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

SECOND SECTION

DECISION

Application no. 5693/12
Hanım ARTUÇ and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 November 2020 as a Committee composed of:

Valeriu Griţco, *President,*
Branko Lubarda,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 December 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 6 May 2010 two unarmed men who were smuggling cigarettes were shot by a group of soldiers in Şırnak, near the Iraq border, where terrorist attacks were quite frequent. Mr Hüseyin Artuç, who was a relative of the first seven applicants, died on the spot and Mr Cavit Ayas, who is the last applicant, was seriously injured.

5. On 29 June 2010 the Şırnak Public Prosecutor filed an indictment with the Şırnak Assize Court against the soldiers who had fired the shots, charging them with homicide and attempted homicide. The applicants joined the proceedings as a civil party.

6. On 28 June 2011 the Şırnak Assize Court decided that there were no grounds to sentence the soldiers as they had acted within the scope of their powers in using their weapons.

7. The applicants appealed.

8. On 28 May 2014 the Court of Cassation quashed the judgment of the first instance court.

9. According to the latest information in the file, the criminal proceedings are still pending before the Şırnak Assize Court.

COMPLAINTS

10. The applicants complained under Articles 2 and 13 of the Convention that the killing of Mr Hüseyin Artuç (a relative of the first seven applicants), and the serious wounding of the eighth applicant, Mr Cavit Ayas, had been a result of the use of force by the military forces which had not been absolutely necessary and proportionate, and that the ensuing investigation had been ineffective.

THE LAW

11. The Government argued that the applicants had not exhausted domestic remedies. Firstly, they maintained that the applicants could have brought compensation proceedings before the administrative courts. Secondly, the Government stated that the applicants should have applied to the Constitutional Court. In this connection, they referred to the decisions of the Constitutional Court in which the court had found that there had been a continuing violation of Article 2 of the Convention on account of the failure of the domestic authorities to provide for an effective investigation.

12. The Court reiterates that, having examined the main aspects of the remedy before the Constitutional Court, it found that the Turkish Parliament had entrusted that court with powers that enabled it to provide, in principle, direct and speedy redress for violations of the rights and freedoms protected by the Convention (see *Uzun v. Turkey* (dec.), no. 10755/13, 30 April 2013).

13. The Court further points out that in its decision in *Kaya and Others v. Turkey* ((dec.), no. 9342/16, 20 March 2018), it observed that the Constitutional Court's examination of the complaints concerning the effectiveness of the investigation into the death of the applicants' relative had been adequate and in accordance with its case-law. The Court further noted in the decision that, having established that the investigation into the applicants' relative's death had been flawed, the Constitutional Court had remitted the case to the relevant prosecutor to reopen the investigation with a view to remedying the deficiencies. The Court remarked that such action was the keystone of the individual application mechanism instituted on

23 September 2012 in the Turkish legal system, in particular for cases raising issues under Articles 2 and 3 of the Convention.

14. The Court reiterates that, indeed, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, it has held on many occasions that this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 et 7 others, § 87, ECHR 2010). At this point, the Court further notes that the Constitutional Court's jurisdiction *ratione temporis* had begun on 23 September 2012 and it is clear from the judgments already delivered that it accepted an extension of its jurisdiction *ratione temporis* to situations involving a continuing violation which had commenced before the introduction of the right of individual application and had carried on after that date.

15. The Court notes that, although the application was lodged on 15 December 2011, there are no special circumstances in the present case which would dispense the applicants from the obligation to exhaust the domestic remedy before the Constitutional Court (see *Deniz v. Turkey* (dec.), no. 47554/11, 3 July 2018).

16. In the light of the foregoing, taking into account the Government's preliminary objection, the Court concludes that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 November 2020.

Hasan Bakırcı	Valeriu Griţco
Deputy Registrar	President

Appendix

No.	Applicant's Name	Birth year	Nationality	Place of residence
1	Hanım ARTUÇ	1967	Turkish	Şırnak
2	Abdurrahman ARTUÇ	1959	Turkish	Şırnak
3	Çiğdem ARTUÇ	1985	Turkish	Şırnak
4	Haci ARTUÇ	1993	Turkish	Şırnak
5	Hezar ARTUÇ	1992	Turkish	Şırnak
6	Berçin ARTUÇ KABUL	1990	Turkish	Şırnak
7	Adalet UYSAL	1987	Turkish	Şırnak
8	Mehmet Cavit AYAS	1970	Turkish	Şırnak