



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

SECOND SECTION

CASE OF MERYEM ÇELİK AND OTHERS v. TURKEY

(Application no. 3598/03)

JUDGMENT
(Revision)

STRASBOURG

16 September 2014

FINAL

16/12/2014

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

In the case of Meryem Çelik and Others v. Turkey, (request for revision of the judgment of 16 April 2013),

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

Guido Raimondi, *President*,

Işıl Karakaş,

Dragoljub Popović,

András Sajó,

Nebojša Vučinić,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Stanley Naismith, Section Registrar,

Having deliberated in private on 26 August 2014,

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

PROCEDURE

1. The case originated in an application (no. 3598/03) 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 fourteen Turkish nationals, Ms Meryem Çelik, Ms Zübeyda Uysal, Ms Misrihan Seveli, Ms Emine Çelik, Ms Marya Çelik, Mr Hamit Şengül, Ms Fatma Şengül, Ms Besna Seveli, Ms Hanife İzci, Mr Şakir Öztürk, Ms Kimet Şengül, Ms Hazima Çelik, Ms Şekirnaz İnan and Ms Hamayıl İnan (“the applicants”), on 10 September 2002.

2. In a judgment delivered on 16 April 2013, the Court held that there had been a violation of Article 2 of the Convention on account of the disappearance and presumed death of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan and on account of the killing of Aşur Seçkin. It further held that there had been a violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an adequate and effective investigation into the disappearance of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın and Abdullah İnan, the killing of Aşur Seçkin and the alleged killing of Kerem İnan by members of the security forces. The Court also held that there had been a violation of Article 5 of the Convention on account of the unlawful detention of Casım Çelik, Cemal Seveli, Yusuf Çelik, Mirhaç Çelik, Naci Şengül, Seddik Şengül, Reşit Seveli, Kemal İzci, Hayrullah Öztürk, Salih Şengül, Hurşit Taşkın, Abdullah İnan and Aşur Seçkin and of Article 3 on account of the

suffering of Meryem Çelik, Misrihan Seveli, Emine Çelik, Marya Çelik, Hamit Şengül, Fatma Şengül, Besna Seveli, Hanife İzci, Şakir Öztürk, Kimet Şengül, Hazima Çelik, Şekirnaz İnan and Zübeyda Uysal due to the disappearance of their relatives.

3. The Court decided to award 60,000 euros (EUR) each to Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Kimet Şengül, Hazima Çelik and Şekirnaz İnan in respect of pecuniary damage. It further awarded EUR 65,000 each to Meryem Çelik, Zübeyda Uysal, Misrihan Seveli, Emine Çelik, Marya Çelik, Fatma Şengül, Besna Seveli, Hanife İzci, Kimet Şengül, Hazima Çelik and Şekirnaz İnan, EUR 32,500 each to Hamit Şengül and Şakir Öztürk and EUR 20,000 to Hamayil İnan in respect of non-pecuniary damage. It finally awarded the applicants, jointly, EUR 5,200 in respect of costs and expenses, less the EUR 850 granted by way of legal aid, and dismissed the remainder of the claims for just satisfaction.

4. On 16 January 2014 the applicants' representative informed the Court that he had learned that Ms Hanife İzci and Mr Hamit Şengül had died on 6 September 2011 and 10 May 2011 respectively. He accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

5. On 1 April 2014 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 14 April 2014.

THE LAW

THE REQUEST FOR REVISION

6. The applicants' representative, on behalf of the heirs of Ms Hanife İzci and Mr Hamit Şengül, requested revision of the judgment of 16 April 2013, which he had been unable to have executed because Ms Hanife İzci and Mr Hamit Şengül had died before the judgment had been adopted. Mr Cemil İzci, Mr Lezgin İzci, Mr Latif İzci, Mr Naif İzci, Mr Cafer İzci, Mr Hefzullah İzci, Mr Abdullah İzci, Mr Şahin İzci, Ms Cemile Şengül, Ms Riha Şengül and Ms Sıtkiye Şengül were the heirs of Ms Hanife İzci. Ms Cemile Şengül, Ms Cemile Tekin, Mr Hacı Şengül, Ms Letife Şengül, Mr Teyyar Şengül, Ms Hedika Şengül, Ms Şerife Şengül, Mr Fehmi Şengül, Mr Muhammed Şengül, Ms Damla Şengül, Ms Rojda Şengül and Ms Akide Şengül were the heirs of Hamit Şengül and should therefore receive the sums awarded to the deceased.

7. The Government maintained that the applicants Ms Hanife İzci and Mr Hamit Şengül had died one year and seven months and two years,

respectively, before the judgment was adopted by the Court. They stated that neither their heirs nor the applicants' representative had informed the Court about their demise. The Government 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.

