



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

SECOND SECTION

CASE OF EKİCİ AND OTHERS v. TURKEY

(Application no. 28877/03)

JUDGMENT

STRASBOURG

23 September 2008

FINAL

23/12/2008

This judgment may be subject to editorial revision.

In the case of Ekici and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 28877/03) 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 five Turkish nationals, Mr Niyazi Ekici, Mr Şükrü Günütoğar, Mr Bayram Akbulut, Mr Salih Demircan and Mrs Müzeyyen Kalkan (“the applicants”), on 22 May 2003.

2. The applicants were represented by Mr S. Çınar, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 3 July 2007, the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. On 5 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. On 11 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 15 June 1999.

7. In the absence of an appeal the judgments became final on 22 November 1999.

8. In the following months, as they did not receive any payment, the applicants 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 application, the relevant judgment debts were still outstanding. Therefore, friendly settlement agreements were reached between the following applicants and the municipality on the dates indicated:

- Müzeyyen Kalkan on 15 March 2005;
- Şükrü Güntoğar on 23 January 2006, and
- Bayram Akbulut on 11 December 2007.

10. No settlement was reached in respect of the other applicants. However, the municipality deposited a partial amount in the relevant account at the local enforcement office, which was made available to the remaining applicants. On 21 February 2005 Salih Demircan was paid 822 New Turkish liras (TRY).

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

I. THE APPLICANTS' VICTIM STATUS

14. The Government submitted that, after the application was lodged, the municipality had invited the applicants to collect the outstanding amounts payable to them. As a result, three of the applicants had reached friendly settlement agreements with the municipality. Although the applicant Niyazi Ekici declined the offer, funds were made available to him in the account of the local enforcement office. Salih Demircan was paid TRY 822. The Government therefore asked the Court to strike the application out of its list of cases.

15. 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.

16. 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).

17. The Court observes that the municipality signed settlement protocols with Müzeyyen Kalkan, Şükrü Günütoğar and Bayram Akbulut (paragraph 9 above).

18. 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.

19. 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.

20. With regard to the amount deposited in the account of the local enforcement office in favour of Salih Demircan, the Court observes that this amount failed to correspond to the full awards of the labour court's judgments and it 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 Salih Demircan can still claim to have been the victim of violations of both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

21. As regards the applicant Niyazi Ekici, the Court observes that he did not receive any amount in the execution of the court's judgments and finds that he can also claim to have been the victim 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 TO THE CONVENTION

22. 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 its 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.”

23. For the reasons explained in the preceding paragraphs, the Court limits the examination of this complaint to the applicants Salih Demircan and Niyazi Ekici.

A. Admissibility

24. In addition to their submission that the applicants could no longer be considered victims, the Government also raised the following objections to the admissibility of the cases.

25. First, the Government argued that the applicants had failed to exhaust domestic remedies, as they had not initiated enforcement proceedings.

26. 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.

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

28. The Court concludes that the property complaint made by the applicants Salih Demircan and Niyazi Ekici requires an examination on the merits and that there are no grounds for declaring it inadmissible.

B. Merits

29. 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).

30. The Diyarbakır Labour Court's judgments on 11 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. It follows that the impossibility for these applicants to have the judgments in their favour enforced 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.

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

32. It follows that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicants Salih Demircan and Niyazi Ekici.

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

33. 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

34. 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.

B. Merits

35. 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).

36. 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 case, 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.

37. The Court notes that the Diyarbakır Labour Court’s judgments on 11 November 1999 remained wholly unenforced in respect of the applicants Salih Demircan and Niyazi Ekici. The other three applicants received a sum of money according to the settlements reached with the municipality on the following dates:

- Müzeyyen Kalkan on 15 March 2005;
- For Şükrü Günütoğar on 23 January 2006, and
- Bayram Akbulut on 11 December 2007.

38. 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.

39. 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

40. 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

41. In respect of pecuniary damage, the applicants claimed various amounts which, according to them, were equivalent to the sums that the judgment debts would have become if they had been paid promptly and deposited in a savings account. Each of them also claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

42. 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.

43. The Court considers that, in accordance with its finding of a violation of Article 1 of Protocol No. 1 (paragraph 32 above), Salih Demircan and Niyazi Ekici are entitled to an award for pecuniary damage. 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 those outstanding judgment debts, including any interest arising under the applicable domestic law for the late payment of employment claims, would satisfy these applicants' claims under this head.

44. 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, 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 EUR 3,000 to each of the applicants in respect of non-pecuniary damage.

B. Costs and expenses

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

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

47. 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 the claim.

C. Default interest

48. 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 under Article 6 § 1 of the Convention admissible;
2. *Declares* the complaint under Article 1 of Protocol No. 1 admissible in respect of the applicants Niyazi Ekici and Salih Demircan and inadmissible in respect of the other applicants;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the applicants Niyazi Ekici and Salih Demircan;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all of the applicants;
5. *Holds*
 - (a) that the respondent State is to pay to Niyazi Ekici and Salih Demircan, 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 each of the applicants, within the same three months period, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into New Turkish liras at the rate applicable at the date of settlement and free of any taxes or charges that may be payable;
 - (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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President