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

SECOND SECTION

DECISION

Application no. 34872/09
Ayşe ÇAKMAK and Enes ÇAKMAK
against Turkey

The European Court of Human Rights (Second Section), sitting on 21 November 2017 as a Committee composed of:
Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*
Having regard to the above application lodged on 17 June 2009,
Having regard to the decision of 8 April 2014,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Ayşe Çakmak and Mr Enes Çakmak, are Turkish nationals who were born in 1979 and 2001 respectively and live in Manisa. They were represented before the Court by Ms Ş. Çöte, a lawyer practising in Manisa.

The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. On 13 October 2001 the applicants' husband and father, Talat Çakmak, was electrocuted as he was picking up pinecones from a tree located in the garden of a public primary school ("Milli Egemenlik Primary School"). It appears that the metal stick that he used to pick up the cones came into contact with an overhead power line passing some fifty centimetres above the pine tree. He died on the spot.

1. Criminal investigation

4. Soon after the incident, police officers inspected the accident site with engineers from the Turkish Electricity Distribution Company ("TEDAŞ", the State-run electricity company) and reported their findings. They also drew up a sketch map of the scene.

5. On the same day five witnesses who had been collecting pinecones with the victim at the relevant time were questioned in relation to the incident. Some of them claimed that Mr Çakmak had obtained a permit from the Saruhanlı Municipality ("the Municipality") for the collection of pinecones in the area.

6. Based on all the evidence before it, on 15 November 2001 the Saruhanlı public prosecutor's office issued a decision not to prosecute, holding that Mr Çakmak had been entirely responsible for his own death. It appears from the information in the case file that the applicants did not object to that decision.

2. Civil proceedings for compensation

7. On 6 June 2002 the applicants brought a claim for compensation against the Municipality and TEDAŞ in the Saruhanlı Civil Court of First Instance. They claimed that Talat Çakmak had entered into a contract with the Municipality for the collection of pinecones in the area. The Municipality had not informed Mr Çakmak of the dangers posed by the electricity line in question and so had been responsible for his death. They further claimed that TEDAŞ had failed to show sufficient care in installing the electricity line.

8. In a response to the applicants' allegations, the Municipality stated that it had not entered into a contract with Mr Çakmak and denied any involvement in the incident.

9. TEDAŞ similarly denied any responsibility for the death. It claimed that the tree in question was cut back periodically by its staff to maintain a safe distance with the power line in question. Moreover, had the victim or the Municipality requested, the power in the relevant electricity line could have been cut during the collection of the pinecones. It lastly stated that an average person would have been aware of the dangers posed by approaching a live power line with a metal stick.

10. On an unspecified date in 2003 the Saruhanlı Civil Court of First Instance ordered an examination of the books and records of the Municipality, Milli Egemenlik Primary School and a neighbouring high school to establish whether any of them had invited anyone to apply to collect pinecones in the school yard in question, and whether they had entered into a contract with the victim for that purpose. The experts who examined the relevant books and records reported that there was no evidence of such a contract.

11. On 17 October 2003 an on-site examination was conducted at the scene of the incident with the participation of the judge overseeing the case, two experts (an electrical engineer and a land surveyor), and the parties' witnesses. The applicants' witness M.T. stated that the victim had told him that he had paid the Municipality some money to obtain a pinecone picking permit, but that the transaction had not been officially documented since the amount involved had been below the relevant threshold. The Municipality's witness M.İ. stated that to his knowledge, it had not issued any permits for the collection of pinecones in the area.

12. In a report dated 7 November 2003 ("the first expert report") the expert electrical engineer found that TEDAŞ had complied with all safety requirements in installing and operating the electricity line in question, and that the victim had been entirely responsible for his own death due to a lack of care and prudence. The expert stressed that had the victim been careful, he would not have touched the electricity line with a metal stick, and that had he been prudent, he would have asked for the power to be cut before climbing the tree to collect pinecones with a metal stick.

