



## The refusal to allow a woman to receive income from a charitable foundation, on the basis of an Ottoman-era legal document, amounted to discrimination

The [Dimici v. Türkiye](#) case (application no. 70133/16) concerned the conditions regulating the allocation of surplus income by the Örfioğlu Foundation (created in Diyarbakır in 1536, during the Ottoman period), which introduced a difference in treatment based on the sex of the entitled persons. Pursuant to the Foundation's constituent document, dating from the 16th century, only male descendants could be paid sums from the Foundation's surplus income, with the result that Necmiye Dimici – the late wife of one applicant and mother of the three other applicants – had been excluded from entitlement to that income.

In today's **Chamber** judgment<sup>1</sup> in this case (application no. 70133/16) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken together with Article 1 of Protocol No. 1 (protection of property) thereto.**

The Court noted that Necmiye Dimici had been denied entitlement to the Örfioğlu Foundation's surplus income in spite of the fact that she would have been entitled to it had she been a man. The deceased had therefore been treated differently on the grounds of sex.

The Court further noted that the domestic courts had merely established and then applied the wishes of the founder as expressed in the Foundation's constituent document, without seeking to examine them in the light of public-policy rules. They appeared to have made no attempt to assess whether the founder's wishes were compatible with the Convention, the Constitution or the legislation, although the relevant provisions clearly raised an issue under the principle of non-discrimination and the principle of equality between men and women.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

### Principal facts

The applicants are Ahmet Dimici (who was born in 1932 and died in 2018), and also Necla, Emine and Şaban Yıldırım Dimici, Turkish nationals who were born in 1955, 1956 and 1959 respectively. They live in various towns in Türkiye.

The applicants are the heirs of Necmiye Dimici (who was Ahmet Dimici's wife and the mother of the three other applicants), whose father had been administrator of the Örfioğlu Foundation (set up in 1536 in Diyarbakır) until his death in 1982.

The Örfioğlu Foundation today has official status under Turkish law (*vakıf*) and belongs to the category of "*mülhak*" foundations; this means that it is managed by the descendants of the founder. Its income is assigned to various charitable activities, and the surplus income is paid to the "descendants of the founder" on the basis of their degree of kinship in the direct line. According to

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

the applicants, the Foundation's assets were estimated, in 2015, at about 207 million euros and its annual income was approximately 3.7 million euros.

Before the Court, the applicants complained that Necmiye Dimici was deprived, on account of her sex, of the sums paid out by the Foundation to the descendants of its founder. The domestic courts refused to recognise Necmiye Dimici as a legitimate claimant to the surplus income, basing their decisions solely on the provisions of the constituent document, dating from the 16th century, under which only male descendants were entitled to receive income from the Foundation.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, taken together with Article 14 (prohibition of discrimination), the applicants submitted that there had been discrimination based on sex.

The application was lodged with the European Court of Human Rights on 22 October 2016.

The applicants Necla, Emine and Şaban Yıldırım Dimici informed the Court that they wished to maintain the part of the application concerning their father, Ahmet Dimici, who died in 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Egidijus **Kūris** (Lithuania),  
Branko **Lubarda** (Serbia),  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** (North Macedonia),  
Saadet **Yüksel** (Türkiye),  
Diana **Sârcu** (the Republic of Moldova),

and also Hasan **Bakırcı**, *Section Registrar*.

## Decision of the Court

### [Article 14 taken together with Article 1 of Protocol No. 1 to the Convention](#)

The Court noted that Necmiye Dimici had been refused entitlement to the Örfioğlu Foundation's surplus income in spite of the fact that, since she was a direct descendant of the founder, she would have been granted that right had she been a man. There was therefore no doubt that the deceased – whose heirs the applicants were – had been treated differently on the grounds of sex.

The Court further noted that the domestic courts' refusal to confirm Necmiye Dimici as a legitimate claimant to the surplus income on account of her sex stemmed from the provisions of the constituent document. It also noted that the discrimination to which she had been subjected was based on no other justification than the wishes of the individual making the initial endowment, which had resulted from social considerations and a view of women which prevailed when the Foundation was set up at the beginning of the 16th century.

In seeking to justify the approach of the domestic courts, the Government argued that, in what ought to be regarded as a private-law dispute, it was the wishes of the founder that ought to prevail, on the grounds of freedom of contract and the privileges attached to the rights of property and of association.

It was clear that to follow this logic would be tantamount to rendering meaningless and even denying the existence of positive obligations requiring States to prevent, put an end to and punish discrimination. The fact that the dispute concerned a relationship between private persons was not

in itself such as to exempt the State from its obligations to adopt certain necessary measures with a view to preventing and punishing discrimination between private persons, and in particular to introducing effective judicial protection against discrimination.

The Court reiterated that neither the principle of the freedom to arrange one's affairs and the freedom to contract which stemmed from it, nor freedom of association and the right to dispose of one's property freely were absolute. Quite the contrary, they were regulated and delineated by law and could not derogate from the legislation, in particular from public-policy rules, and far less from the Constitution. This approach was dictated by the hierarchy of norms.

It noted that the domestic courts had merely established and then applied the wishes of the founder as expressed in the constituent document, without seeking to examine them in the light of public-policy rules. Thus, they appeared to have made no attempt to assess whether the founder's wishes were compatible with the Convention, the Constitution or the legislation, although the relevant provisions clearly raised an issue under the principle of non-discrimination and the principle of equality between men and women.

Neither the domestic courts nor the Government had adduced a single argument that could justify a situation where the discriminatory wishes of an individual making use of privileges deriving from the right of ownership could enjoy greater protection than, and prevail over, the principle of non-discrimination, which was not only enshrined in the Constitution but was, moreover, one of the principles which underpinned the Convention, an instrument of European public order.

With regard to the argument that the founder's wishes had been in conformity with the law in force at the time that they were expressed, the Court held that this could not be considered decisive in the present case. Indeed, the lawfulness of a practice at the time of its adoption could not in itself guarantee any primacy or immunity when compared with current standards of public order and the Convention. Furthermore, the Law on the entry into force of the Civil Code also seemed to be consistent with this approach. This was particularly true where, as in the present case, 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.

In consequence, the authorities had not duly discharged their obligation to protect Necmiye Dimici – whose heirs the applicants were – against sex-based discrimination. It followed that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

### [The temporal scope of the present judgment](#)

The Court considered it important to specify that although it interpreted the Convention in the light of present-day conditions 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, which was necessarily inherent in the law of the Convention, dispensed the Turkish State from re-opening legal acts or situations that antedated the present judgment.

### [Just satisfaction \(Article 41\)](#)

Having regard to the specific features of the case, the Court considered that the most appropriate form of redress for the violation found would be to reopen the proceedings in application of Article 375 § 1 of the Code of Civil Procedure.

It also considered it unnecessary to make awards in respect of non-pecuniary damage and costs and expenses, since the applicants had not submitted any claims in this respect.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.