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

SECOND SECTION

DECISION

Application no. 27446/12
Şener CAN and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 25 November 2014 as a Committee composed of:

Paul Lemmens, *President,*
Robert Spano,
Jon Fridrik Kjølbro, *judges,*

and Abel Campos, *Deputy Section Registrar*,

Having regard to the above application lodged on 30 March 2012,

Having deliberated, decides as follows:

THE FACTS

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

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

3. Erdal Can was the son of the second applicant and the brother of the remaining applicants. He was working as a Turkish language teacher in a public school in the town of Kızıltepe which is located within the administrative jurisdiction of the province of Mardin.

4. On 3 March 2004 at around 7.30 a.m. he was shot dead in the town centre whilst walking towards the school where he worked. According to the witnesses, he was gunned down by a man in civilian clothes who shot the victim three times and fled into a bazaar in the city centre.

5. On the same day, immediately after the incident the police made inquiries at the scene, drew up a sketch map of the locality and took the names of everyone who was present when the shooting occurred. The incident report states that five gun cartridges were found.

6. Also on the same day, the Kızıltepe Public Prosecutor began a preliminary investigation into the murder of the applicants' relative. All

those present at the crime scene were summoned as witnesses and their statements were taken on 3, 4 and 30 March 2004. It was understood that most of the statements of the people who were at the crime scene did not give accurate information in order to identify the perpetrator. Several of them stated that they had seen a 19-20 year old man measuring 1.70-1.75 m who was running away. However, two persons who were questioned during the police investigation and whose identities were kept secret at the investigation phase – and then disclosed during the trial phase - gave the name of two suspects to the police as potential perpetrators.

7. During the course of the investigation, the Kızıltepe Public Prosecutor issued an arrest warrant against a person or persons unknown for murder and requested the relevant police department to investigate the crime and arrest the suspects. It was instructed to report to the Principal Public Prosecutor's Office on progress quarterly. The police department conducted research in the city center and investigated whether the deceased had previously had problems with other people in the neighborhood.

8. On 11 March and 6 April 2004, a ballistics report and a chemical analysis report were also taken from the competent authorities concluding that the blood sample found at the crime scene belonged to the deceased and that the cartridge cases from the seized ammunition were not the same as the cartridge cases that had been found at the scene of certain unsolved cases.

9. The above information was passed on to the Mardin Public Prosecutor, with a summary of the interviews of the persons questioned.

Erdal Can's family members, including the applicants, stated in their written statements given to the Mardin Chief Public Prosecutor and in their oral statements before the Mardin 1st Assize Court on 7 February 2007, that the deceased worked as a teacher and had no enemies as far as they knew. They also stated that the deceased did not inform them of any problem which might have led to his murder and that they wanted the perpetrator to be found.

10. Based on the statements of witnesses and information gathered by the security forces from contacts in the city, two persons named M.D. and B.A. were questioned by the public prosecutor as suspects. They allegedly previously had personal problems with the deceased, as he had allegedly contacted and harassed their girlfriends and wives by sending text messages to their mobile phones.

11. On 5 January 2006 the Public Prosecutor at the Mardin National Security Court dropped charges against B.A. as he considered that there was no concrete evidence to show that he had been involved in the murder as at the date of the event he was in prison due to another conviction and that the allegations against him were not realistic and were based solely on speculation.

12. On 5 January 2006, the Mardin Public Prosecutor's office filed an indictment with the Mardin Assize Court charging M.D. with felonious homicide in consideration of witnesses' statements, information gathered by the Security Department, the incident report and the interrogation reports.

13. On 1 December 2012, an identification parade was conducted in the presence of the witness who had given a detailed description of the person who committed the homicide. The witness identified M.D. as the person he saw at the crime scene.

14. On 7 February 2007 the Mardin 1st Assize Court acquitted M.D. of all charges stating that;

-the two previous witnesses' statements indicating the suspect as the perpetrator had been illegally taken;

- the family members of the deceased had declared once again before the first instance court that they did not know the accused and that they were of the opinion that there was no reason for this person to kill Erdal Can;

- the information in the case-file did not establish the guilt of M.D. beyond doubt.

15. The judgment became final on 16 February 2007 without being appealed.

16. In the meantime, on 10 October 2005 the applicants filed an administrative law compensation claim before the Mardin Administrative Court alleging that the state authorities failed to protect the life of the deceased. The Mardin Administrative Court rejected the applicants' claim stating that the administrative action was not lodged within the time limits according to Article 13 of Law no. 2577 on Administrative Procedure as the action should have been filed within one year from the date of the murder.

The first instance court concluded that the date on which the applicants were aware of an alleged failure of the administration to protect the life of a citizen was the date of the event (3 March 2004). On 14 November 2011, the Supreme Administrative Court upheld the decision of the first instance court.

COMPLAINTS

17. The applicants complained under Article 2 of the Convention that their relative had been killed by agents of the State.

18. In this connection, the applicants stated that the applicant may have been killed by security forces due to a quarrel he had with police officers in 2002 during a national day ceremony in Mardin.

