

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

SECOND SECTION

CASE OF GEDİKLİ v. TURKEY

(Application no. 42413/09)

JUDGMENT

STRASBOURG

16 January 2018

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Gedikli v. Turkey,

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

Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 19 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 42413/09) 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, Ms Selviye Gedikli ("the applicant"), on 20 July 2009.

2. The Turkish Government ("the Government") were represented by their Agent.

3. On 23 January 2017 the complaints raised under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, concerning the inability of the applicant to enforce a judgment rendered in her favour was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Kocaeli.

6. Following a dispute with a private third party, the applicant initiated compensation proceedings.

7. On 12 March 2009 the Tuzla Civil Court of General Jurisdiction granted the applicant compensation, amounting to 386,464.75 Turkish liras (TRY) (approximately 174,000 euros (EUR)). In the operative part of the judgment, the court indicated that the defendant party had to pay TRY 16,000 (approximately EUR 7,400) for court fees pursuant to the Law

on Charges. The court registry accordingly sent a payment order to the defendant party. However, no payment was made.

8. On 18 May 2009 the applicant submitted a petition to the registry of the first instance court, requesting that the judgment be served on her in order to commence enforcement proceedings. On the same day, the court rejected the request on the ground that it was impossible under Section 28(1) (a) of the Law on Charges (Law no. 492) to serve a copy of the judgment unless the court costs that should have been born by the defendant party had been discharged.

9. At the time when the application was introduced, the applicant had therefore been unable to bring enforcement proceedings in order to have the above-mentioned judgment executed unless she herself was willing to pay the court fees that the defendant party had failed to pay.

10. Following the introduction of the present application with the Court, the domestic legislation was amended (see paragraphs 11-13 below), and subsequently the judgment in question was served on the applicant. In the absence of an appeal, the judgment became final on 17 October 2012. On 5 March 2013 the applicant initiated enforcement proceedings against her debtor. On 10 April 2013 the applicant further requested the enforcement office to place a lien on the debtor's property. According to the documents in the file, as of 14 April 2017 the debt, which is still not enforced, amounts to TRY 812,648.94 (approximately EUR 193,500) including the initial amount of compensation awarded by the domestic court plus interest running at statutory rate.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. At the time of the events, section 28(1) (a) of the Law on Fees read:

> "Section 28(1) – Time-limit for the payment of fees
>
> The proportional fees set out in scale no. 1 shall be paid within the following periods:
>
> (a) One quarter of the fees 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] fees for the judgment and the writ of execution are paid ..."

12. In a decision dated 14 January 2010, the Constitutional Court repealed the provision in the second sentence of section 28(1) (a). The court indicated that to put the burden of paying the court fees on the party whose case had been accepted and who had been held exempt from those very fees by the first-instance court's judgment was incompatible with the right of access to court and, in particular, with the right to have a judgment executed. In this respect, the higher court pointed out that the repealed

provision referred to proportional fees, which were calculated on the basis of the main amount at issue.

13. Subsequently, in July 2010 section 28(1) (a) was amended. Following that change, the second sentence reads as follows:

> "... Failure to pay the court fees for the judgment and the writ of execution would not prevent the execution of the judgment, its service on the parties or the parties' right to have recourse to appeal proceedings."

THE LAW

I. PRELIMINARY OBJECTIONS

14. The Government argued that the applicant's complaint concerning the non-enforcement of the judgment delivered in her favour should be rejected. In this connection, they pointed out that following the decision of the Constitutional Court, which repealed the provision in the second sentence of section 28 (1) (a) of Law on Fees, in July 2010 the legislation was amended and the applicant had thus the possibility of obtaining the execution of the impugned judgment. Based on these amendments in domestic law, the Government have asked the Court to declare the application inadmissible on the ground of abuse of the right of petition and incompatibility *ratione personae*.

15. The Court recalls at the outset that an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey* [GC], 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008; and *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012). The same applies if new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 9, 20 June 2002; *Melnik v. Ukraine*, no. 72286/01, §§ 58-60, 28 March 2006; *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006).

16. The Court notes that the impugned domestic court judgment was delivered by the first instance court in March 2009, and the present application was lodged with the Court on 20 July 2009, namely before the amendments in domestic law. Between March 2009 and July 2010, that is to say for approximately sixteen months, the applicant had been unable to enforce the judgment in her favour owing to the domestic court's refusal to provide her with a copy of the said judgment (see *Sevgül Altıparmak v. Turkey*, no. 27023/06, § 25, 20 July 2010).

