

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

SECOND SECTION

DECISION

Application no. 50114/09
Fikri MADAK
against Turkey

The European Court of Human Rights (Second Section), sitting on 26 March 2013 as a Committee composed of:

Dragoljub Popović, *President,*
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 August 2009,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Fikri Madak, is a Turkish national, who was born in 1978 and lives in İzmir. He was represented before the Court by Ms T. Aslan, a lawyer practising in İzmir.

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

3. On 2 March 2009 the Izmir Labour Court accepted the case brought by the applicant against his employer and ruled in his favour. The court indicated that in addition to compensation, the employer company was to pay court fees of 488 Turkish liras. Subsequently, the applicant requested a copy of the judgment to start the enforcement proceedings.

4. However, on 19 June 2009 the Izmir Labour Court rejected the applicant's request as neither party had paid the required fees. The court based its decision on Sections 28 § 1 (a) and 32 of the Law on Fees (Law no. 492), which provided that the copy of the judgment could not be served on the parties and the judgment could not be executed unless the fees for the judgment and the writ of execution were paid.

5. The applicant complained under Article 6 § 1 of the Convention that his right of access to court was violated in that he could not have the judgment in his favour executed due to the other party's failure to pay the required court fees.

6. Relying upon Article 1 of Protocol No. 1 to the Convention, the applicant maintained that the non-execution of the judgment in his favour violated his right to peaceful enjoyment of property.

7. On 17 February 2011, the case was communicated to the Government.

8. On 21 May 2012 and 7 June 2012 the Court received friendly settlement declarations signed by the parties under which the applicant agreed to waive any further claims against Turkey in respect of the facts giving rise to this application against an undertaking by the Government to pay him the outstanding judgment debt and EUR 3,500 (three thousand five hundred euros) to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, which will be converted into Turkish liras at the rate applicable on the date of payment, and will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay this sum within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

THE LAW

9. The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application.

10. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in accordance with Article 39 of the Convention.

Françoise Elens-Passos Deputy Registrar	Dragoljub Popović President