19. The applicants complained as well under Article 2 that the national authorities had failed to provide him with adequate protection of his right to life in domestic law.

20. Invoking both Article 2 and 6, the applicants alleged that the authorities had failed to carry out an effective and adequate investigation into the killing. They also alleged that no steps, other than a number of rudimentary ones, had been taken in the investigation.

THE LAW

21. Article 2 of the Convention reads as follows:

> "1. Everyone's right to life shall be protected by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The alleged substantive violation of Article 2 on account of the death of Şener Can

1. Alleged involvement of the State agents into the killing

22. The applicants alleged that their relative may have been killed by a state agent as revenge due to a scuffle that occurred in 2002 between Erdal Can and some police officers.

23. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions of the Convention, to which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Salman v. Turkey [GC]*, no. 21986/93, § 97, ECHR 2000-VII).

24. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the

surrounding circumstances (see *Tekdağ v. Turkey*, no. 27699/95, § 73, 15 January 2004).

25. The Court recalls that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, p. 65, § 161, and *Ülkü Ekinci v. Turkey*, no. 27602/95, § 142, 16 July 2002).

26. It should be noted that there is no indication in the case-file that the applicants' relative had been killed, or even threatened by State agents. Also, the applicants refrained from making such a complaint before the national authorities. Moreover, the Court considers that the applicants' allegation is not supported by any concrete evidence. In this connection, the Court points out that it has not been provided with any eyewitness accounts or evidence corroborating the applicants' account to a decisive extent.

27. The Court considers that the material in the case file does not enable it to conclude beyond all reasonable doubt that the applicants' relative was killed by any State agent or person acting on behalf of the State authorities. Even assuming the exhaustion of domestic remedies, this complaint is manifestly ill-founded.

2. Alleged failure to comply with the positive obligation to safeguard the lives of those within its jurisdiction

28. The applicants alleged that the national authorities had failed to provide Erdal Can with adequate protection of his right to life in domestic law.

29. The Court emphasizes that the first sentence of Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

30. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every alleged risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to prevent that risk from

materialising (see Keenan v. the United Kingdom, no. 27229/95, §§ 89 and 92, ECHR 2001-III).

31. Turning to the facts of the present application, the first time the applicants put forward the argument that their relative might have been under a risk of being killed by a state agent was in their application form submitted to the Court. However, they have never mentioned it to the national authorities.

32. It should also be noted that the applicants did not put forward any element capable of indicating why their relative had been at particular risk necessitating the taking of pre-emptive steps by the authorities to protect his life.

33. Having regard to the principles established in the judgments referred to above, the Court finds that the national authorities did not fail to take any pre-emptive action to protect the life of the applicants' relative.

34. Even assuming the applicants exhausted domestic remedies, it follows that the claims of the applicants under Article 2 on that account are in any event manifestly ill-founded.

B. The alleged procedural violation on account of the death of Şener Can

35. The applicants invoking both Article 2 and 6 alleged that the killing had not been investigated properly. They also contended that no steps, other than a number of rudimentary ones, had been taken in the investigation.

36. The Court considers that these complaints should be examined from the standpoint of the obligation to carry out an effective investigation under the procedural limb of Article 2.

37. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports* 1998-I). In that connection, the Court points out that this obligation is not confined to cases where it is apparent that the killing was caused by an agent of the State (see *Salman v. Turkey* [GC], no. 21986/93, § 105, ECHR 2000-VII).

38. The Court reiterates that the procedural obligation imposed by Article 2 of the Convention to carry out an effective investigation is not an obligation of result but of means; it does not require that every investigation come to a successful conclusion (see *McKerr v. the United Kingdom*, no. 28883/95, § 113, ECHR 2001-III). What it requires is that the

authorities must take reasonable steps enabling them to secure the evidence concerning the incident (*Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II).

39. In the instant case, the national authorities conducted a detailed investigation including the assessment of all chemical and ballistics reports, the questioning of all witnesses and the trial of a potential perpetrator (who was then acquitted). Having regard to the entirety of the investigation in which the applicants were able to take an active part, coupled with the applicants' failure to refer to any specific aspects of the investigation which they considered flawed, the Court finds that the national authorities did all that could be reasonably expected of them to find the perpetrator and that they cannot be reproached for failing to find the perpetrators or for refusing to re-question the witnesses (see *Gündüz v. Turkey,* no. 19628/05, 10 July 2012, and *İlhan and Others v. Turkey* (dec.), no. 23856/07, 27 August 2013,).

40. In light of the aforementioned findings and having examined the various measures that were taken in the instant case, the Court finds that an effective investigation was conducted into the applicants' allegations.

41. The Court concludes therefore that the applicants' complaints under Article 2 and 6 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Abel Campos
Deputy Registrar

Paul Lemmens
President

APPENDIX

No.	**Firstname LASTNAME**	**Birth year**	**Nationality**	**Place of residence**
1.	Şener CAN	1959	Turkish	Mardin
2.	Medine CAN	1952	Turkish	Mardin
3.	Tahir CAN	1983	Turkish	Mardin
4.	Saime İDGÖ	1973	Turkish	Mardin