



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

SECOND SECTION

CASE OF DEMİRHAN, GÖRSAY AND ÇELİK v. TURKEY

(Application nos. 28152/02, 28155/02 and 28156/02)

JUDGMENT

STRASBOURG

5 June 2007

FINAL

05/09/2007

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 Demirhan, Görsav and Çelik 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. TÜRMEK,

Mr M. UGREKHIDZE,

Mr V. ZAGREBELSKY,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in three applications (nos. 28152/02 and 28155/02 and 28156/02) 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 three Turkish nationals, Mr Nezir Demirhan, Mr Mehdi Görsav and Mr Fırat Çelik (“the applicants”), on 18 June 2002.

2. The applicants were represented by Mr Sedat Çınar, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants complained that the non-enforcement of court decisions in their favour had given rise to a violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

4. On 12 September 2006 the Court decided to give notice of the applications. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants are all Turkish nationals and live in Diyarbakır.

6. Until 4 May 1999 the applicants were employed as manual workers by the Diyarbakır Sur Municipality (“the Municipality”). On that date, the

Municipality discharged 153 employees, including the applicants, without paying their wages, a dismissal indemnity or any other pecuniary rights to which they were entitled pursuant to domestic labour law.

7. On 2 June 1999 the applicants brought separate actions for compensation against the Municipality before the Diyarbakır Labour Court.

8. On 11 November 1999 the court ruled in their favour and ordered the Municipality to pay 743,859,795 Turkish liras (TRL)¹ to Mr Demirhan, TRL 1,000,000,000² to Mr Görsav and TRL 774,821,795³ to Mr Çelik, plus statutory interest running from 2 June 1999. It also ruled that the legal costs and expenses of the proceedings should be borne by the Municipality.

9. In the absence of an appeal, the judgments became final on 11 November 1999.

10. On an unspecified date, the applicants initiated enforcement proceedings against the Municipality. However, their efforts proved futile as the Municipality refused to comply with the judgments.

11. On 15 February 2001 and 21 March 2001 the applicants' representative requested the Diyarbakır Governor's Office and the Ministry of Internal Affairs to intervene on their behalf in order to facilitate the enforcement of the court's judgments.

12. On 9 May 2001 the Diyarbakır Governor's Office informed the applicants' representative that they had written to the Municipality requesting them to redress the applicants' grievances. However, the Municipality did not make any payment since it was underfunded.

13. On 20 June 2002 Mr Mehdi Görsav reached a friendly settlement agreement with the Municipality. The friendly settlement protocol stipulated that the applicant would waive all of his claims, including the principal amount of compensation determined by the Labour Court, interest and all costs and fees, if he were to be paid TRL 1,025,815,000. The protocol also stated the applicant would receive this sum in five instalments. Between 27 June 2002 and 21 November 2002 this amount was paid to the applicant.

14. In the meantime, Mr Fırat Çelik initiated enforcement proceedings in order to recover his compensation. However, on 19 December 2002 his case was struck out by the enforcement office since he did not pursue his application.

15. By letters dated 6 January 2005 the Municipality invited Mr Fırat Çelik and Mr Nezir Demirhan to receive within seven days the principal amount awarded by the Labour Court. However, the applicants declined the invitation since the sum offered did not cover the interest, costs and fees awarded by the Labour Court.

¹ Approximately 1,450 EUR at the time.

² Approximately 1,950 EUR at the time.

³ Approximately 1,500 EUR at the time.

RELEVANT DOMESTIC LAW AND PRACTICE

16. Article 138 § 4 of the Turkish Constitution provides:

“The bodies of executive and legislative power and the authorities must comply with court decisions; they cannot in any circumstances modify court decisions or defer the enforcement thereof.”

17. Article 28 § 2 of the Code of Administrative Procedure reads:

“2. Decisions and judgments in administrative-law actions concerning a specific amount shall be enforced ... in accordance with the provisions of the ordinary law.”

18. Under Section 82(1) of the Enforcement and Bankruptcy Act (Law no. 2004), State property cannot be seized. Likewise, Section 19(7) of the Municipalities Act (Law no. 1580 of 3 April 1930) provides that municipal property that is assigned to a public service cannot be seized.

THE LAW

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

I. THE APPLICANTS' VICTIM STATUS

20. The Government submitted that, after the applications were lodged, the Municipality had invited the applicants to collect the outstanding amounts payable to them. As a result, Mehdi Görsav had reached a friendly settlement agreement with the Municipality. Although the other two applicants declined the offer, funds were made available to them via the account of the local enforcement office. The Government therefore asked the Court to strike the applications out of the Court's list of cases.

21. The applicants contended that the impugned protocol had been made due to the financial vulnerability of Mehdi Görsav and that the deposited amounts for Nezir Demirhan and Fırat Çelik merely constituted partial payments.

