

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

SECOND SECTION

DECISION

Application no. 19053/09
Yusuf Kenan ÖZDEMİR
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 27 March 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 Yusuf Kenan Özdemir, is a Turkish national, who was born in 1957 and lives in Mersin. He was represented before the Court by Mr C. Kayhan, a lawyer practising in Ankara.

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

3. On 21 April 2006 the applicant brought proceedings against two persons, claiming that they had made a fraudulent contract in order avoid their debt.

4. On 5 June 2008 the Ankara Civil Court of General Jurisdiction ruled in the applicant's favour and ordered the defendant party to pay the court fees of 24,551 Turkish liras in addition to the compensation. Subsequently,

the applicant requested a copy of the judgment to start the enforcement proceedings. However, on 19 March 2009 the court refused his request as neither party had paid the required fees.

5. Consequently, the applicant could not have the judgment executed as Sections 28 § 1 (a) and 32 of the Law on Fees (Law no. 492) 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.

6. The applicant complained under Article 6 § 1 of the Convention about the excessive length of the civil proceedings.

7. He further argued under the same Article 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.

8. 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.

9. On 17 February 2011, the complaints under Article 6 § 1 concerning the applicant's right to access to court and under Article 1 of Protocol No. 1 to the Convention were communicated to the Government.

10. On 21 December 2011 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 4,100 (four thousand one 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

11. 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.

12. 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