13. The applicants objected to the report. They claimed in particular that the expert had lacked independence and impartiality, as he had previously worked for the respondent TEDAŞ as an area manager.

14. The Saruhanlı Civil Court of First Instance accepted the applicants' objection and ordered a new expert report from three university professors.

15. In a report dated 28 September 2005 ("the second expert report") the experts made the following findings:

(a) the victim had been four-eighths responsible for the accident due to his failure to take the necessary safety measures;

(b) it was not clear from the file whether the permit had been issued by the Municipality or another authority; whichever authority it was had been two-eighths responsible for the accident due to their failure to ensure the safety of the job;

(c) Both TEDAŞ and Milli Egemenlik Primary School had each been an eighth responsible on account of their failure to prevent the danger posed by the tree growing under the power line.

16. On the basis of that expert report, on 27 March 2006 the applicants brought additional claims against the administration of Milli Egemenlik Primary School.

17. On 9 May 2006 the director of the primary school objected to the applicants' request. He claimed that some two or three days before the accident he had seen the victim climbing a tree in the school yard, and had intervened and escorted him off the premises as he had had no right to be there. He claimed that the deputy director F.Y. and a teacher O.Y. had witnessed the incident.

18. On 10 November 2006 an on-site examination was conducted at the scene of the incident with the participation of the judge overseeing the case,

two experts (a land surveyor and an agricultural engineer), and two witnesses from the Ministry of Education. The witnesses, F.Y. and O.Y. stated that on a Friday afternoon approximately four years earlier, they had seen three individuals collecting pinecones from a pine tree in the school yard. The school director had told them that they had no permission to collect pinecones from the school yard and had warned them of the dangers posed by the overhead power line. The following weekend they had heard about the death of the victim, but had not known if he had been one of the individuals who had been warned by the school director. The deputy director stated that any request for the collection of pinecones from the school premises would have had to be submitted to the school director, who would in turn have conveyed the request to the relevant authorities for a decision. However, to his knowledge, no such request had been made.

19. The agricultural engineer who had participated in the on-site inspection subsequently reported that the pine tree in question was approximately forty-five to fifty years of age. Further evidence provided by the school administration suggested that the tree had been planted in the early 1980s at the latest. The information provided by TEDAŞ indicated that the power line in question had been installed in 1991.

20. On 14 March 2007 the Saruhanlı Civil Court of First Instance commissioned another expert report from two electrical engineers to determine the liability of the victim and defendants on the basis of all the information and reports obtained.

21. In a report submitted to the court on 7 May 2007 ("the third expert report"), the experts found that based on all the evidence and information in the file, responsibility for the accident lay entirely with Mr Çakmak.

22. According to another expert report issued on 21 May 2007 by a legal expert ("the fourth expert report"), the applicants had submitted various documents to demonstrate that the victim had purchased the right to collect pinecones from specific locations in the region, and had therefore engaged in the pinecone collection business earnestly. The expert found, however, that there was nothing amongst those documents to prove that he had obtained permission from the administration of Milli Egemenlik Primary School in connection with the pinecones in their yard. On the contrary, the evidence in the case file suggested that when he had been denied authorisation by the school director to collect the pinecones in the school yard, he had entered the yard clandestinely on a weekend to avoid another confrontation with the school administration. The expert further noted that there was similarly no evidence that the victim had obtained a permit from the Municipality. In these circumstances, and having particular regard to the fact that the victim had engaged in pinecone collection professionally and should have been aware of the dangers posed by a live electrical wire, which would have been evident even to a young schoolchild, he had been entirely responsible for his own death.