8. The applicants' legal representative responded by submitting that the families of Ms Hanife İzci and Mr Hamit Şengül had not informed him of their death in a timely manner because they lived in a remote part of Turkey and he practised in Ankara. He further contended that most of the heirs were illiterate and some of them did not speak Turkish. They therefore were not aware of the responsibility that they had towards the Court. He finally submitted that the failure of the applicants' heirs to inform the Court of these deaths did not have any effect on the Court's examination of the case.

9. As regards the Government's reference to Rule 44A and C of the Rules of Court, the Court observes that the purpose of those provisions is to ensure "the proper administration of justice" (see Rule 44A of the Rules of Court) and to facilitate the Court's examination of a case within the meaning of Article 38 of the convention. The aforementioned Rules have been relied on by the Court, for example, in cases in which its establishment of the facts was hampered due to a party's failure to cooperate with it by refusing to hand over crucial documents (see *Pekaslan and Others v. Turkey*, nos. 4572/06 and 5684/06, § 46, 20 March 2012). In accordance with those rules the Court drew inferences from such failures as to the well-foundedness of the allegations (see *Benzer and Others v. Turkey*, no. 23502/06, §§ 161 and 179, 12 November 2013). In the present case, the Court observes that the failure of the heirs of Ms Hanife İzci and Mr Hamit Şengül or the applicants' representative to inform it of the death of Ms Hanife İzci and Mr Hamit Şengül did not have any such effects on its examination of the case. The Court thus deems it unnecessary to draw any inferences from that failure.

10. The Court further observes, on the basis of the documents submitted to the Court, that the persons mentioned in paragraph 6 above are the legal heirs of the deceased applicants and made a request to revise the judgment. The Court, having regard to its established case-law on the matter, concludes that they have standing to pursue the application in Ms Hanife İzci and Mr Hamit Şengül's stead (see, *mutatis mutandis*, *Volkan Özdemir v. Turkey* (revision), no. 29105/03, § 5, 20 July 2010; *Dyller v. Poland* (revision), no. 39842/05, § 8, 15 February 2011; *Gülbahar Özer and Others v. Turkey* (revision), no. 44125/06, § 8, 10 June 2014¹ and compare with *Gabay v. Turkey* (revision), no. 70829/01, § 8, 27 June 2006).

1. The judgment is not final yet.

11. Having regard to the conclusions reached in the aforementioned comparable cases, the Court considers that the judgment of 16 April 2013 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. The Court accordingly decides to award Mr Cemil İzci, Mr Lezgin İzci, Mr Latif İzci, Mr Naif İzci, Mr Cafer İzci, Mr Hefzullah İzci, Mr Abdullah İzci, Mr Şahin İzci, Ms Cemile Şengül, Ms Rihan Şengül and Ms Sıtkiye Şengül, jointly, the amounts it previously awarded to Ms Hanife İzci, namely EUR 60,000 for pecuniary damage and EUR 65,000 for non-pecuniary damage. Likewise, the Court decides to award Ms Cemile Şengül, Ms Cemia Tekin, Mr Hacı Şengül, Ms Letife Şengül, Mr Teyyar Şengül, Ms Hedika Şengül, Ms Şerife Şengül, Mr Fehmi Şengül, Mr Muhammed Şengül, Ms Damla Şengül, Ms Rojda Şengül and Ms Akide Şengül, jointly, the amount it previously awarded to Mr Hamit Şengül, namely EUR 32,500 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 16 April 2013 in so far as it concerns the claims made by the heirs of the deceased applicants Ms Hanife İzci and Mr Hamit Şengül under Article 41 of the Convention;

and accordingly,

2. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 60,000 (sixty thousand euros) jointly to Mr Cemil İzci, Mr Lezgin İzci, Mr Latif İzci, Mr Naif İzci, Mr Cafer İzci, Mr Hefzullah İzci, Mr Abdullah İzci, Mr Şahin İzci, Ms Cemile

Şengül, Ms Rihan Şengül and Ms Sıtkiye Şengül, the heirs of Ms Hanife İzci, in respect of pecuniary damage;

(ii) EUR 65,000 (sixty-five thousand euros) jointly, plus any tax that may be chargeable, to Mr Cemil İzci, Mr Lezgin İzci, Mr Latif İzci, Mr Naif İzci, Mr Cafer İzci, Mr Hefzullah İzci, Mr Abdullah İzci, Mr Şahin İzci, Ms Cemile Şengül, Ms Rihan Şengül and Ms Sıtkiye Şengül, the heirs of Ms Hanife İzci, in respect of non-pecuniary damage;

(iii) EUR 32,500 (thirty-two thousand five hundred euros), jointly, plus any tax that may be chargeable, to Ms Cemile Şengül, Ms Cemila Tekin, Mr Hacı Şengül, Ms Letife Şengül, Mr Teyyar Şengül, Ms Hedika Şengül, Ms Şerife Şengül, Mr Fehmi Şengül, Mr Muhammed Şengül, Ms Damla Şengül, Ms Rojda Şengül and Ms Akide Şengül, the heirs of Mr Hamit Şengül, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 16 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President