

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

SECOND SECTION

DECISION

Application no. 28883/05
Zeynep ÇİÇEK and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 26 March 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar*.

Having regard to the above applications lodged on 28 July 2005, 16 August 2005, 1 June 2009 and 23 February 2010,

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. The applicants in application no. 28883/05, Mrs Zeynep Çiçek, Mr Hayri Çiçek, Mr İbrahim Çiçek, Mr Cemal Çiçek, Mr Veysel Çiçek, Mr Rıza Çiçek, Mrs Nurcan Güngör, Mrs Hanım Yıldırım, Mrs Gülcan Çiçek and Mr Nurettin Çiçek, are Turkish nationals who were born in 1948, 1989, 1966, 1963, 1972, 1976, 1971, 1965, 1974 and 1981 respectively and

live in the town of Hozat, near Tunceli. They were represented before the Court by Mr Hüseyin Aygün, a lawyer practising in Tunceli.

2. The applicants in application no. 32220/05, Mrs Garip Gülmez, Ms Fatma Karaduman, Ms Serayi Çetin, Mr Süleyman Gülmez, Ms Meneş Gülmez, Ms Yeter Kalkan, Ms Zeynep Gündoğdu, Ms Songül Gülmez and Ms Hatice Gülmez, are Turkish nationals who were born in 1931, 1955, 1957, 1961, 1966, 1967, 1969, 1973 and 1976 respectively and live in the town of Hozat, near Tunceli. They were represented before the Court by Mr Hüseyin Aygün, a lawyer practising in Tunceli.

3. The applicants in application no. 32096/09, Ms Rukiye Aksoy and Ms Ayşe Cingöz, are Turkish nationals who were born in 1972 and 1948 respectively and live in Diyarbakır. They were represented before the Court by Mrs Reyhan Yalçındağ Baydemir, Mr Muharrem Erbey and Mr Serdar Çelebi, lawyers practising in Diyarbakır.

4. The applicant in application no. 14018/10, Mrs Duri Yaman, is a Turkish national who was born in 1948 and lives in Şırnak. She was represented before the Court by Mr Mehmet Recai Bağcı and Ms Hülya Sarsam, lawyers practising in Ankara.

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

The circumstances of the cases

6. The facts of the cases, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

1. Application no. 28883/05 by Zeynep Çiçek and Others

7. The first applicant's husband and the remaining applicants' father, Hasan Çiçek, lived in the village of Boydaş, which is located within the administrative jurisdiction of Tunceli, in south-east Turkey.

8. According to the applicants, on 5 October 1994 a number of soldiers took Hasan Çiçek from his home in order to use him as a guide during a military operation conducted in the area. The applicants' neighbours witnessed the incident. Nothing has been heard from Hasan Çiçek since that date.

9. On 18 November 1994 an article was published in a daily newspaper stating that Hasan Çiçek's corpse had been found. The applicants were not informed of this event by the authorities.

10. On an unspecified date the first applicant filed a petition with the Hozat public prosecutor's office and requested that an investigation be initiated into her husband's disappearance. On 1 August 1996 the Hozat public prosecutor issued a decision based on a lack of jurisdiction (*görevsizlik kararı*) and passed the investigation to the Elazığ military prosecutor's office.

11. On 30 November 2004 the first applicant filed a petition with the Hozat public prosecutor's office. In her petition, she stated that forty days after the disappearance of her husband, she had found a body in the vicinity of their village. She had thought that it was her husband, as she had recognised the buttons of the shirt on the body. Noting that there had been no investigation into Hasan Çiçek's disappearance, she requested that an investigation be conducted.

12. On 11 January 2005 the Hozat public prosecutor heard the first applicant, who reiterated her request.

13. On 2 February 2005 the Hozat public prosecutor issued a decision not to prosecute in respect of the first applicant's allegations. In his decision, the public prosecutor noted that the first applicant had filed a petition with the public prosecutor's office in 1994, at which time she had also handed over a raincoat and empty cartridges which she had found in the vicinity of their village to the public prosecutor, and that there had been a previous decision not to prosecute issued on 1 August 1996 which had been based on a lack of jurisdiction. He further noted that the first applicant had not submitted any new evidence and that her previous allegations had already been dealt with by the public prosecutor's office. The public prosecutor concluded that there was no reason to initiate an investigation into the first applicant's complaints.

14. On 10 February 2005 Zeynep Çiçek objected to the decision of 2 February 2005. The objection was rejected by the Erzincan Assize Court on 21 November 2005.

15. In the meantime, on 22 February 2005 the Malatya public prosecutor issued a decision based on a lack of jurisdiction in relation to six cases of disappearance, including that of Hasan Çiçek. In his decision, the public prosecutor noted that it had been alleged that Hasan Çiçek's body had been found. The public prosecutor referred the cases to the Hozat public prosecutor's office.

