



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

SECOND SECTION

CASE OF AYGÜN AND OTHERS v. TURKEY

(Applications nos. 5325/02, 5353/02 and 27608/02)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Aygün and Others 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,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELENŞ-PASSOS, Deputy Section Registrar,

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in three applications (nos. 5325/02, 5353/02 and 27608/02) 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 the applicants, whose names appear in the appendix attached to the present judgment.

2. The applicants were all 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. On 11 November 2006, the Court decided to give notice of the applications to the Government. 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

I. THE CIRCUMSTANCES OF THE CASE

4. In May 1999 the applicants were laid off by the Diyarbakır Sur municipality, with which they had been employed.

5. Each of the applicants brought an action in the Diyarbakır Labour Court, claiming outstanding salaries, dismissal indemnities, severance pay and other pecuniary rights.

6. In November 1999 the court ruled in their favour and ordered the municipality to pay the applicants certain amounts in Turkish liras (TRL), including costs, together with interest running from June 1999.

7. In the absence of an appeal the judgments became final on 19 November 1999.

8. In the following months, the applicants initiated enforcement proceedings in order to receive the due amounts. As their efforts proved fruitless, they requested the Diyarbakır Governorship to intervene in order to facilitate the enforcement of the court's judgments. The Governor's Office informed the applicants that it had requested the municipality to redress their grievances. However, due to lack of funds, the municipality did not make any payment.

9. At the date of introduction of the present applications, the relevant judgment debts were still outstanding. Thereafter, on an unspecified date, Hatip Bozyl received his full award of 724 New Turkish liras (YTL) and friendly settlement agreements were reached between the following applicants and the municipality on the dates indicated:

- Ramazan Fidancan on 6 February 2002;
- Muhyettin Babayiğit on 11 April 2002;
- Ali Rıza Babayiğit on 27 October 2004;
- Talat Tunç on 21 May 2002;
- Hüseyin and Mehmet Şirin Kamik on 30 December 2003; and
- Fahri Açı on 13 May 2005.

10. No settlement was reached in respect of the other applicants. However, the municipality deposited certain partial amounts in the relevant account at the local enforcement office, which amounts were made available to some of the applicants and paid later.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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.”

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

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

13. 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

14. 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

15. 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, six of the applicants had reached friendly settlement agreements with the municipality. Although the rest of the applicants declined the offer, funds were made available to them in 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.

16. The applicants contended that certain settlements had had to be made due to their financial vulnerability and that the deposited amounts merely constituted partial payments.

17. The Court will examine the present application in the light of the principles enshrined in the judgment of *Çiçek and Öztemel and Others v. Turkey*, (nos. 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, §§ 18-26, 3 May 2007).

18. The Court observes that the municipality signed settlement protocols with Ramazan Fidancan, Muhyettin Babayiğit, Ali Rıza Babayiğit, Talat Tunç, Hüseyin Kamik, Mehmet Şirin Kamik and Fahri Açı (paragraph 9 above).

19. The protocols stipulated that these applicants waived any outstanding domestic compensation claims, rights and other credits including costs, expenses and legal fees, against the payment of certain lump sum amounts. Furthermore, Ali Rıza Babayiğit, waived any potential rights and claims in connection with his application before the Court.

20. Consequently, the Court finds that Ali Rıza Babayiğit can no longer be considered a victim of a violation of the Convention, given the provisions of the full settlement agreement which he signed. It follows that application no. 5353/02 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention in so far as it was brought by Ali Rıza Babayiğit.

21. As regards Fahri Açı, Mehmet Şirin Kamik, Hüseyin Kamik, Ramazan Fidancan, Talat Tunç and Muhyettin Babayiğit, however, the Court considers that their victim status has only been partially reduced by the agreements they reached. The domestic settlement only covers their claims under Article 1 of Protocol No. 1. Their complaints under Article 6 § 1 of the Convention therefore still require a separate examination on the merits.

22. Finally, with regard to the amounts deposited in the account of the local enforcement office in favour of the remaining applicants, the Court observes that these amounts failed to correspond to the full awards of the labour court's judgments. Instead these sums only covered the original debts owed to the applicants, without the interest or 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. Accordingly, the Court finds that Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönner can still claim to have been the victims of violations of both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

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

23. The applicants complain that the authorities' failure to pay the judgment debts breached their right 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.”

24. For the reasons explained in the preceding paragraphs, the Court limits the examination of this complaint to the applicants Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönner.

A. Admissibility

25. In addition to their submission that the applicants could no longer be considered victims (paragraph 15 above), the Government also raised the following objections to the admissibility of the cases.

26. First, the Government argued that the applicants had failed to exhaust domestic remedies. They submitted that, once the applicants were unsuccessful in recovering the judgment debts, there were a number of options available to them under Turkish law. They could have initiated criminal proceedings against the municipality for failure to comply with the judgments, filed new cases to seek temporary remedies such as an injunction, 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, the Government pointed out that some of the applicants had failed to initiate enforcement proceedings.

27. Secondly, the Government contended 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 awards made. Accordingly, the Government maintained that the applicants could not be considered to have been deprived of any rights.

28. The Court observes that it dismissed similar preliminary objections in the *Çiçek and Öztemel and Others* case (cited above, §§ 28-39). It sees no reason to do otherwise in the present applications and therefore rejects the Government's objections.

29. The Court concludes that the property complaint made by the applicants cited at paragraph 24 above requires an examination on the merits and that there are no other grounds for declaring it inadmissible.

