



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

Information Note on the Court's case-law 264

July 2022

Dimici v. Turkey - 70133/16

Judgment 5.7.2022 [Section II]

Article 14

Discrimination

Application by the courts of the statute of a 16th-century private foundation, reserving income to the founder's male descendants, to the detriment of a woman and her heirs:
violation

Facts – The national courts had refused to grant the applicants' deceased spouse and mother, whose heirs they were, the status of legitimate claimant to the surplus income of an Ottoman-era private foundation, which paid this income to the founder's descendants on the basis of their degree of kinship in the direct line. The refusal had been based solely on the female sex of the applicants' deceased relative. In this connection, the courts had relied on the constituent document of the foundation, dating from the 16th century, under which only male descendants could receive this income.

Law – Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1:

1. *The existence of a difference in treatment on grounds of sex* – Firstly, the applicants' deceased relative had been refused entitlement to the Foundation's surplus income in spite of the fact that, since she was a direct descendant of the founder, she would have been so entitled had she been a man.

Secondly, she had also been deprived of the possibility of "transmitting" to her children the status of beneficiary of the surplus income (where the generational order permitted it), unlike male descendants in a situation that was not merely similar but strictly identical to hers.

As to the Government's assertion that the situation complained of by the applicants had not been prejudicial to their relative in so far as the amounts paid to the male descendants were those which remained after the payment to the female descendants of amounts for clothing and maintenance, the Court considered, since the Foundation apparently had an income of several million Turkish lira, that this was speculative and totally unrelated to the situation in issue here. The possibility that the amounts paid to descendants as surplus income could be lower than the amounts paid to the female descendants did not alter the fact of discrimination.

Moreover, this argument had no bearing on the second aspect of the difference in treatment. Equally, the Government's submission on this subject was misleading. Indeed, although some men were deprived of the status of beneficiary to the surplus income, this was not because there was no discrimination, but precisely on account of the discrimination experienced by their mothers.

In consequence, there was no doubt that the applicants' deceased relative had been treated differently on the grounds of sex.

2. Compliance with Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 –

(a) *The nature of the obligations in issue* – In the Government's submission, the complaint fell to be examined from the standpoint of positive obligations, since the Foundation was not administered by the State authorities but by the founder's descendants, and the dispute was of a purely private nature. However, the measure constituting the discrimination in issue was not a decision adopted by the Foundation but one arising from a court judgment.

Under national law, competence to grant the status of legitimate claimant belonged to the judicial authorities alone, since the foundations did not have power to do so. It followed that the interference with the right of the applicants' relative resulted from a judicial act.

The courts had based their decision on the provisions of the Foundation's constituent document. They had not set aside the discriminatory provisions of that document, which amounted to omission or passivity on their part. Accordingly, the question raised ought to be examined from the standpoint of the State's positive obligations (see, *a contrario*, *Molla Sali v. Greece* [GC]).

(b) *Compliance with the obligations* – The discrimination to which the applicants' relative had been subjected had no other justification than the founder's wishes, which had emerged from social considerations and a view of women which prevailed when the Foundation was set up at the beginning of the 16th century.

The fact that the dispute concerned a relationship between private persons did not exempt the State from its obligations to prevent and punish discrimination between private persons.

The courts had merely established and then applied the wishes of the founder as expressed in the constituent document, without seeking to assess whether they were compatible with the Convention, the Constitution or the legislation, in accordance with the hierarchy of legal norms, despite the fact that the relevant provisions clearly raised an issue under the principle of non-discrimination and of equality between men and women.

The lawfulness of the founder's wishes in terms of the law in force at the relevant period could not in itself guarantee any primacy or immunity when compared with current standards of public order and the Convention. This was particularly true where the practice in question stemmed from social and moral perspectives and an outdated vision of the role of women which were no longer widespread in Turkish society or, more widely, in European societies.

There was no link between the arrangements for distributing the Foundation's surplus income in line with the founder's wishes and the performance of actions in the general interest. Although the Foundation used its income primarily for the maintenance of its immovable property assets, including property offered for common use by the public, and for the distribution of food to the needy during a given period, and although these activities were in the general interest, the distribution of the surplus income had no bearing on the Foundation's ability to carry out these tasks, since it concerned only the sums remaining after they had been accomplished.

It followed from all these considerations that the authorities had not duly discharged their positive obligation to protect the applicants' deceased relative against sex-based discrimination.

The Court considered it important to specify the temporal scope of the present judgment. It was not unaware that differences of treatment between descendants of a foundation in the matter of patrimonial rights had for many years been regarded as permissible in Türkiye. It considered that the principle of legal certainty dispensed the Turkish State from re-opening legal acts or situations that antedated the present judgment.

Conclusion: violation (unanimously).

Article 41: claim in respect of pecuniary damage rejected. The most appropriate form of redress would be reopening of the proceedings.

(See also *Molla Sali v. Greece* [GC], 20452/14, 19 December 2018, [Legal summary](#))

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