23. On 26 July 2007 the Saruhanlı Civil Court of First Instance dismissed the applicants' compensation claim and decided, on the basis of all the information and evidence before it, that the victim had been entirely responsible for his own death. The court stressed the following points:

i. although the applicants claimed that the victim had obtained permission from the Municipality to collect pinecones from the yard of Milli Egemenlik Primary School, there was no evidence in the case file, except for some witness statements supplied by the victim's friends (see paragraph 5 above) to support that allegation. In any event, the Municipality had not been in a position to issue a permit, as such authority only lay with the primary school administration as the holder of the right to use the tree in question.

ii. since the victim had kept records of his permits to collect pinecones in other locations (see paragraph 22 above), it was only fair to assume that he would have also kept the permit in respect of Milli Egemenlik Primary School if he had really obtained it.

iii. the fact that the victim had gone to collect pinecones from the school yard on a Saturday morning also supported the school director's allegations that no permission had been given to him for the collection of pinecones from the school yard (see paragraph 17 above).

iv. although the evidence suggested that the planting of the pine tree predated the installation of the power line in question, the reports obtained from various experts in the field had not found any irregularities in the installation or maintenance of the power line. Moreover, although the second expert report had found TEDAŞ an eighth responsible (see paragraph 15 above), it had not explained why.

24. The applicants appealed. They claimed that TEDAŞ had been responsible for the death of Mr Çakmak, as it had failed to take all necessary security measures in respect of the power line in question. They did not submit any claims regarding the responsibility of the other two defendants (the Municipality and the Ministry of Education).

25. On 30 October 2008 the Court of Cassation dismissed the applicants' appeal and upheld the judgment of the Saruhanlı Civil Court of First Instance. It appears that the decision of the Court of Cassation was served on the applicants on 18 December 2008.

COMPLAINTS

26. The applicants complained under Article 2 of the Convention that the respondent State authorities had been responsible for the death of Talat Çakmak on account of their failure to take the necessary measures to protect his life. They argued in particular that installation of the electricity

line so close to some trees should not have been allowed and that the trees should have been cut back. They further argued that the competent authorities had allowed the collection of pinecones from the school yard in question despite the apparent dangers involved.

27. The applicants argued under Article 6 that the second expert report issued by the three university professors, which had determined the liability of a number of State authorities in connection with the incident, had not been taken into consideration by the Saruhanlı Civil Court of First Instance.

28. The applicants also complained under Article 13 that the criminal proceedings had been ineffective.

29. They lastly complained under Article 1 of Protocol No. 1 to the Convention that they had suffered financial hardship as a result of the death of their husband and father.

THE LAW

30. The Court considers at the outset that the applicants' complaints under Articles 2, 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention should be examined from the standpoint of Article 2 alone.

31. The Court notes in this connection that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also involves a duty to take reasonable measures to ensure the safety of individuals within its jurisdiction as necessary (see, amongst many authorities, *Ciechońska v. Poland*, no. 19776/04, § 60, 14 June 2011, and the cases cited therein). In the event of serious injury or death, the duty under Article 2 requires an effective independent judicial system to be set up so as to secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. Although this obligation may require the provision of a criminal-law remedy in certain special circumstances (see, for instance, *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 93-96, ECHR 2004-XII; *Oruk v. Turkey*, no. 33647/04, §§ 50 and 65, 4 February 2014; and *Aydoğdu v. Turkey*, no. 40448/06, §§ 62-64 and §§ 87-88, 30 August 2016), the Court stresses that neither Article 2 nor any other provision of the Convention guarantees an applicant a right to secure the prosecution and conviction of a third party or a right to " private revenge" (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I, and *Öneryıldız*, cited above, § 147). The Court reiterates in that regard that where death results from negligence, for instance, the obligation under Article 2 may be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts (see *Ciechońska*, cited above, § 66).

32. The Court notes that in the instant case, the Saruhanlı public prosecutor's office initiated an investigation into the incident of its own motion on the same day as the accident. Accordingly, the accident site was inspected with the participation of engineers from TEDAŞ, findings were reported and a sketch map was drawn. Moreover, the statements of five witnesses were taken in relation to the incident. On the basis of all the evidence and information before it, the Saruhanlı public prosecutor decided not to prosecute anyone in respect of the death of Mr Çakmak, as he had been found to be entirely responsible for his own death. The Court notes that although the applicants complained during the Strasbourg proceedings that the investigation had been ineffective, they did not object to the prosecutor's decision before the assize court, nor did they explain in detail why they deemed the investigations to have been ineffective. Those complaints therefore remain unsubstantiated.

