



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

SECOND SECTION

CASE OF GÜLER AND KEKEÇ v. TURKEY

(Applications nos. 33994/06 and 36271/06)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

07/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Güler and Kekeç v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Giorgio Malinverni,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in two applications (nos. 33994/06 and 36271/06) 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 Mahmut Güler and Mr Ahmet Kekeç (“the applicants”), on 1 August 2006.

2. The applicants were represented by Mr A. Özçelik and Mr M. Okutan, lawyers practising in Gaziantep. The Turkish Government (“the Government”) were represented by their Agent.

3. On 16 September 2009 the President of the Second Section decided to give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it was also decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASES

4. The applicants were born in 1956 and 1946 respectively and live in İslahiye, Gaziantep.

1. The first set of proceedings

5. Each of the applicants, who were employees of the İslahiye Municipality, brought proceedings before the İslahiye Civil Court of First

Instance acting as a labour court, claiming unpaid wages and other pecuniary rights on 10 October 2001 and 21 November 2001, respectively.

6. On 21 May 2004 and 23 May 2003, respectively, the İslahiye Civil Court of First Instance granted the applicants' requests partially and ordered the payment of 14,288 Turkish Liras (TRY)¹ to the first applicant and TRY 18,514² to the second applicant, together with interest. These judgments became final as no appeal was filed against them.

7. The first applicant further initiated execution proceedings before the İslahiye Execution Office to obtain the amount ordered by the İslahiye Civil Court of First Instance (file no. 2005/8415).

8. At the date of introduction of the applications, the aforementioned judgment debts were still outstanding.

2. The second set of proceedings

9. On 14 November 2002 and 14 September 2002, respectively, the applicants retired from their jobs at the İslahiye Municipality. The town council calculated the applicants' severance benefits accordingly.

10. On 18 March 2003, not having been paid the amounts awarded, the applicants brought proceedings before the İslahiye Civil Court of First Instance acting as a labour court, claiming severance benefits and other pecuniary rights.

11. On 15 July 2004 the labour court ordered the Municipality to pay TRY 11,918³ to the first applicant and TRY 12,119⁴ to the second applicant, together with interest. These judgments became final as no appeal was filed against them.

12. The applicants further initiated execution proceedings before the İslahiye Execution Office to obtain those amounts ordered by the İslahiye Civil Court of First Instance (file nos. 2004/351 and 2004/352).

13. At the date of introduction of the applications, the aforementioned judgment debts were still outstanding.

THE LAW

I. JOINDER

14. Given the similarity of the applications, both as regards fact and law, the Court deems it appropriate to join them.

1. Approximately EUR 7,858 at the material time.

2. Approximately EUR 10,944 at the material time.

3. Approximately EUR 6,814 at the material time.

4. Approximately EUR 6,929 at the material time.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

15. The applicants complained that the authorities' failure to pay them their severance benefits, unpaid wages and indemnities ordered by the domestic courts violated their rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

A. Admissibility

16. The Government asked the Court to dismiss the applicants' complaints for failure to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. The Government argued that the applicants had in particular failed to bring compensation proceedings against the relevant administration and/or public servants who had not complied with the requirements of the domestic courts' decisions. The Government further maintained that the judgments of the first instance court remained valid despite the inability of the İslahiye Municipality to pay the awards made. In this regard, the Government also contended that the rates of statutory interest which were applicable to the awards of the applicants were higher than the inflation rates. Accordingly, the Government claimed that the applicants could not be considered to have been deprived of any rights under Article 1 of the Protocol No.1.

17. As regards the preliminary objection concerning non-exhaustion of domestic remedies, the Court recalls in the first place that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to additional remedies to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Arat and Others v. Turkey*, nos. 42894/04, 42904/04, 42905/04, 42906/04, 42907/04, 42908/04, 42909/04 and 42910/04, § 19, 13 January 2009). In the same vein, the applicants were not required to bring compensation proceedings against the administrative bodies or public servants for the purposes of Article 35 § 1 of the Convention. In any event, none of the remedies that the Government pointed to was capable of offering the applicants any prospects of success in obliging the national authorities to pay the due amounts. In this regard, the Court further observes that the execution proceedings initiated by the applicants also remained fruitless. The Government's preliminary objection must therefore be rejected.

18. As for the second objection, that the complaints under Article 1 of the Protocol No. 1 are manifestly ill-founded, the Court observes that it has dismissed similar objections in its previous case-law (*Çiçek and Öztemel and Others*, nos. 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, § 37, 3 May 2007; *Ekici and Others v. Turkey* (no. 28877/03, § 26, 23 September 2008). It sees no reason to do otherwise

in the present case and therefore rejects the Government's objection. In this regard, the Court also recalls that the applicants' complaints relate to the authorities' failure to execute binding judgments, not to the question whether the applicable interest rates were higher than the inflation rates.

