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

SECOND SECTION

DECISION

Application no. 17697/10
Ali TÜRKOĞLU and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 November 2020 as a Committee composed of:
Aleš Pejchal, *President,*
Egidijus Kūris,
Carlo Ranzoni, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*
Having regard to the above application lodged on 22 December 2009,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,
Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.
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, and as they appear from the documents submitted by them, may be summarised as follows.

1. Background to the dispute

4. In 1995 the applicants became guarantors on the basis of several joint liabilities for a company ("the Company") which had signed a loan agreement with Türkiye Halk Bankası A.Ş. ("the Bank").

5. On 30 June 1998 the Bank sent a written notice of unilateral termination to the Company on the ground that the latter had failed to pay the loan on time.

6. On 4 September 1998 the Bank issued a payment order through the Enforcement Bureau (*ilamsız takip*) against the applicants. The order was stayed as a result of an objection filed by the applicants.

7. On 12 April 2001 the Ankara Commercial Court ("the Commercial Court"), upon the request of the Bank, overruled the stay of the enforcement proceedings and awarded the Bank 57,000,000,000 Turkish liras ("TRL", approximatively equivalent to EUR 50,328 on the date of the judgment).

8. The parties appealed against the judgment of the Commercial Court. On 13 May 2002 the Court of Cassation quashed the first-instance court's judgment due to procedural flaws.

9. On 13 March 2003 the Commercial Court complied with the Court of Cassation's decision and rendered a new judgment by awarding the same amount in favour of the Bank.

10. On 28 March 2005 the Court of Cassation once again overturned the decision of the Commercial Court on the ground that the amount granted was higher than that for which the applicants had been responsible. In particular, the high court noted that not all applicants had fallen into default at the same time and that the default interest rate applied by the Commercial Court should have been lower.

On 17 October 2005 the Court of Cassation dismissed the parties' requests for rectification.

11. On 11 May 2006 the Commercial Court complied with the ruling of the Court of Cassation and awarded the bank 56,203 Turkish liras ("TRY" [1] approximatively equivalent to EUR 32,725 on the date of the judgment). Nevertheless, it noted that some of the applicants were responsible for TRY 49,000 of the awarded amount as they had fallen into default at a later date. The Court of Cassation overruled this judgment in respect of one of the applicants, Mr Ali Türkoğlu, on the ground that the Commercial Court had not issued a judgment against him. It upheld the rest of the judgment.

12. On 25 January 2008 the applicants' request for the rectification of the decision was rejected by the Court of Cassation.

13. On 24 July 2008 the Commercial Court issued a judgment in line with the Court of Cassation's ruling. It awarded the bank TRY 56,203 and determined for each applicant the amount for which he was liable, including Mr Ali Türkoğlu. On 22 June 2009 the Court of Cassation upheld this judgment.

14. On 23 September 2009 the Commercial Court requested the administration to collect from the applicants the unpaid Court of Cassation

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

appeal fees (*Yargıtay Onama Harcı*), which had been TRY 2,276.20 (approximatively equivalent to EUR 1,055).

15. On 28 August 2009 the applicants asked the Commercial Court to send them the Court of Cassation's decision and to transfer the case file to the Court of Cassation for rectification. The applicants also demanded an exemption from appeal fees in order to be able to file a rectification request.

16. On 7 September 2009 the Commercial Court dismissed the applicants' above requests as ill-founded on the ground that its judgment became final.

17. On 22 December 2009 the applicants lodged their application with the Court.

2. Developments after the introduction of the application

18. In their observations, the Government informed the Court about the developments that took place after the applicants lodged their application with the Court. According to the information provided by the Government, on 15 March 2010 the Commercial Court communicated to the parties the Court of Cassation's decision on appeal, without requesting them to pay the relevant appeal fees, following the ruling of the Constitutional Court of 14 January 2010 declaring Section 28(1)(a) of the Law on Fees unconstitutional (see paragraphs 20-21 below).

19. On 30 March 2010, the applicants submitted a request for the rectification of the Court of Cassation's above decision. On 19 July 2010, the Court of Cassation rejected that request. Thus, the proceedings became final.

B. Relevant domestic law and practice

20. At the time of the events, section 28(1)(a) of the Law on Fees provided that the judgments and decisions should not be served on the party concerned unless the court fees were paid (see *Ülger v. Turkey*, no. 25321/02, § 24, 26 June 2007, and *Çakır and Others v. Turkey*, no. 25747/09, § 11, 4 June 2013).