16. On 14 April 2005 the Elazığ military public prosecutor's office issued a decision based on a lack of jurisdiction in relation to the aforementioned six cases of disappearance, including that of Hasan Çiçek, holding that the military public prosecutor's office at the General Gendarmerie Command had jurisdiction.

2. Application no. 32220/05 by Garip Gülmez and Others

17. The first applicant's husband and the remaining applicants' father, Nazım Gülmez, lived in the village of Taşıtlı, which is located within the administrative jurisdiction of Tunceli, in south-east Turkey.

18. According to the applicants, in October 1994 Nazım Gülmez was taken from his house by a group of soldiers so that he could help them by using his familiarity with the area to act as a guide. Nine neighbours witnessed the incident. Nothing has been heard from him since that date.

19. The mayor of the town of Hozat and mayors of the nearby towns sent a joint letter to the office of the Prime Minister. In their letter the mayors stated that large scale military operations had been conducted in their areas in October 1994. During the operations a large number of houses had been burnt down and a number of villagers – including Mr Gülmez – had been taken away by the soldiers. The bodies of two of the villagers had subsequently been found but nothing had been heard from the remaining villagers. No response was given to this letter by the Prime Minister's office.

20. In 2002 the applicant Meneş Gülmez made an official complaint to the Hozat prosecutor. However, on 13 December 2002 the prosecutor decided that military prosecutors had jurisdiction to investigate the disappearance. In January 2003 the applicants made an application to the Elazığ military prosecutor and asked for those responsible for the disappearance to be prosecuted.

21. As no response was received from the military prosecutor, the family submitted another petition on 12 January 2004. They also stated in their petition that the military prosecutors were not allowing them to consult the investigation file.

22. On 25 January 2005 the Elazığ military prosecutor's office informed the applicants that the investigation file had been forwarded to the Malatya State Security Court's prosecutor.

23. On 22 February 2005 the Malatya prosecutor decided that his office lacked jurisdiction to investigate the killings and disappearances of six people, including the disappearance of Mr Nazım Gülmez. The investigation files were forwarded to the prosecutor's office in the town of Hozat. According to this decision, the first applicant, Garip Gülmez, had been questioned by the prosecutor and had stated that her husband had been taken away from their home by soldiers.

24. On 14 April 2005 the Elazığ military prosecutor decided that his office also lacked jurisdiction to investigate the disappearances and killings and sent the investigation files to the military prosecutor's office in Ankara. It appears from this decision that the Hozat prosecutor had decided on 25 March 2005 that his office did not have jurisdiction either. It also appears from the decision that, according to the Hozat prosecutor's decision, there was evidence showing that a number of villagers had been taken away from their villages by soldiers and that nothing had been heard from those villagers since.

3. Application no. 32096/09 by Rukiye Aksoy and Ayşe Cingöz

25. According to the applicants, on 7 June 1995 the first applicant's husband, Edip Aksoy, and the second applicant's son, Orhan Cingöz, were bundled into an unmarked car in Diyarbakır by three plain-clothed members

of the security forces and taken away to an unknown location. Two of their friends witnessed the incident.

26. In the course of the following days and years, the applicants and their families made a number of applications to various domestic authorities, including the local prosecutors, the State Security Court, local governors, the Ministry of Justice and the Ministry of the Interior. Most of their requests for information received no response. On some occasions they were told that the two men were not in custody. The disappearance of the two men was reported in the national media.

27. On 9 August 2001 the first applicant, Ms Aksoy, submitted a written petition to the Diyarbakır prosecutor. She alleged that her husband had been arrested and detained on a number of occasions prior to his disappearance on 7 June 1995. She asked the prosecutor to inform her as to whether there had been any developments in the investigation into the disappearance of the two men.

28. On 4 September 2001 the second applicant, Ms Cingöz, also submitted a written petition to the Diyarbakır prosecutor and asked for information about the investigation into the disappearance of her son.

29. On the same date the prosecutor questioned the second applicant and recorded her statement. She gave the prosecutor the names of the eyewitnesses to the incident.

30. On 6 July 2005 the applicants were questioned by a prosecutor in the town of Silopi in the presence of their two lawyers. The first applicant gave the prosecutor a copy of a national newspaper article published in 2004, in which it was reported that the two men had been killed by members of the security forces and then buried in a river bed next to Cudi Mountain. The newspaper article was based on information given by Mr Abdülkadir Aygan, a former agent of the JİTEM (*Jandarma İstihbarat Terörle Mücadele* – the anti-terror intelligence branch of the gendarmerie). A number of investigations had already been instigated into Mr Aygan's allegations and the bodies of a number of individuals had been found in the locations described by him.

