



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

SECOND SECTION

CASE OF ÜLGER v. TURKEY

(Application no. 25321/02)

JUDGMENT

STRASBOURG

26 June 2007

FINAL

26/09/2007

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 Ülger 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 I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 5 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 25321/02) 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 a Turkish national, Mr Muharrem Ülger (“the applicant”), on 10 June 2002.

2. The applicant was represented by Ms N. Ünal, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained, in particular, that the failure to execute a final judgment given in his favour had been incompatible with the Convention. He invoked Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that respect.

4. On 13 December 2005 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

5. The applicant was born in 1955 and lives in Ankara.

6. He worked in a construction yard in Russia for a Turkish Company, YAPITEK Construction, Industry and Commerce Limited Corporation (hereinafter “the company”), from 14 October 1996 until 9 May 1998.

7. On 28 June 1999, the applicant brought a case against the company before the Ankara Labour Court. He claimed that the company had made him stay and wait for four months in Turkey where he had returned for a holiday. However, he was neither sent back to Russia nor given work in Turkey. He submitted that no payment had been made to him concerning his salary for this period and that he had not been notified of the termination of his contract. He requested the court to rule on his unpaid salary and compensation for the length of his service (*kıdem tazminatı*) and the lack of any dismissal notice (*ihbar tazminatı*), together with interest.

8. On 1 July 1999 the court made the first examination on the case file and decided to hold a hearing on 5 October 1999, before which date the company was required to submit its replies, with any evidence.

9. The defendant did not appear at the hearings of 5 October and 18 November 1999 although the summons had been duly served.

10. On 27 January 2000 the court took evidence from two of the witnesses whom the applicant wished to have examined, who were his co-workers at the construction yard. The applicant's lawyer stated that they would ensure that a third witness would be present at the next hearing.

11. On 21 March 2000 the court heard the third witness. At the end of the hearing, the court decided to obtain an expert report and, accordingly, sent the case file to the expert after the necessary fee had been deposited by the applicant.

12. The first expert report dated 12 April 2000 stated that the company was liable to pay the applicant compensation for his length of service, for non-notification of the termination of his contract and for his unpaid salary. The amounts due were also assessed in the report.

13. On 28 April 2000 the applicant's lawyer objected to the report, claiming that the amounts were insufficient and requesting that it be reviewed by another expert.

14. On 4 May 2000, the court decided to obtain an additional expert report from the same expert once an additional fee had been deposited by the applicant. Accordingly, a second report was prepared by the same expert and submitted to the court. This report stated that the claim made by the applicant's representative was valid in respect of the amount of compensation for his length of service. This should have been in the sum of 787.5 US dollars. The applicant's lawyer challenged that report and requested a further assessment, to be made by another expert.

15. The applicant's representative did not attend the hearing on 20 June 2000. The court decided to discontinue the proceedings unless a request for resumption was put before it. Upon the request by the applicant's lawyer, the case was reinstated on 26 June 2000 and a hearing was scheduled for 13 July 2000.

16. On 13 July 2000 the court decided that, if the necessary fees were deposited by the applicant within three days, an order would be sent to the defendant requesting payslips showing that the applicant had been paid a salary for five months after he had returned to Turkey. The company would be warned that, unless these payslips were provided, it would be assumed that no salary had been paid. The hearing was postponed to 5 October 2000. The defendant company did not respond to the order despite the formal warning.

17. On 5 October 2000 the court decided to obtain another expert report, the cost of which was to be paid by the applicant. The report, in which the abovementioned five-month period had been taken into account, was submitted to the court on 27 November 2000.

18. On 18 January 2001 the applicant's lawyer requested that another case pending before the court, which was grounded on the same facts and in which additional compensation had been claimed, be joined to the present case. The court decided to join the proceedings as requested and postponed the hearing to 13 March 2001.

19. On 13 March 2001 the Ankara Labour Court awarded the applicant 9,424.50 US dollars in total in compensation for the length of his service, the lack of dismissal notice and his unpaid salary. In the judgment, it was stated that the proportionate court fee for the judgment was 524,190,700 Turkish liras¹. This fee, less the amount paid by the applicant at the beginning of the proceedings, was to be borne by the defendant company.