33. The Court further notes that in the meantime the applicants brought a claim for compensation against the Municipality and TEDAŞ in the Saruhanlı Civil Court of First Instance, as they held them responsible for Mr Çakmak's death. They subsequently extended their claims to Milli Egemenlik Primary School as the owner of the pine tree on which Mr Çakmak had been electrocuted. According to the information in the case file, the court conducted a thorough investigation into the applicants' claims. It ordered an examination of the books and records of the Municipality, the primary school and another school located on the adjacent land to find out whether any of them had entered into a contract for the collection of pinecones in the yard of the primary school, or whether they had received any money from the victim in return for a permit to do so. There was no evidence of any such transaction in their records. Moreover, it conducted two on-site examinations of the accident site with the participation of experts and the parties' witnesses, and commissioned four expert reports to determine the liability of the defendant authorities in respect of the accident. It must be stressed that when the applicants objected to an expert's opinion on the grounds that he lacked independence and impartiality (see paragraph 13 above), the court ordered a new report from other electrical experts to determine whether TEDAŞ had in any way failed in its obligations arising from the relevant public safety laws and regulations (see paragraph 14 above). Based on all the information and evidence it collected, the court decided that none of the authorities held responsible by the applicants had played any role in the victim's death through their actions or omissions. Indeed, the court found that Mr Çakmak, who had apparently been engaging in the business of pinecone picking in a professional manner, had entered Milli Egemenlik Primary School's yard to collect pinecones without a permit, and had not displayed the necessary prudence to protect himself from the possible dangers posed by the power line passing above the pine tree on which he was working. The court stressed that no

irregularities had been found in the installation or maintenance of the power line at issue that would implicate TEDAŞ in the victim's death.

34. Based on the material before it, the Court finds no appearance of arbitrariness in the judgment of the Saruhanlı Civil Court of First Instance. On the contrary, the Court finds that the court appears to have gone to great lengths to establish the facts of the case in an accurate manner and, as a result, based its judgment on a very solid body of evidence which the Court has no reason to doubt. While the applicants complained of the civil court's failure to take into account the findings of the second expert report, the Court notes that that report was only one of four expert reports obtained by the Saruhanlı Civil Court of First Instance to shed light on the circumstances of the case, and the only one attributing some fault to the State authorities for the incident. The Court stresses that in the exercise of its power to freely assess the evidence before it, the domestic court had the discretion to not take into account the findings of a particular expert report and to order new reports as it deemed necessary. The Court further notes, in any event, that contrary to the applicants' argument, the domestic court did take the findings of the second expert report into consideration, but dismissed them for being unsubstantiated (see paragraph 23 above).

35. The Court therefore finds no reason to depart from the Saruhanlı Civil Court of First Instance's finding that in the instant case, Talat Çakmak lost his life as a result of his own imprudent conduct and that the State authorities could not be held responsible for his death (see, for instance, *Bone v. France* (dec.), no. 69869/01, 1 March 2005). The Court reiterates in this connection that while Article 2 enjoins the State to protect the right to life, it cannot be interpreted as guaranteeing to every individual an absolute level of security in any activity in which the right to life may be at stake (see *Bone*, cited above; *Molie v. Romania* (dec.), no. 13754/02, § 44, 1 September 2009; *Koseva v. Bulgaria* (dec.), no. 6414/02, 22 June 2010; and *Gökdemir v. Turkey* (dec.), no. 66309/09, § 17, 19 May 2015). Bearing in mind, among other things, the unpredictability of human conduct, the scope of the State's positive obligation under that provision must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Koseva*, cited above).

36. Having regard to the foregoing, the Court considers that the applicants' complaints must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 December 2017.

Hasan Bakırcı Deputy Registrar	Julia Laffranque President