of access to court

33. The Court reiterates that the "right to a court" is not absolute. It may be subject to limitations permitted by implication because the right of access by its very nature calls for regulation by the State. Guaranteeing to litigants an effective right of access to courts for the determination of their "civil rights and obligations", Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the ultimate decision as to the observance of the Convention's requirements rests with the Court (see *Kreuz v. Poland*, no. 28249/95, § 53, ECHR 2001-VI).

34. A restriction placed on access to a court or tribunal will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (*Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, § 59). According to the Court's case-law, a financial limitation may be imposed in the interests of a fair administration of justice. In the past, the Court has held that the requirement to pay fees to civil courts in connection with the

claims which they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention. It reiterates, however, that the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed, are factors which are material in assessing whether or not a person enjoyed the right of access and had "a ... hearing by [a] tribunal" (see *Kreuz*, cited above, § 60).

35. In the present case, the Court must therefore determine whether the requirement to pay the court fees imposed on the applicants constituted a restriction in breach of their right of access to a court.

36. The Court notes that the applicants' daughter underwent surgery in the Dicle University Medical Faculty and lapsed into a coma during the operation. Subsequently, she came out of the coma but lost the ability to move her arms and legs. Following this incident, the applicants sought to initiate compensation proceedings against the Dicle University. To initiate these proceedings, under domestic legislation, they were required to pay court fees amounting to TRL 180,000,000. At this point, it should be underlined that, in December 1998, this amount was four times higher than the monthly minimum wage in force at the time (see paragraph 23 above). It is also an undisputed fact that, at the time of the events, the applicants had no income. This fact was supported by certificates submitted by the applicants to the Diyarbakır Administrative Court (see paragraphs 7-10 above). Furthermore, in October 1998, based on these documents, the Diyarbakır Civil Court of General Jurisdiction decided to exempt the applicants from paying the court fees (see paragraph 12 above). In view of the foregoing, the Court considers that the amount of the court fees imposed by the Administrative Court constituted an excessive burden on the applicants.

37. Furthermore, it is observed that, when the Administrative Court refused to exempt the applicants from paying the court fees, it referred to the case-law of the Supreme Administrative Court, according to which no legal aid was to be granted to claimants who were represented by a lawyer. The Court recalls that, pursuant to Article 19 of the Convention, its task is not to substitute itself for the competent domestic authorities in determining the most appropriate policy for regulating access to domestic courts. Nor can it re-assess the facts which led that court to adopt one decision rather than another. The Court's role is limited to a review under the Convention of the decisions which those authorities have taken in the exercise of their power of appreciation (see *Tolstoy Miloslavsky*, cited above, § 59*)*. However, in the instant case, the Court considers that the reason, given by the Administrative Court, when refusing to award legal aid to the applicants, is wholly insufficient. It is true that the applicants hired a lawyer to pursue the compensation proceedings; however, this does not mean that they had

the means to pay the court fees. Furthermore, the applicants' lawyer had explained to the domestic courts that he had not received any money from the applicants to pursue their case, but they had agreed to pay him a certain percentage of any compensation received at the end of the proceedings.

38. Consequently, in the Court's view, the requirement that the applicants, who had no income, had to pay court fees which amounted to four times more than the monthly minimum wage at the time, cannot be considered proportionate.

39. The Court concludes that in the instant case there has been a disproportionate restriction on the applicants' right of access to a court. There has accordingly been a violation of Article 6 § 1 in that respect.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION, AND ARTICLE 1 OF PROTOCOL NO. 1

40. The applicants complained of the suffering which they have endured because of their daughter's illness, as a result of medical malpractice and the lack of compensation. In this respect, they relied on Articles 3 and 8 of the Convention, as well as Article 1 of Protocol No. 1.

41. The Government contested those allegations.

42. The Court notes that these complaints are linked to the one examined above and must likewise be declared admissible.

43. The Court further notes that the main Convention question raised in the instant application was the applicants' right of access to a court, pursuant to Article 6 § 1 of the Convention. Having found a violation of this provision (paragraphs 35-39 above), the Court considers that there is no need to make a separate ruling on the applicants' other complaints, given the fact that it cannot determine the issues of malpractice or compensation as a first instance court itself (see *Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 73, ECHR 2001-VIII).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. Article 41 of the Convention provides:

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

A. Damage

45. The applicants claimed 1,962,681,000,00 Turkish liras (TRL) – approximately 1,216,789.21 euros (EUR) – in respect of pecuniary damage and EUR 60,000 in respect of non-pecuniary damage.

46. The Government, considering the requested amounts excessive, contested these claims.

47. As regards material damage, the Court reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicants, as far as possible, are put in the position in which they would have been had this provision not been disregarded (see *Teteriny v. Russia*, no. 11931/03, § 56, 30 June 2005; *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 53, ECHR 2006-...). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be to annul or otherwise put aside the administrative court decisions of 16 April 1999 and 16 October 2001 (paragraphs 17 and 18 above) and restart the proceedings before the Diyarbakır Administrative Court, in accordance with the requirements of Article 6 § 1 of the Convention, should the applicants so request (see, *mutatis mutandis, Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003).

48. As regards non-pecuniary damage, deciding on an equitable basis, the Court awards the applicants EUR 10,000 under this head.

B. Costs and expenses

49. The applicants also claimed EUR 4,712 for the costs and expenses incurred before the Court. In respect of their claims, the applicants relied on the Diyarbakır Bar Association's list of recommended minimum fees and submitted a document showing the number of hours – 38 – spent by the lawyer on their case.

50. The Government contested this claim.

51. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there is no need to examine separately the applicants' other complaints under Articles 3 and 8 of the Convention, or Article 1 of Protocol No. 1;

4. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable:

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses.

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

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

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	F. TULKENS
Registrar	President