19. The Court considers moreover that this application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE NON-ENFORCEMENT OF THE DOMESTIC COURTS' JUDGMENTS

20. The applicants complained under Article 6 § 1 of the Convention of the State authorities' failure to execute the judgments of 21 May 2004 and 15 July 2004 with regard to the first applicant as well as the judgments of 23 May 2003 and 15 July 2004, respectively, with regard to the second applicant. In the absence of any appeal, these judgments became final on different dates.

21. The Court reiterates that the right to a fair hearing includes the right to have a binding judicial decision enforced. That right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. The execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 (*Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II).

22. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Whilst a delay in the execution of a judgment may be justified in particular circumstances, it may not be such as to impair the essence of the right protected by Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V). In the instant case, the applicants should not have been prevented from benefiting from the success of the litigation on the ground of the alleged financial difficulties experienced by the İslahiye Municipality.

23. The Court considers that by failing for around seven and eight years to ensure the execution of the binding judgments of 23 May 2003, 21 May 2004 and 15 July 2004, respectively, the Turkish authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see, among many others, *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 62-88, ECHR 2009-...).

24. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

25. The Court reiterates that a “claim” may constitute a “possession”, within the meaning of Article 1 of Protocol No. 1, if it is sufficiently established as enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, § 59, Series A no. 301-B).

26. The İslahiye Civil Court of First Instance’s judgments of 23 May 2003, 21 May 2004 and 15 July 2004, respectively, provided the aforementioned applicants with enforceable claims and not simply a general right to receive support from the State. The judgments had become final as no appeal was filed against them and enforcement proceedings had been instituted. It follows that the impossibility for these applicants to have the judgments in their favour enforced constituted an interference with their right to the peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

27. By failing to comply with the judgments of the labour court, the national authorities prevented the applicants from receiving the money to which they were entitled. The Government have not advanced any convincing justification for this interference and the Court considers that a lack of funds cannot justify such an omission (see, *mutatis mutandis*, *Ambruosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000, and *Burdov v. Russia*, no. 59498/00, §§ 35 and 41, ECHR 2002-III, *Çiçek and Öztemel and Others*, nos. 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, § 42, 3 May 2007; *Ekici and Others v. Turkey* (no. 28877/03, 23 September 2008, § 32).

28. It follows that there has been a violation of Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

29. Each of the applicants claimed 100,000 euros (EUR), in respect of pecuniary damage, corresponding to the potential financial benefits they had been deprived of on account of the non-payment of amounts ordered by the domestic courts. As regards non-pecuniary damage, each applicant claimed that he had suffered distress and hardship on account of the non-payment of the domestic judgment debts and requested EUR 100,000.

30. The Government contested these sums, alleging that they were based on fictitious calculations. They also submitted that, were the Court to find violations in the present cases, this would constitute sufficient compensation for any non-pecuniary damage allegedly suffered by the applicants.

31. The Court notes that it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 by reason of the non-execution of final judicial decisions. The Court considers in the light of its case-law that the payment by the Government of the outstanding judgment debts would satisfy the applicants' claim for pecuniary damage (see, among others, *Basoukou v. Greece*, no. 3028/03, § 26, 21 April 2005; *Ahmet Kılıç v. Turkey*, no. 38473/02, § 39, 25 July 2006; *Akıncı v. Turkey*, no. 12146/02, § 21, 8 April 2008; *Kaçar and Others*, cited above, § 30). The Court therefore considers that the respondent Government should ensure that the İslahiye Civil Court of First Instance's judgments of 23 May 2003, 21 May 2004 and 15 July 2004, respectively, are executed by the administration in full.

32. The Court further considers that the applicants must have suffered some non-pecuniary damage which cannot be sufficiently compensated by the finding of a violation alone. Consequently, taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards each of the applicants EUR 9,400 in respect of non-pecuniary damage.

B. Costs and expenses

33. Each of the applicants also claimed EUR 30,000 for the costs and expenses incurred before the domestic courts and the Court. They did not produce any supporting documents.

34. The Government contested this claim.

35. According to the Court's case law, an applicant is entitled 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, the applicants have neither substantiated nor documented that they have actually incurred the costs claimed. Accordingly, the Court makes no award under this head.

C. Default interest

36. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and 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:
 - (i) the amounts of the domestic judgment debts still owed to them, plus statutory interest applicable under domestic law;
 - (ii) EUR 9,400 (nine thousand four hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (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 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President