

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

SECOND SECTION

DECISION

Application no. 3424/09
Haydar DURSUN
against Turkey

The European Court of Human Rights (Second Section), sitting on 4 September 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 31 December 2008,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Haydar Dursun, is a Turkish national who was born in 1964 and lives in İstanbul.

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

3. On 26 September 1999, at around 5 p.m., the applicant's brother, B.D., died as a result of falling from the roof of a building, allegedly while trying to pick a fig from a tree.

4. Following the incident gendarmerie officers arrived at the scene of the incident. They drafted a report at 5.30 p.m. and drew a sketch.

5. The Tuzla Public Prosecutor began an investigation into the incident.

6. On 7 October 1999 the applicant filed a formal complaint with the Tuzla Public Prosecutor's Office.

7. According to the autopsy report of 5 November 1999, the experts observed several abrasions and ecchymoses on the deceased's body. They concluded that the cause of death was fractures to his head due to blunt head trauma, and cerebral bleeding.

8. On 17 January 2000 the public prosecutor inspected the scene of the incident and interviewed three suspects.

9. In the meantime the gendarmerie questioned several witnesses.

10. On 3 March 2000 the Tuzla Public Prosecutor issued a decision not to prosecute. The prosecutor found that B.D. had died as a result of falling from the roof of a building while trying to pick a fig.

11. On 12 March 2000 the applicant filed an objection against the decision not to prosecute.

12. On 23 May 2000 the Kadıköy Assize Court quashed the decision of 3 March 2000 and ordered that criminal proceedings be initiated against the suspects on account of the findings of the autopsy report of 5 November 1999. Drawing attention to the ecchymoses on B.D.'s body, the assize court noted that those wounds might have occurred during a fight.

13. On 16 June 2000 the Kartal Public Prosecutor issued a bill of indictment charging three persons with intentional homicide under Article 448 of the former Criminal Code.

14. On 21 December 2000, at the fifth hearing, the Kartal Assize Court acquitted the accused as there was not sufficient evidence to convict them.

15. On 31 October 2001 the Court of Cassation upheld the judgment.

16. Following the acquittal of the accused, on 1 May 2002 the Tuzla Public Prosecutor issued an extended search warrant in connection with the search for the perpetrators of the incident, valid until 26 September 2004.

17. On 14 March 2002 the applicant made a request to the Tuzla Public Prosecutor for the investigation to be reopened as he was not satisfied with the outcome of the criminal proceedings. He expressed doubts about the way his brother had died.

18. On 14 November 2003 a gendarmerie officer took a statement from the applicant concerning the incident. He stated that his brother must have been murdered. The applicant requested that statements be taken from certain persons about whom he had suspicions.

19. After the issue of the search warrant, the gendarmerie reported to the Tuzla Public Prosecutor at regular intervals that they had been unable to find the perpetrators of the killing of B.D.

COMPLAINTS

20. Without invoking any Article of the Convention, the applicant contended that he had not received a fair trial and that the public authorities had failed to conduct an effective investigation into the death of his brother. In particular, he complained that the public officer, as well as the doctor and the inspection team, had not arrived at the scene of the incident immediately after the events, as a result of which the evidence had been destroyed.

THE LAW

21. The applicant alleged that he had not had a fair trial, and that the domestic authorities had failed to carry out an effective investigation into the death of his brother.

22. The Court notes first of all that both complaints should be assessed from the standpoint of Article 2 alone. It further considers that it should first examine whether the applicant has complied with the six-month rule contained in Article 35 § 1, given that although the acts complained of occurred in 1999, the application with to Court was lodged in December 2008.

23. The Court observes in the first place that the purpose of the six-month rule is to promote legal security 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, *mutatis mutandis*, *Brunner v. Turkey* (dec.), no. 10/10, 6 December 2012; *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; and *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

24. The Court further notes that 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 (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002).

25. However, special considerations may apply in exceptional cases where an applicant avails himself of or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective; in such a case it is appropriate to take as the start of the six-month period the date when he first became aware or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001, and *Bulut and Yavuz*, cited above).

26. In this connection, in a number of cases concerning ongoing investigations into the death of an applicant's relatives the Court has

examined the period of time from which the applicant could or should have started doubting the effectiveness of a remedy (see *Şükran Aydın and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005; *Bulut and Yavuz*, cited above; *Bayram and Yıldırım*, cited above; *Kıniş v. Turkey* (dec.), no. 13635/04, 28 June 2005; *Elsanova v. Russia* (dec.) no. 57952/00, 15 November 2005; and *Seyithan Aydın v. Turkey*, no. 71998/01, 4 March 2008). Although in those cases the Court refrained from indicating a specific period for establishing when an investigation had become ineffective for the purposes of assessing when the six-month period began to run, the determination of such period by the Court depended on the circumstances of each case and other factors, such as the diligence and interest displayed by the applicants, and the adequacy of the investigation in question.

27. In the instant case, the Court notes that, following the incident, the domestic authorities immediately commenced an investigation with a view to ascertaining the circumstances of the incident. In this connection, they prepared an incident report and a sketch-map of the scene and took statements from a number of witnesses, including the applicant. The authorities conducted an autopsy in order to establish the cause of death. They further initiated criminal proceedings against three persons which resulted in their acquittal. However, it can be seen from the documents submitted by the applicant that since 14 November 2003 no meaningful investigation has been carried out by the authorities, who merely left the matter on file until the perpetrators were found.

28. Following the issue of the extended search warrant in 1 May 2002, despite the lack of any concrete development in the investigation, the applicant also remained passive apart from giving statements to the public prosecutor and the gendarmerie on 14 March 2002 and 14 November 2003 respectively. In this regard, the Court considers that the applicant must have become aware of the ineffectiveness of the investigation, as no concrete progress had been made in the investigation for more than five years. Thus, the Court considers, in the circumstances of the present case, that the applicant must have become aware of the situation more than six months before he lodged the application with the Court.

It follows that applicant has failed to observe the six-month rule under Article 35 § 1 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President