20. On 22 May 2001 the court ordered the bailiffs' tax office to levy the court fee from the company.

21. On 10 December 2001 the applicant's lawyer submitted a petition to the court, in which she requested that the judgment be served on her to enable the commencement of enforcement proceedings. She stated that the applicant had won his case whilst the defendant company, in addition to the payment of compensation, had been held liable for the legal costs and charges. She pointed out the risk that the company, which had a known address at the time of the judgment, would attempt to evade its obligations by moving elsewhere, on account of its financial crisis. She further maintained that the applicant would be willing to pay the court costs in order to obtain the judgment, but did not have sufficient means to do so.

22. On the same day the court rejected this request on the ground that it was impossible under Article 28 (a) of the Law on Charges (Law no. 492) to serve a copy of the judgment unless the court costs had been discharged.

23. The applicant was therefore unable to bring enforcement proceedings in order to have the abovementioned judgment executed. In the meantime, the company has apparently relocated.

1. The equivalent of 598 euros ("EUR") at the relevant time

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The relevant Articles of the Law on Charges (Law no. 492 of 2 July 1964) read as follows:

Article 28 § 1 – “The time-limit for the payment of charges”

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

(a) One quarter of the charges 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] charges for the judgment and a writ of execution are paid....”

Article 32- “Non-payment of charges”

“As long as the relevant charges for the judicial processes are not paid, the subsequent processes shall not be executed. If the charges which were not paid by the party concerned are paid by the other party, the process shall be continued and the amount shall be taken into consideration in the judgment without the need for any request to this effect.”

Article 37 § 1

“Charges not paid within the periods foreseen in this Law shall be notified by the court or legal office to the relevant tax office within fifteen days from the expiry of the abovementioned time-limit, and the charges shall be recuperated by the tax office. This order shall include the nature and amount of the charge and the tax-payer's details, including the address.”

THE LAW

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

25. The applicant complained that the length of the civil proceedings against the company had been excessive and that he had been unable to enforce the judgment in his favour owing to the refusal of the domestic court to provide him with a copy. He further alleged that the non-enforcement of that judgment had violated his right to the peaceful enjoyment of his possessions. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

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

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

26. The Government submitted that the application must be rejected for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. They contended that the applicant had failed to avail himself of the remedy provided by domestic law. They claimed that the proceedings would continue if the charges that had not been paid by the responsible party were paid by the applicant. They referred to the Court's decision on the case of *Poghosyan v. Armenia* (no. 36211/03, 5 October 2006) by which it declared the application inadmissible for non-exhaustion of domestic remedies. They maintained that, in that case, the Court had examined whether the failure of the applicant to institute proceedings had been a result of a State omission or the applicant's own actions, and had concluded that the applicant had failed to take all possible and accessible measures to advance the enforcement of the judgment. They maintained that, in the instant case, regard should also be had to the fact that the debt arising from the judgment was not owed by a State enterprise but by a private limited company.

27. The Court notes that in the abovementioned case the relevant domestic authorities had instituted enforcement proceedings and undertaken all the necessary measures in order to recover the debt arising from the domestic court's judgment. Therefore, they had in fact started executing the judgment in respect of which the applicant was expected to apply to the relevant court with a concrete claim pursuant to the domestic law. It remained to the Court to determine whether that applicant's failure to institute proceedings had been the result of a State omission or his own action. The Court, duly noting that the domestic court had not treated the applicant's case with sufficient diligence, nevertheless accepted that this fact did not prevent the applicant from re-applying to the same first-instance

court at any time with a properly drafted claim, as required by the domestic law. Thus, the Court concluded that the applicant himself had failed to take all the possible and accessible measures to advance the enforcement of the judgment, and declared the application inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

28. However, in the present case, the Court observes that the applicant had duly applied to the relevant authority, the Ankara Labour Court, to obtain a copy of the judgment in order to have it executed. The applicant's request was refused on the ground that there were outstanding court costs to be paid by the other party. The Court notes that there was no other authority to which the applicant could have or should have applied to ensure the enforcement of the judgment of the Ankara Labour Court under the domestic law of the respondent State. Therefore the applicant used the only domestic remedy available to him. Consequently, the Government's objection in this respect must be rejected.