21. In a decision of 14 January 2010, the Constitutional Court repealed the above provision, considering it incompatible with the right of access to a court. Subsequently, in July 2010, section 28(1)(a) was amended to allow parties to have recourse to an appeal procedure even if they do not pay relevant court fees (see *Çakır and Others*, cited above, § 12).

COMPLAINT

22. The applicants complained about a violation of their right of access to a court on account of the Commercial Court's refusal to provide them

with a copy of the Court of Cassation's decision on appeal and to accord them an exemption from appeal fees.

THE LAW

A. Scope of the case

23. The Court notes that, in their reply to the Government's observations, the applicants additionally invoked Article 1 of Protocol No. 1 concerning the facts of the present case. In the Court's view, the new complaints are not an elaboration of the applicants' original complaints to the Court, which had been communicated to the respondent Government. The Court considers, therefore, that it is not appropriate now to consider them (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

B. Alleged violation of Article 6 of the Convention

24. The applicants complained of a breach of their rights under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair ... hearing within a reasonable time..."

25. The Government argued that the applicants could not claim to be victims of the alleged violation of their right of access to a court since a copy of the Court of Cassation's decision had been served on them free of appeal fees, which allowed them to submit a request for the rectification of that decision. The Government further submitted that the applicants had abused the right of individual application since they did not inform the Court about those developments after the introduction of the case (see paragraphs 18-
19 above).

26. The applicants maintained their arguments.

27. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention; in this regard the question of whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention; a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (*Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts); and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 80, ECHR 2012). The alleged loss of the applicant's victim status involves an examination of the nature of the right at issue, the reasons

advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010, and *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

28. In the present case, the Court observes that on 14 January 2010, the Constitutional Court declared unconstitutional the relevant part of section 28(1)(a) of the Law on Fees considering that it was in breach of the right to a court (see paragraph 21 above). The Court considers that, by doing so, the national authorities have acknowledged, at least in substance, a breach of Article 6 of the Convention. The Court should therefore concentrate on the question of whether they complied with the obligation to "redress" it.

29. The Court recalls that different types of remedies may redress the violation appropriately (see, *mutatis mutandis*, the Court's analysis under Article 13 in *Kudła v. Poland* [GC], no. 30210/96, §§ 154-55, ECHR 2000-XI). The appropriateness and sufficiency of redress depend on the nature of the violation complained of by the applicant (see *Gäfgen*, cited above, § 116).

30. Turning to the present case, the Court observes that subsequent to the ruling of the Constitutional Court declaring unconstitutional Section 28 (1) (a) of the Law on Fees, a copy of the Court of Cassation's decision had been communicated to the applicants without requiring them to pay the appeal fees. The applicants were then able to submit their request for the rectification of the said decision and could obtain a definitive decision in respect of their case.

31. The Court further finds the time that elapsed between the Commercial Court's judgment not to provide the applicants with a copy of the Court of Cassation's decision and the notification of the said decision to the applicants soon after the Constitutional Court's decision to be relatively short. Moreover, the Court of Cassation rendered its decision on the request for rectification filed by the applicants without delay (compare *Baškienė v. Lithuania*, (no. 11529/04, 24 July 2007), where the Court found a violation of Article 6 of the Convention because the national courts left the applicant's civil claims without any judicial determination for almost seven years and five months).

32. In view of the above, the Court considers that the notification to the applicants of the decision of the Court of Cassation, without requiring them to pay the relevant appeal fees, and the possibility for them to submit a request for rectification could be regarded as adequate reparation which removes all damages complained of, which were caused by the interference with the applicants' right of access to a court (see, *mutatis mutandis*, *Koç and Tambaş v. Turkey*, (no. 50934/99, § 23, 21 March 2006) where the Court concluded that the applicants victim status under Article 6 of the

Convention ceased to exist as their condemnation had been nullified by the national authorities as a result of an amendment in legislation).

33. It follows that the applicants can no longer claim to be victims of a violation of their Convention rights and this application must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

34. Having regard to the above conclusion, the Court does not consider it necessary to examine the other admissibility arguments brought by the Government.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 November 2020.

Hasan Bakırcı	Aleš Pejchal
Deputy Registrar	President

Appendix

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Ali Türkoğlu	1959	Turkish	Ankara
2	Çeliksan Çelik Sanayi ve Ticaret Ltd. Şti.	1989	Turkish	Ankara
3	Fatih Pres San. ve Tic. Ltd. Şti.		Turkish	Ankara
4	Arif Türkoğlu	1952	Turkish	Ankara
5	Etnan Türkoğlu	1954	Turkish	Ankara
6	Hacı Hüseyin Türkoğlu	1949	Turkish	Ankara