B. Merits

30. 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, Series A no. 301-B, p. 84, § 59).

31. The Diyarbakır Labour Court's judgments in November 1999 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 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.

32. 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, *Burdov v. Russia*, no. 59498/00, §§ 35 and 41, ECHR 2002-III).

33. It follows that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicants Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyıl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönder.

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

34. The applicants also complained that the failure by the authorities to comply with the labour court's judgments over a long period breached the “reasonable time” requirement of Article 6 of the Convention which provides:

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

A. Admissibility

35. The Court notes that this 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 in respect of all the applicants, except for Ali Rıza Babayiğit (paragraphs 19-20 above).

B. Merits

36. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to the individual's 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 the 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 court and the fair 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 of Judgments and Decisions* 1997-II, p. 510, § 40).

37. 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 cases, 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 Diyarbakır Sur Municipality.

38. The Court notes that the Diyarbakır Labour Court's judgments of November 1999 remained unenforced wholly or in part (with the exception of Ali Rıza Babayiğit's case, paragraph 19 above).

39. In the light of these considerations, the Court finds that by failing, over a period of several years, to take the necessary measures to comply with the final judicial decisions in the present cases, the authorities deprived the provisions of Article 6 § 1 of much of their useful effect.

40. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of all of the applicants (except for Ali Rıza Babayiğit).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. In respect of pecuniary damage, the applicants claimed various amounts which, according to them, were equivalent to the sums that the judgments debts would have become if they had been paid promptly and deposited in a savings account. Each of them also claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government contested these claims, 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.

44. The Court finds that, in accordance with its finding of a violation of Article 1 of Protocol No. 1 (paragraph 33 above), Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyıl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönder are entitled to pecuniary damages. Bearing in mind that the applicants' complaint related to the non-payment of awards made in court judgments, the Court finds that the payment by the Government of these outstanding judgment debts, including any interest arising under the applicable domestic law for the late payment of employment claims, would satisfy these applicants' claim for pecuniary damages.

45. Given its finding of a violation of Article 6 § 1 of the Convention on account of the significant period of time during which the said judgments remained unenforced (paragraphs 39-40 above), the Court considers that the applicants' prejudice cannot be sufficiently compensated by the finding of a violation alone (*Çiçek and Öztemel and Others*, cited above, § 57). Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicants (except Ali Rıza Babayiğit) the following amounts in respect of non-pecuniary damage:

- EUR 1 320 for Ramazan Fidancan;
- EUR 1 320 for Muhyettin Babayiğit;
- EUR 1 440 for Talat Tunç;
- EUR 2 400 for Hüseyin Kamık;
- EUR 2 400 for Mehmet Şirin Kamık;
- EUR 3 000 for Fahri Açı; and
- EUR 3 000 for each of the applicants Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozylı, Mehmet Ali Bölek, Hamit Girişen, and Şaban Gönder.

B. Costs and expenses

46. Each of the applicants claimed EUR 1 101 for the costs and expenses incurred during the proceedings before the domestic authorities and the Court.

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

48. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, as well as being reasonable as to quantum (see *Sunday Times v. the United Kingdom (no. 1)* (Article 50), judgment of 6 November 1980, Series A no. 38, p. 13, § 23). The Court observes that the applicants failed to submit any documentary evidence in support of their submissions under this head. The Court therefore dismisses this claim.

C. Default interest

49. 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* partially inadmissible application no. 5353/02 insofar as it concerns Ali Rıza Babayiğit;
3. *Declares* admissible the complaint under Article 6 § 1 of the Convention submitted by the other applicants;
4. *Declares* admissible the complaint under Article 1 of Protocol No. 1 submitted by Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönner, and *declares* this complaint inadmissible as regards the other applicants;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicants Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönner;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all the applicants (except Ali Rıza Babayiğit);
7. *Holds*
 - (a) that the respondent State is to pay to Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyl, Mehmet Ali Bölek, Hamit Girişen and Şaban Gönner, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the outstanding amounts of the judgment debts still owed to them, plus the statutory interest applicable under domestic law;
 - (b) that the respondent State is also to pay the applicants who are listed below the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1 320 (one thousand three hundred and twenty euros) for Ramazan Fidancan;
 - EUR 1 320 (one thousand three hundred and twenty euros) for Muhyettin Babayiğit;
 - EUR 1 440 (one thousand four hundred and forty euros) for Talat Tunç;
 - EUR 2 400 (two thousand four hundred euros) for Hüseyin Kamik;
 - EUR 2 400 (two thousand four hundred euros) for Şirin Kamik;
 - EUR 3 000 (three thousand euros) for Fahri Açı; and
 - EUR 3 000 (three thousand euros) for each of the applicants Hasan Aygün, Sabri Bahşi, Remzi Demirel, Hatip Bozyl, Mehmet Ali Bölek, Hamit Girişen, and Şaban Gönner;

- (ii) 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;

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

Done in English, and notified in writing on 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President

APPENDIX

Application no.	Applicant name	Date of introduction
5325/02 Aygün and Others	Hasan Aygün Fahri Açı Mehmet Şirin Kamik Sabri Bahşı Hüseyin Kamik	12/10/2001
5353/02 Fidancan and Others	Ramazan Fidancan Remzi Demirel Hatip Bozyıl Ali Rıza Babayığit Talat Tunç	02/10/2001
27608/02 Bölek and Others	Mehmet Ali Bölek Muhyettin Babayığit Hamit Girişen Şaban Gönder	11/03/2002