31. When the applicants were shown photographs of the bodies of people killed in the area, they told the prosecutor that two of the dead men looked like their disappeared relatives. They asked the prosecutor to identify the bodies and, if it was established that the bodies were indeed those of their relatives, they asked for the bodies to be returned to them.

32. The prosecutor ordered the exhumation of the remains of two people who had been killed in 1995 and whose bodies had been buried by the local authorities that year because no relative had claimed them. A DNA analysis conducted in 2006 showed that the two men were not the applicants' disappeared relatives.

33. On 6 August 2008 the Diyarbakır prosecutor decided to close the investigation because the statute of limitations had expired. In the

prosecutor's decision, the offence was qualified as "deprivation of liberty", for which the prescription period was ten years. The prosecutor considered that nothing had happened in the course of the ten years to stop the running of the time-limit. According to the documents submitted by the applicants, the prosecutor's decision was only communicated to the first applicant, Ms Aksoy.

34. On 19 September 2008 the first applicant, with the assistance of her lawyer, lodged an objection with the Siverek Assize Court against the prosecutor's decision. She stated that a number of newspaper articles had detailed how her husband and Mr Cingöz had been killed and where they were buried.

35. The objection was dismissed by the Siverek Assize Court on 25 November 2008. The Siverek Court did not respond to the first applicant's arguments concerning the newspaper articles. The decision was communicated to the applicants' lawyer on 3 January 2009.

4. Application no. 14018/10 by Duri Yaman

36. In July 1995 the applicant's 30-year-old son, Ahmet Yaman, was summoned to the Uludere District Gendarmerie Station. When he failed to return, the applicant went to the gendarmerie station to look for him. She was told that her son had been handed over to the military in Şırnak.

37. After receiving no news from her son for about a week, the applicant made an official complaint at the Uludere prosecutor's office on 11 July 1995, and asked for her son to be found.

38. In October 1995 the Uludere prosecutor decided that he lacked jurisdiction to investigate the disappearance because, according to two eyewitnesses heard by him, the applicant's son had disappeared in Şırnak, which was outside his jurisdiction. The prosecutor therefore forwarded the file to his opposite number in Şırnak. It also appears from the prosecutor's decision that, in a letter sent to him on 18 July 1995, the Uludere Gendarmerie Station officials denied having summoned the applicant's son to their station.

39. The applicant claimed that for a period of almost fourteen years she had visited various prosecutors' offices on hundreds of occasions and had asked unsuccessfully for information about her son.

40. On 1 June 2009 the applicant, with the assistance of two legal representatives, sent a letter to the Şırnak prosecutor's office and asked for information about the investigation into the disappearance. She claimed that the failure to find and prosecute those responsible for her son's disappearance was in breach of Articles 2, 6 and 13 of the Convention and of applicable domestic law.

41. On 4 June 2009 the Şırnak prosecutor informed the applicant that the investigation into the disappearance of her son had been closed on 18 March

1996 by a decision of his office not to prosecute on account of a lack of evidence.

42. According to the decision of 18 March 1996, the Şırnak prosecutor's office had been informed by the Şırnak Provincial Gendarmerie Command on 7 November 1995 that Ahmet Yaman had not been detained by them. The Şırnak prosecutor had also enquired as to the accuracy of two eyewitness statements to the effect that Ahmet Yaman had been put in a helicopter in Uludere and flown to Şırnak. In their reply of 1 December 1995 the Şırnak Gendarmerie had informed the Şırnak prosecutor that, although there were no regular helicopter flights between Uludere and Şırnak, the military did use helicopters between the two locations when the need arose. Thus, it was impossible to establish whether a helicopter flight had been made to Uludere on the day in question.

43. It also appears from the prosecutor's decision that the applicant had informed the investigating authorities that the Şırnak Regiment's Commander had visited a café in Uludere and told those present in the café, which had included civilians and village guards, that Ahmet Yaman was in Şırnak and would soon be released. When questioned by the Şırnak prosecutor, however, the village guards present during the commander's visit had stated that the commander had not said anything about Ahmet Yaman.

44. Upon receiving the Şırnak prosecutor's decision of 18 March 1996 on 4 June 2009, the applicant's legal representatives filed an objection against it. They argued that the investigation by the Şırnak prosecutor had been inadequate. They submitted that important leads had not been followed up, not all eyewitnesses had been heard, and the prosecutor had been content to accept the written replies received from the military, rather than questioning them in person.

45. The objection was rejected by the Siirt Assize Court on 13 August 2009 on the grounds that the two legal representatives "had not been representing the applicant at the time of the adoption of the prosecutor's decision of 18 March 1996 and the objection was thus filed outside the statutory time-limit".

