



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

SECOND SECTION

CASE OF M. ÖZEL AND OTHERS v. TURKEY

(Applications nos. 14350/05, 15245/05 and 16051/05)

JUDGMENT
(Revision)

Art 41 • Non-pecuniary damage • Revision of judgement in respect of deceased applicant • Award to be made to heirs

STRASBOURG

31 March 2020

FINAL

31/07/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M. Özel and Others v. Turkey (revision of the judgment of 17 November 2015),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Paul Lemmens, *President*,

Helen Keller,

Egidijus Kūris,

Robert Spano,

Jon Fridrik Kjølbro,

Ivana Jelić,

Saadet Yüksel, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 10 March 2020,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in three applications against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight Turkish nationals (“the applicants”). Their names and other details, as well as the date of the lodging of each application, are specified in the judgment delivered on 17 November 2015.

2. In that judgment, the Court held that there had been a violation of Article 2 of the Convention under its procedural head on account of the respondent State’s failure to meet its positive obligations regarding the criminal proceedings conducted by the national authorities into the deaths of the applicants’ relatives resulting from an earthquake. The Court also decided to award the eight applicants the total sum of 124,000 euros (EUR) for non-pecuniary damage, and to award three of the applicants EUR 4,000 for costs and expenses.

3. On 15 July 2016 the applicants’ representative in application no. 15245/05 informed the Court that he had learned that one of the applicants, Mr İsmail Erdoğan, had died on 25 September 2009 and that his heirs wished to pursue the application. He accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 3 July 2018 the Court considered the request for revision and decided to give the Government six weeks in which to submit any observations. Those observations were received on 10 September 2018. The applicants did not submit to the Court any observations in reply.

THE LAW

THE REQUEST FOR REVISION

5. The applicants' representative requested revision of the judgment of 17 November 2015, which he had been unable to have executed because Mr İsmail Erdoğan had died before the judgment had been adopted.

6. Relying on official documentation, the legal representative informed the Court that Güher Erdoğan, Şükrü Erdoğan, Şemsi Erdoğan, Cemal Ulusoy, Bülent Erdoğan and Menekşe Kılıç were heirs of the above-mentioned deceased applicant and should therefore receive the sum awarded to the deceased applicant.

7. The Government stated that the applicant İsmail Erdoğan had died on 25 September 2009, which is approximately 6 years before the judgment date but that neither the applicants' representative nor the heirs of İsmail Erdoğan had informed the Court in this regard. The Government also referred to the parties' duty to cooperate fully with the Court in the conduct of the proceedings (see Rule 44A of the Rules of Court), and asked the Court to draw "the necessary conclusions", within the meaning of Rule 44C of the Rules of Court, from the failure to inform the Court in a timely manner about the demise of the applicant.

8. As for the Government's reference to Rule 44A and C of the Rules of Court, the Court observes that it has already examined and rejected similar arguments raised by the respondent Government in three comparable cases (see *Cangöz and Others v. Turkey* (revision), no. 7469/06, § 9, 19 September 2017; *Benzer and Others v. Turkey* (revision), no. 23502/06, § 13, 13 January 2015; and *Gülbahar Özer and Others v. Turkey* (revision), no. 44125/06, § 9, 10 June 2014). The Court finds no particular circumstances in the instant case which would require it to depart from its findings in those cases. It finds it unnecessary, therefore, to draw any inferences from the failure to inform the Court at an earlier stage about the demise of the applicant.

9. The Court notes from the documents submitted to it that Güher Erdoğan was the wife, and Şükrü Erdoğan, Şemsi Erdoğan, Cemal Ulusoy, Bülent Erdoğan and Menekşe Kılıç are the children of the deceased applicant İsmail Erdoğan.

10. In the light of foregoing, the Court considers that these six heirs have standing to request that the judgment be revised in their deceased relative's stead. It observes that they have expressed their intention to do so and requested that the judgment be revised.

11. The Court considers that the judgment of 17 November 2015 should be revised pursuant to Rule 80 of the Rules of Court, the relevant parts of which provide:

“A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.

...”

12. It accordingly decides to award Ms Güher Erdoğan (second applicant in the case) EUR 15,000 and the heirs of Mr İsmail Erdoğan, namely Güher Erdoğan, Şükrü Erdoğan, Şemsi Erdoğan, Cemal Ulusoy, Bülent Erdoğan and Menekşe Kılıç, jointly, EUR 15,000 for non-pecuniary damage.

13. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to revise its judgment of 17 November 2015 in so far as it concerns the claims made by the deceased applicant Mr İsmail Erdoğan under Article 41 of the Convention,

and accordingly,

2. *Holds*

- (a) that the respondent State is to pay to Ms Erdoğan and the following heirs of Mr Erdoğan, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (i) EUR 15,000 (fifteen thousand euros) to Ms Erdoğan;
 - (ii) EUR 15,000 (fifteen thousand euros) to the heirs of Mr Erdoğan, namely Güher Erdoğan, Şükrü Erdoğan, Şemsi Erdoğan, Cemal Ulusoy, Bülent Erdoğan and Menekşe Kılıç;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

M. ÖZEL AND OTHERS v. TURKEY (REVISION) JUDGMENT

Done in English, and notified in writing on 31 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Paul Lemmens
President