22. The Court notes that the Municipality signed a settlement protocol with Mehdi Görsav. The protocol stipulated that the applicant waived any outstanding compensation claims, rights and other credits including costs, expenses and legal fees, against the payment of certain lump sum amounts.

23. The Court finds that the friendly settlement reached between the parties bear a critical impact on the application under examination. In similar cases, it has previously found that the matter had been resolved for those applicants who signed such settlements and received the relevant amounts, given that their complaints were based on the very issue of

non-payment (*Yıldırım and Durman v. Turkey* (dec.), no. 49507/99, *Bilgin v. Turkey* (dec.), no. 69821/01, 3 November 2005; *Şahin v. Turkey* (dec.), no. 33902/02, 20 October 2005). With respect to Mr Mehdi Görsav, the Court finds no reason to depart from its established case-law. In the Court's opinion, Mr Görsav, who signed a protocol and received a certain amount, can no longer be considered a victim of a violation of Article 1 of Protocol No. 1.

24. However, this reasoning does not require the Court to strike his application out of its list of cases. It notes that the above-mentioned case-law only dealt with complaints under Article 1 of Protocol No. 1. Thus, the “matter” which was resolved through the settlement protocol was the “deprivation of property” complaints. Indeed, while the payment of outstanding amounts may sufficiently respond to property-related matters, other complaints, if submitted separately, would remain unresolved unless the State took additional action to remedy them.

25. In this connection, the Court notes that Mr Görsav also complained under Article 6 § 1 of the Convention on account of the authorities' failure to execute the labour court's judgment for a significant period of time. It further notes that the case file does not contain any indication that the Government have separately remedied that grievance. This being so, the Court considers that Mr Görsav's victim status has been removed *only* in the context of Article 1 of Protocol No. 1. His complaints under Article 6, however, require a separate examination on the merits (see, *mutatis mutandis*, *Guerrera and Fusco v. Italy*, no. 40601/98, §§ 54-55, 3 April 2003).

26. Finally, with regard to the amounts deposited in the account of the local enforcement office in favour of Nezir Demirhan and Fırat Çelik, the Court observes that these amounts failed to correspond entirely to the Labour Court's judgments. These amounts consisted of the original debts, without the interest, costs and expenses which had been awarded. As such, they fell short of the actual amounts payable to the applicants under the domestic legislation regulating the late payment of labour claims. Thus, the Court finds that Nezir Demirhan and Fırat Çelik can still claim to have been the victims of violations of Article 6 of the Convention as well as Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

27. The applicants Nezir Demirhan and Fırat Çelik complained that the authorities' failure to pay the judgment debts had breached their rights to the peaceful enjoyment of their possessions. They relied on Article 1 of Protocol No. 1, which reads, in relevant part, as follows:

“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.”

A. Admissibility

28. In addition to their submission that the applicants could no longer be considered victims (paragraph 20 above), the Government also raised the following admissibility challenges.

29. First, they submitted that the Court lacked jurisdiction *ratione materiae*. According to the Government, the Convention and its Protocols do not protect economic and social rights. Article 1 of Protocol No. 1 should not cover rights such as severance pay or dismissal indemnities.

30. Secondly, the Government argued that the applicants had failed to exhaust all domestic remedies. They submitted that, once the applicants failed to recover the judgment debts, there were a number of options available to them under Turkish law. They could have initiated criminal proceedings against the municipal authorities for failure to comply with court judgments, filed fresh cases to seek temporary remedies such as a stay of execution or applied for a certificate of insolvency (*aciz vesikası*) which would have allowed them to resume enforcement proceedings at any time in the future. Furthermore, Fırat Çelik did not follow up his case in the enforcement office and Nezi̇h Demirhan failed to initiate any enforcement proceedings whatsoever.

31. Thirdly, the Government argued that the complaints under Article 1 of Protocol No. 1 were manifestly ill-founded as the judgments of the labour court remained valid, despite the inability of the Municipality to pay the debt. Accordingly, the applicants could not be considered to have been deprived of any rights.

32. With regard to the Government's jurisdictional challenge, the Court recalls that the present applications do not concern the question of whether the applicants are entitled to certain economic and social rights under the Convention. The Diyarbakır Labour Court has already addressed that issue as a matter of domestic labour law and resolved it in favour of the applicants. The only matter before this Court is whether the non-execution of the labour court's judgments raises issues under the Convention and its Protocols.

33. In this context, the Court recalls that, in its well-established jurisprudence, Article 1 of Protocol No. 1 as well as Article 6 of the Convention are applicable to non-payment of a judgment debt. Accordingly, the Court dismisses the challenge to its competence.

34. As regards the Government's “non-exhaustion” objection, the Court recalls 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 proceedings, such as enforcement proceedings, in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004). In the same vein, the applicants were not required to seek a temporary remedy or a certificate of insolvency or to initiate criminal proceedings for the purposes of Article 35 of the Convention. In any event, none of the remedies cited by the Government was capable of offering the applicants any prospect of success in forcing the national authorities to pay the due amounts.

