



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

SECOND SECTION

CASE OF ÇAKIR AND OTHERS v. TURKEY

(Application no. 25747/09)

JUDGMENT

STRASBOURG

4 June 2013

FINAL

04/09/2013

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

In the case of Çakır and Others v. Turkey,

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

Guido Raimondi, *President*,

Danutė Jočienė,

Peer Lorenzen,

Dragoljub Popović,

Işıl Karakaş,

Nebojša Vučinić,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 30 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 25747/09) 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 forty Turkish nationals, whose names are listed in the annex below, on 29 April 2009.

2. The applicants were represented by Mr M. Erşahin, a lawyer practising in Sinop. The Turkish Government (“the Government”) were represented by their Agent.

3. Relying on Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants alleged that the non-execution of the judgments in their favour violated their right of access to court and their right to peaceful enjoyment of property.

4. On 17 February 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants’ birth years are indicated in the annex below. They all live in Sinop.

6. On various dates in 2005 and 2006 the applicants brought separate sets of proceedings against their employer, claiming compensation for their unpaid salaries.

7. In 2006, 2007 and 2008 respectively, the Sinop Civil Court of General Jurisdiction, sitting as a Labour Court, delivered its judgments, ruling in favour of the applicants¹. The court stated that in addition to the compensation, the employer company had to pay proportional court fees² ranging from 66 to 785 Turkish liras (TRY)³.

8. On 20 October 2008 the applicants requested copies of the writs of execution in order to enforce the judgments in their favour, as the employer company had not paid the required court fees. They argued that the company had gone bankrupt and that they would not be able to obtain the compensation awarded to them by the court at a later date.

9. On 6 November 2008 the Sinop Civil Court of General Jurisdiction rejected the applicants' request. The court stated that pursuant to section 28(1)(a) of the Law on Fees (Law no. 492), the writs could not be served on the applicants unless all the fees were paid, either by the employer company or by the applicants themselves in the event that the former failed to do so.

10. The judgments in favour of the applicants have not been executed to date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. At the time of the events, section 28(1)(a) of the Law on Fees read:

“Section 28(1) – Time-limit for the payment of fees

The proportional fees set out in scale no. 1 shall be paid within the following periods:

(a) One quarter of the fees for the judgment and the writ shall be paid beforehand and the rest shall be paid within two months of the judgment's delivery ... The writ shall not be served on the party concerned unless the [court] fees for the judgment and the writ of execution are paid ...”

12. Decision of the Constitutional Court and the subsequent change in section 28(1)(a) of the Law on Fees

In a decision dated 14 January 2010, the Constitutional Court repealed the provision in the second sentence of section 28(1)(a). The court indicated that to put the burden of paying the court fees on the party whose case had been accepted and who had been held exempt from those very fees by the first-instance court's judgment was incompatible with the right of access to court and, in particular, with the right to have a judgment executed. In this

1. The dates of the domestic court's judgments are listed in the annex below.

2. The court fees required for each set of proceedings are indicated in the annex.

3. Between 35 and 410 euros at the time.

respect, the higher court pointed out that the repealed provision referred to proportional fees, which were calculated on the basis of the main amount at issue.

Subsequently, in July 2010 section 28(1)(a) was amended. Following that change, the second sentence reads as follows:

“... Failure to pay the court fees for the judgment and the writ of execution would not prevent the execution of the judgment, its service on the parties or the parties’ right to have recourse to appeal proceedings.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

13. The applicants complained that they had been unable to enforce the judgments in their favour owing to the domestic court’s refusal to provide them with copies of the said judgments. They further alleged that the non-enforcement of those judgments had violated their right to peaceful enjoyment of possessions. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

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

B. Merits

1. Article 6 § 1 of the Convention

15. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, 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. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 § 1 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, p. 510, and *Ülger v. Turkey*, no. 25321/02, § 38, 26 June 2007).

16. In so far as enforcement proceedings constitute an integral part of the trial, the Court considers that the right to a court, along with access to first-instance and appeal courts for the determination of “civil rights and obligations” (see *Kreuz v. Poland*, no. 28249/95, §§ 53-54, ECHR 2001-VI), equally protects the right of access to enforcement proceedings (see *Ülger*, cited above, § 39).

17. In the present case, the applicants, who had brought proceedings against their employer company for its failure to pay their salaries, were awarded compensation by the judgments of the Sinop Civil Court of General Jurisdiction. However, they could not have those judgments executed as the required court fees (see paragraph 7 above), which the domestic court had imposed on the defendant party, the employer company, were never paid.

18. In this connection, the Court reiterates that the right to access to a court is not absolute but may be subject to limitations; these are permitted by implication, since the right of access by its very nature calls for regulation by the State. However, the Court must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable

relationship of proportionality between the means employed and the aim sought to be achieved (see *Apostol v. Georgia*, no. 40765/02, § 57, ECHR 2006-..., and *Ülger*, cited above, § 41).

19. The Court further reiterates that, in order to determine whether or not a person enjoyed the right of access, the amount of the fees requested must be 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 (see *Apostol*, cited above, § 59).

20. The Court notes that, by invoking section 28(1)(a) of the Law on Fees, the domestic court imposed on the applicants a financial obligation, failure to comply with which barred their access to the judgments concerning their unpaid salaries and thus to the further enforcement proceedings. Accordingly, that obligation, which should have been borne by the other party and which was imposed on the applicants at the enforcement stage, constituted a restriction of a purely financial nature and therefore calls for particularly rigorous scrutiny from the point of view of the interests of justice (see *Apostol*, cited above, § 60, and *Osman Yılmaz v. Turkey*, no. 18896/05, § 41, 8 December 2009). In this connection, the Court takes account of the Constitutional Court's decision dated 14 January 2010, which repealed the provision in the second sentence of section 28(1)(a). It notes that the higher court found the said provision incompatible with the right of access to court, as it imposed the obligation to pay the court fees on the party whose case had been accepted and who was not legally liable for such fees pursuant to the judgment.