46. The Assize Court's decision was communicated to the applicant's lawyers on 25 August 2009.

47. Unbeknown to the applicant, on 30 September 2009 the Minister of Justice asked the Court of Cassation to set aside the Siirt Assize Court's judgment because, the Minister argued, the applicant had lodged the objection within the time-limit foreseen in the applicable statute.

48. The Court of Cassation accepted the Ministry's request on 13 January 2010 and quashed the Siirt Assize Court's decision of 13 August 2009. Subsequently, the Siirt Assize Court examined the applicant's objection against the Şırnak prosecutor's decision and accepted it. The

Assize Court ordered the prosecutor to carry out a new investigation into the disappearance of the applicant's son.

49. The new investigation started by the Şırnak prosecutor is still pending.

COMPLAINTS

50. The applicants complained that State agents had been responsible for the disappearance of their relatives, in breach of Articles 2, 3, 5, 6, 8, 13 and 14 of the Convention.

THE LAW

51. The Government argued that the applicants had failed to comply with the six-month rule contained in Article 35 § 1 because they had not lodged their applications until many years after the disappearance of their relatives.

52. The applicants rejected the Government's arguments and maintained that they had acted in compliance with the six-month rule.

53. The Court reiterates that the purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002, also *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

54. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. In cases concerning deprivation of life, if no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of. Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the date when the applicant becomes aware, or should have become aware, of these circumstances (*ibid*.; see also *Hazar and others v. Turkey* (dec.), no. 62566/00, 10 January 2002).

55. In cases concerning disappearances, the Court has held that allowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance (*Varnava and*

Others v. Turkey [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 162-163, ECHR 2009). Furthermore, as the Court held recently, the nature of investigations into disappearances is such that relatives of a disappeared person may be justified in waiting lengthy periods of time for the national authorities to conclude their investigations. Thus, in the case of *Er and Others v. Turkey* (no. 23016/04, §§ 55-60, ECHR 2012 (extracts)), the applicants, who had waited for a period of almost ten years after the disappearance of their relative before lodging their application, were held to have complied with the six-month rule because an investigation was being conducted at the national level into the disappearance (see also *Yetişen v. Turkey* (dec.), no. 21099/06, 10 July 2012; *Taşçı and Duman v. Turkey* (dec.), no. 40787/10, 9 October 2012; and *Fındık and Kartal v. Turkey* (dec.), nos. 33898/11 and 35798/11, 9 October 2012).

56. In the present applications the applicants' relatives disappeared in 1994 and 1995. Although a number of steps were taken in the investigations into the disappearances, there were also long periods of inactivity during which no actions appear to have been taken by the applicants or by the investigating authorities.

57. For example, in the application lodged by Zeynep Çiçek and others there are no documents in the file to show that any action was taken by either the applicants or the national authorities for a period of eight years between 1996 and 2004 (see paragraphs 10-11 above). In the application lodged by Garip Gülmez and others the period of inactivity was also eight years (see paragraphs 18-20 above). In the application lodged by Rukiye Aksoy and Ayşe Cingöz there was an initial period of inactivity between 1995 and 2001 and then a second dormant period between 2001 and 2005. Finally, in the application lodged by Duri Yaman, the applicant did not submit to the Court any documents detailing the steps taken by her for a period of almost fourteen years between 1995 and 2009 (see paragraphs 36-40 above).

58. The Court notes that the applicants have not advanced any justifications for these lengthy periods of inactivity and it thus considers that the absence of meaningful investigations must have been apparent to the applicants long before they introduced their applications with the Court.

59. The Court observes that the present applications differ from that of *Er and Others* (cited above) where there were no such lengthy periods of inactivity and the applicants submitted to the Court documents showing that an investigation, albeit a sporadic one, was being conducted during the period in question.

60. Furthermore, the steps taken by the national authorities into the requests made by the applicants many years after the disappearance of their relatives are largely of a procedural nature and do not affect the running of the six-month period. Those steps do not concern, for example, any new

evidence or information about the applicants' disappeared relatives which could have led to significant new developments and, as such, to revive the procedural obligation to investigate the disappearances (see, *mutatis mutandis*, *Gasyak and Others v. Turkey*, no. 27872/03, §§ 60 and 63, 13 October 2009).

61. In light of the foregoing the Court finds that the applicants, who waited for lengthy periods of time for ineffective investigations to come to an end, failed to comply with the six-month time-limit. It follows that the applications have been introduced out of time and are inadmissible under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court

Decides, unanimously, to join the applications;

Declares, unanimously, application no. 28883/05 inadmissible;

Declares, by a majority, the remaining three applications inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President