



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

SECOND SECTION

**CASE OF ABİDİN ŞAHİN v. TURKEY**

*(Application no. 45559/04)*

JUDGMENT

STRASBOURG

18 December 2007

**FINAL**

*18/03/2008*

*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 Abidin Şahin 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,

Mrs D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 27 November 2007,

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

## PROCEDURE

1. The case originated in an application (no. 45559/04) 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 Abidin Şahin (“the applicant”), on 30 April 2003.

2. The applicant was represented by Mr H. Gezer, a lawyer practising in Gaziantep. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that the authorities failed to pay his pension benefits that had been ordered by a judicial decision. He did not invoke any Articles of the Convention.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Gaziantep.

6. In 2000 the applicant retired from his work at the Municipality. On 28 August 2000 the town council calculated the applicant's pension benefits at 11,981,741,000 Turkish liras<sup>1</sup> and ordered its payment.

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<sup>1</sup> It was equivalent to EUR 20,473 at that time.

7. On 18 May 2001 the applicant applied to the execution office, requesting the payment of his pension benefits, plus interest at the rate of 95%. The Municipality objected to the applicant's interest request.

8. On 5 June 2001 the applicant filed an action before the İslahiye Enforcement Court to annul the Municipality's objection.

9. On 6 December 2001 the court partially upheld the applicant's request. It ordered the Municipality to pay the applicant's wages and indemnities, plus interest at the statutory rate running from 15 September 2000. It upheld the applicant's request in respect of severance benefit which had to be paid together with interest at the highest annual bank deposit rate.

10. In the absence of an appeal the judgment became final on 20 December 2001.

11. The execution authority made several unsuccessful attempts to attach the Municipality's property in order to secure the payment of the debt.

12. On 1 August 2002 the applicant sent a letter to the President of the Republic, complaining about the Municipality's failure to pay his pension benefits.

13. On 9 September 2002 the President's Office forwarded this letter to the Ministry of the Interior for an inquiry into the matter.

14. In reply, the Mayor of İslahiye explained in his letter of 11 October 2002 that the Municipality's outstanding debts to 60 retired staff exceeded its budget. He maintained that the Municipality had therefore offered to make the payments in instalments. However, the applicant had refused this offer.

15. On 6 January 2003 the applicant requested the Gaziantep Governor's Office to intervene on his behalf in order to facilitate the execution of the Enforcement Court's decision.

16. According to the information in the case file, as submitted by the parties, the relevant judgment debt is still outstanding.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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.”

18. 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.”

19. 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

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No.1 TO THE CONVENTION

20. The applicant complains that the authorities' failure to pay the judgment debt breached his right to the peaceful enjoyment of his possessions. He relied on Article 1 of Protocol No. 1, which reads 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.

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

21. The Government asked the Court, firstly, to dismiss the application as inadmissible for failure to comply with the six-month time-limit under Article 35 of the Convention. For the purposes of that provision, time had started to run on 20 December 2001. However, the applicant had not lodged his application with Court until 30 April 2003, that is one year and four months after the final domestic decision.

22. The Court notes that the complaint before it is concerned solely with the authorities' failure in paying the judgment debt and the damage sustained by the applicant as a result. Having regard to the information in the case file that the judgment debt has still not been paid, the Court finds that the applicant satisfied the requirement of Article 35 in that regard. This preliminary objection must therefore be dismissed.

23. The Government also argued that the applicant failed to exhaust all domestic remedies.

24. 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).

25. The Court consequently considers 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.

## **B. Merits**

26. The Government maintained that the municipality could not make the relevant payment since it was underfunded, which was a situation that fell under the second paragraph of the Article 1 to the Protocol No. 1 and that, therefore justified the non-execution of the judicial debt.

27. 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 and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

28. The Islahiye Enforcement Court's judgment of 6 December 2001 provided the applicant with an enforceable claim. The judgment had become final as no appeal was filed against it, and enforcement proceedings had been instituted. It follows that the impossibility, for the applicant who has not accepted the relevant payment in instalments, to enforce the judgment in his favour constituted an interference with his right to the peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

29. By failing to comply with the judgment of the Enforcement Court, the national authorities prevented the applicant from receiving the money he was entitled to. 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*, cited above, §§ 35 and 41).

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

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

31. 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**

32. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 for non-pecuniary damage.

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

34. Bearing in mind that the applicant's complaint is related to the non-payment of a judgment debt, the Court finds that the payment by the Government of the outstanding amount, including any interest incurred under the applicable domestic law for the late payment of the employment claim, would satisfy the applicant's request for pecuniary damage. The Court further considers that the applicant has sustained some non-pecuniary damage, which it assesses on an equitable basis at EUR 1,000.

### **B. Costs and expenses**

35. The applicant claimed EUR 3,000 for the costs and expenses as well as the lawyer's fee.

36. The Government contended that the applicant's claim was unsubstantiated.

37. 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 the Court notes that the applicant did not submit any documents relating to the costs and expenses or to the lawyer's fee. Accordingly it rejects the claim under this head.

### **C. Default interest**

38. 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 application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, the amount of the

domestic judgment debt still owed to him, plus statutory interest applicable under domestic law;

(b) that the respondent State is also to pay to the applicant the following sums, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros) for non-pecuniary damage,

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

F. TULKENS  
President