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

SECOND SECTION

DECISION

Application no. 51375/07
Bayram ÇAKIR and Besime ÇAKIR
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 September 2017 as a Committee composed of:

Ledi Bianku, *President,*
Paul Lemmens,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 November 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Bayram Çakır and Ms Besime Çakır, are Turkish nationals, who were born in 1947 and 1949 respectively and live in Diyarbakır. They were represented before the Court by Mr Fethi Gümüş, a lawyer practising in Diyarbakır.

The circumstances of the case

2. The facts of the case, as submitted by the applicants and as they appear from the documents submitted by them, may be summarised as follows.

3. The applicants' son Zana Çakır was shot and killed on 22 October 1993 by, according to the applicants, members of the security forces in the course of a large-scale security operation in the town of Lice in south-east Turkey (for a description of the events during which the applicants' son lost his life, see *Ayder and Others v. Turkey*, no. 23656/94, 8 January 2004).

4. An official investigation file was opened by the local prosecutor the same day and a post-mortem examination conducted on Zana Çakır's body the following day established that he had been shot in the head with a number of bullets.

5. On 2 November 1993 the first applicant requested a prosecutor to prosecute those responsible for the killing of his son.

6. On 11 November 1993 the Lice prosecutor decided that he lacked jurisdiction to investigate the killing of the applicants' son as well as the killings of a large number of other persons in the course of the same operation. The prosecutor forwarded the investigation file to the office of the prosecutor at the Diyarbakır State Security Court.

7. It appears from the documents submitted by the applicants that a standing search order was issued by a prosecutor, ordering law enforcement personnel to search for the perpetrators of the killing until expiry of statute of limitations.

8. On 24 September 2001, at the request of the applicants, a prosecutor informed the applicants that the investigation into the killing was continuing.

9. On 14 November 2001 the applicants and a number of other persons, who had also lost a relative during the same operation, introduced an application before the Court and complained about the killings (*Çakır and Others v. Turkey*, no. 3195/02). That application was rejected on 29 June 2004 by a Committee of three judges on account of the applicants' failure to comply with the requirements set out in Articles 34 and 35 of the Convention.

10. In 2006 the applicants signed an agreement with the office of the Governor of Diyarbakır and accepted to receive 16,000 Turkish liras in accordance with the provisions of the Law on Compensation of the Losses resulting from Terrorism and the Measures Taken against Terrorism (Law no. 5233 of 27 July 2004). The money (approximately 9,500 euros at the time) was paid to them on 10 October 2007.

COMPLAINTS

11. The applicants complained that their son had been killed and that no effective investigation had been conducted into the killing, in breach of Articles 2, 6 and 13 of the Convention.

12. The applicants argued that, as they had introduced the present application within six-months from the date of the payment of the compensation on 10 October 2007, they had complied with the six-month rule foreseen in Article 35 of the Convention.

THE LAW

13. The applicants relied on Articles 2, 6 and 13 of the Convention and complained about the killing of their son and the ensuing investigation.

14. The Court considers that the applicants' complaints can be examined solely from the standpoint of Article 2 of the Convention.

15. The Court has already held that, in cases concerning an investigation into the suspicious death of a relative, applicants are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 263, ECHR 2014 (extracts) and the cases cited therein).

16. In the present case the Court observes that the investigation into the killing was instigated by the prosecutors in 1993 (see paragraph 4 above). It also observes from the documents submitted to it that, apart from examining the body of the applicants' son (see paragraph 4 above), establishing which prosecutor had jurisdiction to examine the killing (see paragraph 6 above) and issuing a standing search order (see paragraph 7 above), the prosecutors did not take any investigative steps. On the other hand, the applicants do not appear to have taken any steps during the same period to acquaint themselves with the investigation's progress.

17. The Court notes that pursuant to standing search orders issued by prosecutors – as happened in the present case (see paragraph 7 above) - law-enforcement officials carry outs visits to the place of the incident every three months until expiry of statute of limitations for the offence in question, and prepare information notes pertaining to those visits. Those notes are subsequently forwarded to the relevant prosecutors with a view to informing them about any developments in the search for the perpetrator of an offence. In a number of its judgments the Court has examined this particular method of investigation in Turkey, and has ruled that visits paid to the place of the crime many years after the events could not be taken as constituting part of any meaningful investigation (see, *inter alia*, *Sakine Epözdemir and Others v. Turkey*, no. 26589/06, § 52, 1 December 2015 and the cases cited therein).

18. In the light of the foregoing, the Court considers that the absence of a meaningful investigation must have been apparent to the applicants long before they introduced their application with the Court in 2007. Nevertheless, it does not appear that they exercised due diligence in determining that the criminal investigation had become dormant.

19. Moreover, the Court has already held that the administrative procedure of which the applicants made use cannot be regarded as an effective remedy for the purposes of Article 2 of the Convention as it is not capable of clarifying the circumstances of the killing and identifying the

perpetrator (see, *inter alia*, *Gasyak and Others v. Turkey*, no. 27872/03, § 71, 13 October 2009). The Court finds, therefore, that the administrative procedure in question does not affect the running of the six-month period (see also, *mutatis mutandis*, *Jørgensen and Others v. Denmark* (dec.), no. 30173/12, §§ 62-63, 28 June 2016; *Alkın v. Turkey*, no. 75588/01, § 33, 13 October 2009; and *Erkan v. Turkey* (dec.), no. 41792/10, §§ 64-65, 28 January 2014).

20. In the light of the foregoing, the Court finds that the applicants have failed to comply with the six-month rule. The application must therefore be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President