29. The Government further maintained that the applicant's complaint must also be dismissed for non-compliance with the six-month rule under Article 35 § 1 of the Convention. In this connection, they contended that the judgment given in the applicant's favour had been delivered on 13 March 2001 and that, according to Article 28 (a) of the Law on Charges, the court costs should have been paid within two months of that date. After the expiry of the two month period on 21 May 2001, the court, in compliance with Article 37 of the Law on Charges, ordered the bailiffs' tax office to recover the unpaid charges from the company. From this date until the reply given to the applicant's petition of 10 December 2001, no further proceedings were conducted since the costs had not been paid by the defendant. They argued that the applicant was therefore aware of the fact that the judgment would not be served on him unless he paid the necessary charges long before his petition of 10 December 2001.

30. The applicant disputed the Government's argument and claimed that his claim had not arisen on account of the court's judgment but because of the non-enforcement of it. Thus, the date of the judgment could not be taken as the starting point of the six-month time-limit. Instead, the relevant date was 10 December 2001, when the domestic court explicitly stated that the judgment would not be served on him, in other words, when the enforcement had been prevented.

31. The Court reiterates that, if no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of. Special considerations could apply in exceptional cases where an applicant first pursues a domestic remedy and only later becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002).

32. The Court notes that on 10 December 2001 the domestic court refused the applicant's request to have the judgment served on him. He lodged his application with the Court on 10 June 2002 that is exactly within six months of 10 December 2001. The Court therefore dismisses the Government's objection of failure to comply with the six-month rule.

33. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

34. The Government submitted that, in the present case, the length of the proceedings had not exceeded a reasonable time. They argued that the court had collected evidence, had obtained three expert reports and had heard the applicant's witnesses. The case had been concluded within a period of less than two years and without any period of inactivity. They contended that, in these circumstances, the length of the case could not be regarded as excessive.

35. They further stated that, at the outset, what was at stake in this case was not a refusal by the authorities to enforce the judgment. The reason for this non-enforcement was that it was impossible to serve the judgment on the applicant without the necessary charges first being paid. They added that the non-service of the judgment on the applicant was therefore in compliance with the domestic law and that the court had sent an order to the bailiff's tax office for the recovery of the charges from the defendant company.

36. They contended that the lodging of enforcement proceedings would have been possible if the court costs had been paid by the applicant. Article 32 of the Law on Charges provided that subsequent proceedings would not be conducted unless the relevant charges were paid, but also that any payments made by the successful party would be taken into account at the end of the proceedings. That is to say, the applicant had the possibility to pay the charges, thereby starting the enforcement proceedings, and then have this amount recovered, together with the rest of the debt. They concluded therefore that the applicant should bear the responsibility for the non-execution of the judgment in his favour, since he had refused to use this opportunity under domestic law.

37. The applicant maintained that, by virtue of this law, the State was empowered to collect the charges from those whose loss had already been recognised by the courts, victimising once more the injured party. He added that, because of this practice, parties in the right could not obtain the sums awarded by court orders if they did not or could not pay the charges which should be borne by the losing party.

1. Article 6 § 1 of the Convention

38. 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. 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 this provision as being exclusively concerned with access to a court and the conduct of proceedings could 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 § 1 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40, and *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III).

39. 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 and 54, ECHR 2001-VI), equally protects the right of access to enforcement proceedings (see, *mutatis mutandis*, *Manoilescu and Dobrescu v. Romania* (dec.), no. 60861/00, ECHR 2005-....).

