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

SECOND SECTION

DECISION

Application no. 55952/13
Mahmut GÜLER and Ahmet KEKEC
against Turkey

The European Court of Human Rights (Second Section), sitting on 11 January 2022 as a Committee composed of:

Branko Lubarda, *President,*
Jovan Ilievski,
Diana Sârcu, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to the above application lodged on 18 August 2006,

Having regard to:

The application (no. 55952/13) against Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 August 2006 by two Turkish nationals, Mr Mahmut Güler and Mr Ahmet Kekeç, who were born in 1956 and 1946 respectively and live in İslahiye / Gaziantep and ("the applicants") who were represented by Mr A. Özçelik, a lawyer practising in Gaziantep;

The decision to give notice of the application to the Turkish Government ("the Government"), represented by their Agent, Mr Dr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Turkey, co-Agent of the Republic of Turkey before the European Court of Human Rights;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The application concerns alleged non-execution of the final judgments in favour of the applicants.

2. Despite the national courts' payment orders, the applicants' employer, the Municipality of Islahiye, did not pay the applicants' severance benefits for a certain period of time.

3. On December 2012 the applicants signed an agreement with the Municipality and gave an acquittance (*ibraname*). On 6 August 2013, the Municipality payed the entirety of the amounts foreseen in the agreement.

4. The applicants, who were represented by a legal counsel in the domestic proceedings and before the Court, failed to inform the Court of these developments despite the Registry's letter of 12 September 2013 requesting them to inform the Court of important developments regarding their application. Nor did they provide any explanation for their failure to do so.

5. The Court was informed of these developments by the Government after the communication of the application in 2018.

6. The applicants complain under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of the payment orders that had been issued by the domestic courts in their favour.

THE COURT'S ASSESSMENT

7. The Court recalls that an application may be rejected as an abuse of the right of individual application under Article 35 § 3 of the Convention if it was knowingly based on untrue facts (see, among other authorities, *Jian v. Romania* (*dec.*), no. 46640/99, 30 March 2004, and *Kerechashvili v. Georgia* (dec.), no. 5667/02, ECHR 2006-V) or if incomplete and therefore misleading information was submitted to the Court (see, among other authorities, *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006, and *Basileo v. Italy* (dec.), no. 11303/02, 23 August 2011). Similarly, an application may be rejected as an abuse of the right of application if applicants – despite their obligation under Article 47 § 6 of the Rules of Court – fail to inform the Court of important new developments regarding their pending applications, given that such conduct prevents the Court from ruling on the matter in full knowledge of the facts (see *Bekauri v. Georgia*, (dec.) no. 14102/02, §§ 21-23, 10 April 2012).

8. The notion of abuse of the right of application is not limited to these scenarios, however. In general terms, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application, as provided for in the Convention, and that impedes the proper functioning of the Court, or the proper conduct of the proceedings before it, constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009).

9. The Court emphasises that under Rule 44 A: "The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice...". The Court has repeatedly held that the rules of procedure laid down in national laws are intended to ensure the proper

administration of justice and the principle of legal certainty and that the parties must be able to rely on their application. The same observation applies, *a fortiori*, to the Convention and the Rules of Court (see *Miroļubovs*, cited above, § 66).

10. Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation was given for the failure to disclose that information (*Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007).

11. The applicant's failure to inform the Court of the recent and important events which occurred at the outset (*Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002) or in the course of the proceedings was also considered to fall within the scope of abuse of the right of application (*Hadrabova and Others v. the Czech Republic* (dec.), no. 42165/02, 25 September 2007; and *Predescu v. Romania*, no. 21447/03, §§ 25 and 27, 2 December 2008).

12. In the circumstances of the present case, the applicants, represented by a legal counsel in the domestic proceedings and the proceedings before the Court, have not submitted any plausible explanation for their failure to inform the Court of the fact that they had signed a protocol with the debtor Municipality, that they had given an acquittance and that the amounts in question had been paid to them on 6 August 2013, which corresponds to a date prior to the Court's letter of 12 September 2013.

13. Having regard to the importance of the information at issue for the proper determination of the present cases, the Court finds that the applicants' conduct was contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention.

14. In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention and to reject the applications as a whole as an abuse of the right of application within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 February 2022.

Hasan Bakırcı Deputy Registrar	Branko Lubarda President