



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

SECOND SECTION

CASE OF DÜZDEMİR AND GÜNER v. TURKEY

(Applications nos. 25952/03 and 25966/03)

JUDGMENT

STRASBOURG

27 May 2010

FINAL

27/08/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Düzdemir and Güner v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 4 May 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 25952/03 and 25966/03) 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 two Turkish nationals, Mr İsa Düzdemir and Mr Gıyasettin Güner (“the applicants”), on 26 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 14 September 2007 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

4. By a letter dated 9 July 2009, the respondent Government informed the Court that the first applicant, Mr İsa Düzdemir, had died on 19 April 2008. By a letter dated 6 August 2009, the applicants' representative verified the first applicant's death on the said date and informed the Court that his heirs, namely Mr Mehmet Düzdemir, Mr Şükrü Düzdemir, Mr Ahmet Düzdemir, Mr Abdurrahman Düzdemir, Mr Harun Düzdemir and Mr Musa Düzdemir, wished to pursue his application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

5. The applicants were born in 1981 and 1961 respectively and lived in Diyarbakır.

6. On 5 May 1999 the applicants were laid off by the Diyarbakır Sur Municipality (“the Municipality”), with which they had been temporarily employed.

7. The applicants subsequently brought separate actions before the Diyarbakır Labour Court against the Municipality, claiming outstanding salaries, dismissal indemnities, severance pay and other pecuniary rights.

8. On 23 December and 11 November 1999, respectively, the labour court granted the applicants' request and ordered the payment of 324,681,000 Turkish liras (TRL)¹ to the first applicant and TRL 927,531,000² to the second applicant, together with interest. In the absence of an appeal, these judgments became final on 3 January 2000 and 22 November 1999, respectively.

9. At the date of introduction of the applications, the judgment debts were still outstanding. However, in the meantime, friendly settlement agreements were reached between the applicants and the Municipality on 31 July 2008 and 10 February 2005, respectively, and the relevant payments were made to the applicants.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law and practice in force at the material time are outlined in *Ekici and Others v. Turkey* (no. 28877/03, §§ 11-13, 23 September 2008).

THE LAW

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

1. Equivalent of approximately 600 euros (EUR) at the material time.

2. Equivalent of approximately EUR 1,800 at the material time.

I. LOCUS STANDI

12. The Court notes that the first applicant, Mr İsa Düzdemir, died on 19 April 2008 and that his heirs, namely Mr Mehmet Düzdemir, Mr Şükrü Düzdemir, Mr Ahmet Düzdemir, Mr Abdurrahman Düzdemir, Mr Harun Düzdemir and Mr Musa Düzdemir, expressed their wish to pursue the application.

13. The Government contested the applicant's heirs standing before the Court, arguing that although the applicant had died on 19 April 2008, his heirs had only expressed their wish to pursue the application on 6 August 2009, after the Government had notified the Court of the applicant's death.

14. The Court reiterates that in a number of cases in which an applicant died in the course of the proceedings, it has taken into account the statements of the applicant's heirs or of close family members expressing their wish to pursue the proceedings before the Court (see, among many others, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI; *Latif Fuat Öztürk v. Turkey*, no. 54673/00, § 27, 2 February 2006; *Mutlu v. Turkey*, no. 8006/02, §§ 13-14, 10 October 2006).

15. Considering that the applicant's heirs have a “definite pecuniary interest” in the enforcement of the labour court judgment in the present case, the Court finds, without prejudice to the Government's other preliminary objections, that they have standing to continue the present proceedings in the applicant's stead. However, Mr İsa Düzdemir will continue to be referred to as the applicant.

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

16. The applicants alleged that the failure of the authorities to comply with the Diyarbakır Labour Court's judgments for a long period of time constituted a violation of their rights protected by Article 6 § 1 of the Convention. They also complained under Article 1 of Protocol No. 1 that the authorities' failure to pay the judgment debts breached their rights to the peaceful enjoyment of their possessions.

A. Admissibility

17. 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, they had reached friendly settlement agreements with the Municipality. The Government thus asked the Court to declare the applications inadmissible as the applicants had lost their victim status.

18. The applicants contended that they had signed the said agreements by reason of their financial vulnerability and that the amounts they had received under these agreements merely constituted partial payments.

19. The Court observes that the settlement agreements stipulated that the applicants waived any outstanding compensation claims, rights and other credits including costs, expenses and legal fees, against the payment of certain lump sums.

20. The Court considers that the applicants' victim status has only been partially reduced by virtue of the agreements which they signed. The domestic settlements covered their claims under Article 1 of Protocol No. 1 and thus the “matter” which was resolved through the settlement protocols was solely the “deprivation of property” complaint. Indeed, while the payment of the outstanding amounts may have sufficiently responded to the property related matters, it did not remedy the applicants' complaint under Article 6 § 1 of the Convention concerning crucial employment issues, caused by the authorities' failure to execute the labour court's judgments for a significant period of time.

21. In these circumstances, and relying on its case-law (see *Çiçek and Öztemel and Others v. Turkey*, nos. 74069/01, 74703/01, 76380/01, 16809/02, 25710/02, 25714/02 and 30383/02, §§ 23-25, 3 May 2007; *Ekici and Others*, cited above, § 19), the Court considers that the applicants' victim status has been removed in the context of Article 1 of Protocol No. 1, and the applicants' complaint thereunder should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention. However, their complaint under Article 6 § 1 requires a separate examination on the merits and there are no other grounds for declaring it inadmissible under Article 35 § 3 of the Convention.

B. Merits

22. The Court notes that the Diyarbakır Labour Court's judgments of 23 December and 11 November 1999 in respect of the applicants remained unenforced until the signing of the settlement agreements on 31 July 2008 and 10 February 2005, respectively.

23. In view of the above, the Court considers that by failing for 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 most of their useful effect (see *Çiçek and Öztemel and Others*, cited above, § 48; *Ekici and Others*, cited above, § 38).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage and costs and expenses

25. The applicants each claimed 25,348 Turkish liras (TRY³)⁴ in respect of pecuniary damage which sums, according to them, were equivalent to the amount the judgment debts would have grown into, had they been paid promptly and deposited in a savings account. They both also claimed EUR 6,000 in respect of non-pecuniary damage and EUR 1,061 for the costs and expenses incurred before the Court.

26. The Government contested these claims.

27. The Court considers, in accordance with its findings in respect of Article 1 of Protocol No. 1, that the applicants are not entitled to any pecuniary damage. The Court, therefore, rejects this claim.

28. The Court, however, also considers that given its finding of a violation of Article 6 § 1 of the Convention in relation to both applicants on account of the significant period of time during which the domestic judgments remained unenforced (see paragraph 24 above), the applicants' prejudice cannot be sufficiently compensated by the finding of a violation alone. Taking into account the circumstances of the cases and having regard to its case-law, the Court awards the applicants EUR 6,000 each.

29. As for costs and expenses, the Court makes no award under this head as the applicants have failed to submit any documentary evidence in support of their claim.

B. Default interest

30. 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 complaint under Article 6 § 1 of the Convention (excessive length of proceedings) admissible and the remainder of the application inadmissible;

3. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000.

4. Equivalent of approximately EUR 13,130 at the material time.

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (b) 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President