



## Dismissal of applicant's claims of medical negligence was Convention compliant

In its decision in the case of [S.A. v. Turkey](#) (application no. 62299/09) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's claim that his son had sustained physical harm as a result of an allegedly botched circumcision.

Taking the view that it was not appropriate to call into question the facts as established by the national authorities or the conclusions reached by them, the Court found that the domestic courts' decision to dismiss the applicant's claims had neither been arbitrary nor unreasonable.

### Principal facts

The applicant, Mr S.A., is a Turkish national who was born in 1963 and lives in Eskişehir.

On 12 September 2003 his 11-year-old son was circumcised at the Eskişehir Civil Hospital. Mr S.A. claimed that the incision made during the procedure was larger than necessary. He lodged a criminal complaint against the doctor who performed the operation and a criminal investigation was opened.

On 10 December 2003 the Eskişehir Forensic Institute issued a medical report confirming the findings of a first report, which had observed that there had been no surgical error. On the basis of these medical reports, the public prosecutor ordered the discontinuance of the criminal proceedings and the Assize Court confirmed that decision.

On 6 February 2004 an internal administrative investigation for disciplinary purposes was opened by the Eskişehir Governor's Office, following which it refused to issue an authorisation to bring proceedings against the hospital staff. In July 2004 Mr S.A. brought a compensation claim against the administration and it was dismissed.

On 13 September 2004 Mr S.A. applied to the Eskişehir Administrative Court alleging that his son was suffering from disorders and sought compensation for pecuniary and non-pecuniary damage. The Administrative Court ordered a medical assessment and, after considering the findings of the report, concluded that there was no professional negligence attributable to the authority. The Supreme Administrative Court upheld that judgment.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 November 2009.

Relying on Article 12 (right to marry and to found a family), Mr S.A. complained that his son had sustained physical harm as a result of complications from surgery.

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

Robert **Spano** (Iceland), *President*,  
Ledi **Bianku** (Albania),  
İşıl **Karakaş** (Turkey),  
Nebojša **Vučinić** (Montenegro),  
Valeriu **Griţco** (the Republic of Moldova),  
Jon Fridrik **Kjølbro** (Denmark),

Stéphanie Mourou-Vikström (Monaco), *Judges*,

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 8

The Court took the view that it was appropriate to examine the facts of the case under Article 8 of the Convention, as questions relating to the physical and mental well-being of the individual fell within the scope of that Article.

It observed that Mr S.A. had initiated both criminal proceedings and an administrative claim for compensation. The national authorities had also opened, of their own motion, an internal administrative investigation for disciplinary purposes. In dismissing the claims of Mr S.A. the domestic authorities had relied on medical assessments. It was not for the Court to call into question the doctors' findings or to speculate as to the nature of the experts' conclusions.

The Court saw no reason in the present case to call into question the facts as established by the national authorities or the conclusions reached by them.

Moreover, the Court noted that Mr S.A. had not taken any steps to obtain a medical assessment in support of his allegations. Nor had he accepted a second corrective operation as recommended by the doctors.

Having regard to the case file, the Court found that the domestic courts' decision was neither arbitrary nor manifestly unreasonable.

*The decision is available only in French.*

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