35. The Court consequently dismisses the preliminary objection regarding the exhaustion of domestic remedies.

36. With regard to the third preliminary objection, the Court observes that the fact that the Labour Court's judgments remain valid has no bearing on the complaints before it. The complaints relate to the authorities' failure to execute binding judgments, not to the question of whether the judgments have become invalid. Accordingly, the Court also dismisses the argument that the applicants were not deprived of their rights.

37. In the light of the foregoing, the Court concludes that the applications submitted by Nezir Demirhan and Fırat Çelik, who have not reached friendly settlement agreements with the Municipality, require an examination on the merits and there are no other grounds for declaring them inadmissible.

B. Merits

38. The Court reiterates that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

39. The Diyarbakır Labour Court's judgments of November 1999 provided the 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 the applicants who have not reached settlements with the Municipality, to enforce the judgments in their favour 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.

40. 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 justification for this interference and the Court considers that a lack of funds cannot justify such an omission (see, *mutatis mutandis*, *Ambrosi v. Italy*, no. 31227/96, §§ 28-34, 19 October 2000).

41. It follows that there has been a violation of Article 1 of Protocol No. 1 in respect of Nezir Demirhan and Fırat Çelik.

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

42. The applicants also complained that the failure by the authorities to comply with the labour court's judgments for a long period of time constituted a violation of their rights protected under Article 6 § 1 of the Convention which provides:

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

A. Admissibility

43. The Court notes that the complaint 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

44. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his 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. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. 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 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

45. 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 under 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 alleged financial difficulties experienced by the Diyarbakır Sur Municipality.

46. The Court notes that the Diyarbakır Labour Court's judgments of November 1999 remained unenforced wholly or in part at least until a settlement protocol was made with Mehdi Görsav, and are still unenforced for Nezir Demirhan and Fırat Çelik.

47. In view of the above, the Court considers that, by failing for years to take the necessary measures to comply with the final judicial decisions in the present case, the authorities deprived the provisions of Article 6 § 1 of all useful effect.

48. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of all of the applicants.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. In respect of pecuniary damage, the applicants claimed the following amounts:

- Nezir Demirhan, 9,600 euros (EUR);
- Mehdi Görsav, EUR 12,337; and
- Fırat Çelik, EUR 11,618.

51. According to the applicants, these sums were equivalent to those which the judgments debts would have grown into, if they had been paid promptly and deposited in a savings account.

52. Furthermore, each of the applicants claimed EUR 3,000 in respect of non-pecuniary damage.

53. 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 case, this would constitute sufficient compensation for any non-pecuniary damage allegedly suffered by the applicants.

54. The Court finds that, in accordance with its finding of a violation of Article 1 of Protocol No. 1, Nezir Demirhan and Fırat Çelik are entitled to pecuniary damages. Bearing in mind that the applicants' complaint related to the non-payment of judgment debts, the Court finds that the payment by the Government of these outstanding amounts, including any interest incurred

under the applicable domestic law for the late payment of employment claims, would satisfy the applicants' claims for pecuniary damages.

55. In view of its conclusion concerning the victim status of Mehdi Görsav in respect of his complaint under Article 1 of Protocol No. 1, the Court dismisses his claim for pecuniary damages.

56. Given its finding of a violation of Article 6 § 1 of the Convention on account of the significant period of time during which the domestic judgments remained unenforced, the Court considers that the applicants' prejudice cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the case and having regard to its case-law and deciding on an equitable basis, the Court awards EUR 4,000 for each of the applicants Mr Nezir Demirhan and Mr Fırat Çelik and EUR 1,500 for Mr Mehdi Görsav in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicants each claimed around EUR 1,101 for the costs and expenses incurred during the proceedings before the domestic authorities and the Court.

58. The Government contended that the applicants' claims were wholly unsubstantiated.

59. 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 500 for costs and expenses incurred by each of the applicants.

C. Default interest

60. 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 complaints under Article 1 of Protocol No. 1 admissible in respect of Nezir Demirhan and Fırat Çelik and inadmissible with regard to Mehdi Görsav;
3. *Declares* the complaints under Article 6 § 1 of the Convention admissible;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of Nezir Demirhan and Fırat Çelik;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all the applicants;
6. *Holds*
 - (a) that the respondent State is to pay to Nezir Demirhan and Fırat Çelik, within three months from the date on which the judgment becomes final, the amounts of the domestic judgment debts still owed to them, plus statutory interest applicable under domestic law;
 - (b) that the respondent State is also to pay to each applicant the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 4,000 (four thousand euros) for each of the applicants Mr Nezir Demirhan and Mr Fırat Çelik and EUR 1,500 (one thousand five hundred euros) for Mr Mehdi Görsav for non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) for costs and expenses;
 - (iii) plus any taxes that may be chargeable;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President