21. Moreover, the Court reiterates that the fulfilment of the obligation to secure effective rights under Article 6 § 1 of the Convention does not only mean the absence of interference but may also require positive action on the part of the State (see *Kreuz*, cited above, § 59). It considers that by shifting to the applicants the full responsibility to meet the court costs, the State avoided its positive obligation to organise a system for the enforcement of judgments which is effective both in law and in practice (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005, and *Osman Yılmaz*, cited above, § 42). Thus, some consideration should also have been given in the present case to the reasonable relationship of proportionality (see paragraph 18 above) between the payment of the court costs and the work required for the task in hand, namely merely providing the applicants with a copy of the judgment.

22. Accordingly, the Court finds that holding the applicants responsible for payment of the charges before they could receive copies of the judgments imposed an excessive burden on them and restricted their right of access to a court to such an extent as to impair the very essence of that right.

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

2. *Article 1 of Protocol No. 1 to the Convention*

24. 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 so as to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). The judgments delivered by the Sinop Civil Court of General Jurisdiction in the compensation proceedings brought by the applicants provided them with enforceable claims.

25. It follows that the impossibility for the applicants to have the judgments enforced constituted an interference with their right to the peaceful enjoyment of their possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Ülger*, cited above, §§ 49-50).

26. In the absence of any justification for that interference, the Court concludes that there has also been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. Relying on Article 13 of the Convention, the applicants reiterated their complaints that the judgments in their favour had not been executed.

28. The Court notes that this complaint is linked to those examined above and must therefore be declared admissible. However, having regard to the violations found under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention (see paragraphs 23 and 26 above), the Court does not consider it necessary to examine separately the applicants’ allegations under this head.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. The applicants did not submit any claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

30. However, it must be noted that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to identify, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court. The respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it. Consequently,

it is for the respondent State to remove any obstacles in its domestic legal system that might prevent the applicants' situation from being adequately redressed (see *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II, and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

31. Having regard to its findings in the instant case, the Court considers that the most appropriate form of redress would consist in removing the obstacles to enforcement by taking all necessary measures to ensure that the writs of execution can be issued, it being understood that the applicants may be partly or fully unable to recover their debts in the event of the debtor being bankrupt (see paragraph 8 above).

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 has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
5. *Holds* that the respondent State shall, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, remove the obstacles to the enforcement of the judgments indicated in the appended list, by taking all necessary measures to ensure that the writs of execution can be issued, it being understood that the applicants may be partly or fully unable to recover their debts in the event of the debtor being bankrupt.

Done in English, and notified in writing on 4 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President

ANNEX

Nº.	Name	Birth year	Date of judgment (Sinop Civil Court of General Jurisdiction)	Amount of court fee (in TRY)
1.	Kemal AKGÜN	1970	1 May 2007	601,30
2.	Sedat ALTUN	1965	1 May 2007	681,10
3.	Niyazi ATICI	1975	1 May 2007	578,80
4.	Cengiz AYRAN	1969	1 May 2007	376,50
5.	Durmuş BAŞ	1972	1 May 2007	537
6.	Yılmaz BAŞ	1973	1 May 2007	645,10
7.	Ayhan BAŞCAN	1964	28 November 2006	118,10
8.	Muammer ÇAKIR	1964	1 May 2007	632
9.	Salih CANEL	1968	1 May 2007	585,90
10.	Yücel ÇAVDAR	1985	22 January 2008	765
11.	Erdoğan ÇELEBİ	1972	1 May 2007	684,10
12.	Zekiye CİVAZ	1975	1 May 2007	66,90
13.	Şerafettin DAĞ	1973	1 May 2007	656,20
14.	Mete DAĞLI	1965	1 May 2007	544,50
15.	Davut DEMİR	1974	1 May 2007	596,15
16.	Kahraman Duygu GÖKALP	1964	22 January 2008	636,50
17.	Sinan GÖNENÇ	1970	1 May 2007	649,50
18.	Cengiz GÜN	1974	1 May 2007	142,30
19.	Mehmet KARA	1975	1 May 2007	678,80
20.	Reşit KARAARSLAN	1970	1 May 2007	533,50

21.	Ahmet KARAKAŞ	1969	1 May 2007	156,60
22.	Mustafa KARASU	1971	28 November 2006	185,50
23.	Yusuf Kenan KAYA	1950	22 April 2008	261,50
24.	Hasan KIRBIYIK	1966	1 May 2007	705,10
25.	Cengiz KOYUNCU	1965	1 May 2007	225
26.	Hakan ÖZBERK	1971	1 May 2007	678,10
27.	Ramazan ÖZCAN	1957	1 May 2007	655
28.	Güray Rahmi ÖZCAN	1970	1 May 2007	488,90
29.	Arif ÖZCAN	1973	1 May 2007	675,30
30.	İrfan ÖZCAN	1968	1 May 2007	488,20
31.	Faruk SAATÇIOĞLU	1982	1 May 2007	93
32.	Mehmet ŞİŞMAN	1975	1 May 2007	546
33.	Coşkun SOLMAZ	1973	1 May 2007	643,50
34.	Salih SOYLU	1973	1 May 2007	636,30
35.	Adem TEKİN	1980	28 November 2006	215,10
36.	Ahmet TEPE	1967	1 May 2007	507,90
37.	İlhan URHAN	1972	1 May 2007	461
38.	Sadettin UZUN	1976	1 May 2007	140,70
39.	Halit YILMAZ	1971	1 May 2007	669,70
40.	Cevdet YILMAZ	1966	1 May 2007	785,80