

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

SECOND SECTION

DECISION

Application no. 39105/09
Semra KARAKAŞOĞLU and Sündüs KARAKAŞOĞLU
against Turkey

The European Court of Human Rights (Second Section), sitting on 10 April 2012 as a Chamber composed of:
Françoise Tulkens, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*
Having regard to the above application lodged on 10 July 2009,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Semra Karakaşoğlu and Ms Sündüs Karakaşoğlu, are Turkish nationals who were born in 1965 and 1947 respectively and live in Istanbul. They were represented before the Court by Mr A. Yazıcıoğlu, a lawyer practising in Istanbul.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The first applicant is the daughter of the second applicant. On an unspecified date, the first applicant issued a cheque in the name of the second applicant. Subsequently, in April 2004, alleging that she had lost the cheque, the second applicant applied to the Kadıköy Commercial Court to have it cancelled. The cheque was accordingly cancelled by the Kadıköy Commercial Court.

4. In the meantime, a third person, Ms H.K.Ç. (hereinafter referred to as "the creditor"), who is the niece of the second applicant, presented the cheque in question to the bank for payment; however, she was informed that the cheque had been cancelled. The creditor then applied to the Istanbul Execution Office and alleged that the second applicant had endorsed the cheque in her name to pay a debt to her. The amount of the cheque in dispute was 70,000 Turkish liras (TRY) and the due date was set at 12 August 2004. On 8 October 2004 a payment order was sent to the applicants. On 12 October 2004 the applicants filed an objection with the Execution Office, stating that they did not have a debt to the creditor and alleging that the creditor had stolen the cheque from their house.

5. Thereafter, the creditor initiated proceedings before the Istanbul Commercial Court, requesting the annulment of the objection filed by the applicants. Relying on section 67 of the Execution and Bankruptcy Act (Law no. 2004), she further claimed compensation amounting to 40% of the sum due, as the applicants had denied paying their debt in an unjust manner.

6. On 18 October 2004 the applicants initiated another set of proceedings before the Istanbul Commercial Court, seeking a declaratory judgment to the effect that they did not have any debt to the creditor in respect of the cheque in question. They also requested the creditor to pay them compensation amounting to 50% of the sum in dispute for acting in bad faith. On 29 June 2005 the Istanbul Commercial Court rejected the applicants' case on account of insufficient evidence. In its decision, the court held that the applicants had failed to provide the basis of an arguable claim in support of their allegations. On 24 April 2006 the Court of Cassation quashed the judgment of the first-instance court, holding that that court should have examined whether the refusal to pay the amount due had caused unjust enrichment to the applicants. The case was accordingly remitted to the Istanbul Commercial Court.

7. On an unspecified date, the Istanbul Commercial Court decided to join the two cases. During the hearings held before the Commercial Court, the applicants were represented by a lawyer and were able to put forward all their arguments. The court also heard witness statements. In her submissions before the court, the creditor maintained that she had lent TRY 70,000 to the second applicant and had in return taken a cheque with a due date set for 12 August 2004. She further claimed that in order to avoid paying the cheque, the second applicant had applied to the court to have it cancelled. On 14 November 2007 the Commercial Court held that as the

creditor was in possession of a cheque, the burden of proof lay on the applicants to prove that they did not have a debt to her. Having regard to the case file as a whole, the court decided that the applicants had failed to prove that they did not have any debt to the creditor. It therefore dismissed the case initiated by the applicants and annulled their objection against the payment order. Pursuant to section 67 of Law no. 2004, the court further ordered the applicants to pay compensation, amounting to 40% of the sum due, for unjustly filing an objection against the payment order. On 30 June 2008 the Court of Cassation upheld the judgment of the first-instance court. A request by the applicants for rectification was subsequently rejected and this final decision was served on the applicants on 11 January 2009.

B. Relevant domestic law and practice

8. Section 67 of the Execution and Bankruptcy Act (Law no. 2004) provides that the court may order the payment of compensation amounting to at least 40% of the sum in dispute, upon a request by the other party, if at the end of execution proceedings it concludes that the debtor has unjustly filed an objection against the payment order, or that the creditor acted in bad faith in initiating the execution proceedings.

COMPLAINTS

9. Relying on Article 6 of the Convention, the applicants argued that the domestic courts had failed to assess the facts of the case properly, and complained about the outcome of the proceedings. The applicants further alleged under Article 6 that their right of access to court had been breached. In this connection, they argued that they had had to pay compensation amounting to 40% of the sum in dispute, on account of the fact that they had filed an objection against the payment order.

THE LAW

10. The applicants argued under Article 6 of the Convention that they had not had a fair hearing. In this connection, they maintained that the domestic courts that had examined their case had failed to assess the facts of the case properly. Secondly, they stated that the compensation ordered pursuant to section 67 of Law no. 2004 had constituted a breach of their right of access to court since it was to be construed as a penalty for having used their right to bring their case before the domestic courts.

11. In so far as the applicants complained about the outcome of the proceedings, the Court reiterates that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, among many other authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B).

12. In the present case, it is observed that the national court decisions were based on the domestic law and the particular circumstances of the case. The Court finds no element which could lead it to conclude that the domestic courts acted in an arbitrary or unreasonable manner in their assessment.

13. As regards the second part of the applicants' complaint, regarding the compensation provided for by section 67 of Law no. 2004, the Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to court in view of the prominent place held in a democratic society by the right to a fair trial. It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-II). In the present case it is clear that the applicants had the opportunity to have their cases examined thoroughly at three levels of jurisdiction. The Court observes that at the end of the proceedings, the applicants were ordered to pay compensation pursuant to section 67 of Law no. 2004. This type of compensation is provided for by the law to avoid delays in payment of debts through the filing of unjust objections. The Court further takes into consideration that in order to strike a balance between the parties, the law also provides for the possibility for the debtor to request compensation if at the end of the proceedings the court finds that the creditor had made a false allegation concerning the debt.

14. In the present case, the Court notes that the applicants were ordered to pay compensation at the end of the proceedings as they failed to provide the basis of any arguable claim that they did not have a debt to the creditor. Moreover, the Court observes from their petition to the Istanbul Commercial Court that in the proceedings which they had initiated against the creditor, they also asked the domestic court to order the defendant to pay compensation for sending a payment order in bad faith, should the court find that they did not have a debt to her. In the Court's view, when, at the end of adversarial proceedings, the domestic court finds that the debtor filed an unjust objection against a payment order, the payment of a certain

amount of compensation to the creditor cannot be considered to constitute a breach of access to court.

15. The Court concludes that during the proceedings the applicants were represented by a lawyer and were able to submit arguments in support of their allegations and challenge the evidence against them. For the reasons set out above, there is also no indication in the case file that the decision of the trial court failed to respect the applicants' procedural rights. Moreover, there are no elements which could lead to the conclusion that the domestic courts acted in an arbitrary or unreasonable manner.

16. Regard being had to the circumstances of the case as a whole, the Court finds that the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President