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

SECOND SECTION

DECISION

Application no. 617/06
Hasan Basri GÖKBELEN
against Turkey

The European Court of Human Rights (Second Section), sitting on 11 October 2016 as a Committee composed of:

Valeriu Griţco, *President,*
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 December 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Hasan Basri Gökbelen, is a Turkish national, who was born in 1961 and lives in Kayseri.

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

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant was working as an officer at a public bank, namely Ziraat Bank ("the Bank").

5. On 7 February 2002, following the adoption of a new regulation regarding the employment surplus, the applicant's work place changed and

he was subsequently appointed as a secretary to the Erciyes University on 4 March 2002.

6. On 24 February 2003 the applicant initiated proceedings before the Kayseri Administrative Court, claiming that his former employer, the Bank, had withdrawn part of his last salary - which he was not entitled to receive - from his personal bank account twice. Relying on this wrongful act, the applicant asked the Bank to reimburse the amount in question.

7. On 4 March 2004 Kayseri Administrative Court accepted the case and ordered the Bank to pay back the applicant's partial salary amounting to 276,554,017 Turkish liras (TRL)[1] plus interest.

8. An appeal and a request for rectification lodged by the Bank were subsequently rejected by the Kayseri Regional Administrative Court and the decision became final on 27 June 2005.

9. The Bank did not pay the outstanding amount to the applicant.

B. Relevant domestic law and practice

10. A description of the domestic law and practice with respect to the Compensation Commission mentioned below (paragraph 12) may be found in *Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013; *Demiroğlu v. Turkey* (dec.), no. 56125/10, 4 June 2013; and *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, 27 May 2014.

COMPLAINTS

11. The applicant complained under Article 14 and Article 1 of Protocol No. 1 to the Convention that as a result of the non-execution of a final judgment, his right not to be subjected to discrimination and his right to peaceful enjoyment of his possessions had been breached.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

12. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the respondent State failed to pay the amount awarded to the applicant and thus violated his right to peaceful enjoyment of his possessions.

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

13. The Government noted that pursuant to Law no. 6384 a new Compensation Commission had been established in Turkey to deal with applications concerning the length of proceedings and the non-execution of judgments. Accordingly, they maintained that the applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission.

14. The Court observes that, as pointed out by the Government, a new domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Demiroğlu v. Turkey* ((dec.), no. 56125/10, 4 June 2013), the Court declared an application inadmissible on the ground that the applicant had failed to exhaust domestic remedies, that is to say the new remedy. In so doing, the Court considered in particular that this new remedy was a priori accessible and capable of offering a reasonable prospect of redress for complaints concerning the failure of the authorities to enforce judicial decisions.

15. The Court notes that in its decision in the case of *Ümmühan Kaplan* (cited above, § 77), it stressed that it could nevertheless examine, under its normal procedure, applications of that type which had already been communicated to the Government.

16. However, taking into account the Government's preliminary objection with regard to the applicant's failure to make use of the new domestic remedy established by Law no. 6384, the Court reiterates its conclusion in the case of *Demiroğlu*, cited above.

17. In view of the above, the Court concludes that this part of the application should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Alleged violation of Article 14 of the Convention

18. The applicant alleged that the respondent State's failure to enforce a final judgment in favour of him breached the principle of equity and thus amounted to discrimination within the meaning of Article 14 of the Convention.

19. In the light of all the material in its possession and in so far as the matter complained of is within its competence, the Court concludes that this complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects it as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares inadmissible the application.

Done in English and notified in writing on 17 November 2016.

Hasan Bakırcı
Deputy Registrar

Valeriu Griţco
President