17. In view of the foregoing, the Court considers that the applicant cannot be considered to have abused the right of petition and moreover she can still continue to be considered as a victim of the alleged breach. Accordingly, the Court dismisses the Government's preliminary objections.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained under Article 6 of the Convention that she had been unable to enforce the judgment in her favour owing to the domestic court's refusal to provide her with a copy of the said judgment.

19. The Government contested that argument.

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

21. 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. 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*, 19 March 1997, § 40, *Reports* 1997-II, and *Ülger v. Turkey*, no. 25321/02, § 38, 26 June 2007).

22. 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, §§ 53-54, ECHR 2001-VI), equally protects the right of access to enforcement proceedings (see *Ülger*, cited above, § 39).

23. In the present case, the applicant was awarded compensation by the judgment of the Tuzla Civil Court of First Instance. However, she could not secure the enforcement of that judgment as the required court fees, which the domestic court had imposed on the defendant party, were not paid.

24. In this connection, the Court reiterates that the right to 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 *Apostol v. Georgia*, no. 40765/02, § 57, ECHR 2006-XIV, and *Ülger*, cited above, § 41).

25. The Court further reiterates that, in order to determine whether or not a person enjoyed the right of access, the amount of the fees requested must 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 restriction has been imposed (see *Apostol*, cited above, § 59).

26. The Court notes that, by invoking section 28 (1) (a) of the Law on Fees, the domestic court imposed on the applicant a financial obligation, failure to comply with which barred her access to the judgment concerning her compensation claims and thus to the further enforcement proceedings. Accordingly, that obligation, which should have been borne by the other party and which was imposed on the applicant at the enforcement stage, constituted a restriction of a purely financial nature and therefore calls for particularly rigorous scrutiny from the point of view of the interests of justice (see *Apostol*, cited above, § 60, and *Osman Yılmaz v. Turkey*, no. 18896/05, § 41, 8 December 2009). In this connection, the Court takes account of the Constitutional Court's decision dated 14 January 2010, which repealed the provision in the second sentence of section 28 (1) (a). It notes that the higher court found the said provision incompatible with the right of access to court, as it imposed the obligation to pay the court fees on the party whose case had been accepted and who was not legally liable for such fees pursuant to the judgment.

27. Moreover, the Court reiterates that the fulfillment of the obligation to secure effective rights under Article 6 § 1 of the Convention does not only mean the absence of 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, and *Osman Yılmaz*, cited above, § 42). Thus, some consideration should also have been given in the present case to the reasonable relationship of proportionality between

the payment of the court costs and the work required for the task in hand, namely merely providing the applicant with a copy of the judgment.

28. Accordingly, the Court finds that holding the applicant responsible for payment of the charges before she could receive a copy of the judgment imposed an excessive burden on her and restricted her right of access to a court to such an extent as to impair the very essence of that right.

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

30. The applicant further alleged under Article 1 of Protocol No. 1 to the Convention that the non-enforcement of the judgment had violated her right to peaceful enjoyment of possessions.

31. The Government contested the claim.

32. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

33. 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). Thus, the judgment delivered by the Tuzla Civil Court of General Jurisdiction in the compensation proceedings brought by the applicant provided her with an enforceable claim.

34. It follows that the impossibility for the applicant to have the judgment enforced constituted an interference with her right to the peaceful enjoyment of her possessions, as set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Ülger*, cited above, §§ 49-50, and *Çakır and Others v. Turkey*, no. 25747/09, §§ 24-26, 4 June 2013).

35. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

36. The applicant claimed EUR 750,000 in respect of pecuniary and EUR 500,000 in respect of non-pecuniary damage.

37. The Government contested the claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. Without submitting any evidence in support of her claims, the applicant also claimed a total of EUR 3,295 for the costs and expenses incurred before the Court.

40. The Government contested the claim.

41. The Court reiterates that according to Rule 60 § 2 of the Rules of Court, any claim for just satisfaction must be itemised and submitted together with the relevant supporting documents. In the instant case, the applicant did not submit any document to substantiate her claim for costs and expenses. In view of the applicant's failure to comply with the aforesaid requirement, the Court makes no award for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; to be converted into the currency of the respondent State 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Julia Laffranque
Deputy Registrar	President