40. With regard to the present case, the Court considers that the question whether or not the applicant could have had the court costs reimbursed after the enforcement of the impugned judgment is not relevant to the situation he complained of under Article 6 § 1 of the Convention. The issue here is the fact that the obligation to pay the charges in advance, which should have been borne by the losing party, prevented him from having the binding judgment in his favour served on him and, thereafter, from being able to initiate enforcement proceedings.

41. It is recalled in this connection that the right to have 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 *Waite*

and *Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I, and *Apostol v. Georgia*, no. 40765/02, § 57, ECHR 2006-...).

42. The Government submitted that the reason for the non-enforcement of the judgment had been the impossibility under domestic law of serving the judgment on the party concerned unless the outstanding court costs had been paid. However, the Court notes that, by invoking Article 28 (a) of the Law on Charges, the court imposed on the applicant a financial obligation, failure to comply with which barred his access to the judgment and thus to the further enforcement proceedings.

43. The Court recalls that in order to determine whether or not a person has enjoyed the right of access, the reasonableness of the amount of the court costs imposed is to 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 obligation has been imposed (see *Kreuz*, cited above, § 60). In this connection, the Court observes that the applicant was a construction worker. He brought the proceedings against the respondent company to obtain his unpaid salary. The court partly accepted the applicant's claim and awarded him approximately EUR 10,000 in compensation. The remaining court costs were around EUR 598. The applicant, although apparently willing to pay the charges in order to obtain what he was owed, no longer had sufficient means to do so.

44. 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 an 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 applicant 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). Thus, some consideration should also have been given in the present case to the reasonable relationship of proportionality (paragraph 41 above) between the amount and payment of the court costs, the applicant's ability to pay them and the work required for the task in hand, i.e. merely providing him with a copy of the judgment.

45. In the light of the above considerations, the Court finds that holding the applicant responsible for the payment of the charges before he could receive a copy of the judgment imposed an excessive burden on him and restricted his right of access to a court to such an extent as to impair the very essence of that right.

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

47. Finally, the Court notes that, in the present case, the length of proceedings constituted an integral part of the applicant's complaint about the non-execution of the judgment. Therefore, it does not find it necessary to examine this aspect of the complaint separately.

2. Article 1 of Protocol No. 1

48. 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*, cited above, § 40, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). The judgment of 13 March 2001 provided the applicant with an enforceable claim.

49. It follows that the impossibility for the applicant to have the decision enforced constituted an interference with his right to the peaceful enjoyment of his possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

50. 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

51. The applicant further complained under Article 13 of the Convention that the domestic court's decision had remained inoperative on account of the obstacle created by the domestic court.

52. 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 (paragraphs 46 and 50 above), the Court does not consider it necessary to examine separately the applicant's allegations under this head.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Lastly, the applicant complained of violations of Articles 1 and 17 of the Convention without any specific reasoning.

54. The Court finds nothing whatsoever in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. 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.”

A. Damage

56. The applicant claimed EUR 15,005 in respect of pecuniary damage and EUR 50,000 for non-pecuniary damage.

57. The Government disputed these claims.

58. The Court notes that the pecuniary damage sustained by the applicant related to the non-enforcement of the judgment awarding him compensation. Having regard to the amount awarded to the applicant by that judgment as well as the economic circumstances at the material time, the Court awards the applicant EUR 10,000 in respect of pecuniary damage. This award should be in final settlement of the applicant's outstanding domestic claim.

59. The Court considers that the applicant has also suffered non-pecuniary damage as a result of the violations found. However, the particular amount claimed is excessive. Making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 1,000 under this head.

B. Costs and expenses

60. The applicant also claimed EUR 3,198 in respect of costs and expenses incurred before the domestic court and EUR 3,618 for those incurred before the Court.

61. The Government contested the claims, arguing that the applicant had failed to substantiate them.

62. 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 covering costs and expenses under all heads.

C. Default interest

63. 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 complaint concerning Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) for pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) for non-pecuniary damage;
 - (iii) EUR 1,500 (one thousand five hundred euros) for costs and expenses;
 - (iv) any tax that may be chargeable;
 - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F TULKENS
President