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

SECOND SECTION

DECISION

Application no. 18357/11
Gülseren KUTLU and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 12 March 2019 as a Chamber composed of:

Robert Spano, *President,*
Paul Lemmens,
Işıl Karakaş,
Julia Laffranque,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 6 December 2010,

Having regard to the declaration submitted by the respondent Government on 30 January 2018 requesting the Court to strike the application out of the list of cases, and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

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

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

3. Mikdat Kutlu, the first applicant's husband and the remaining three applicants' father, was arrested and placed in police custody on 18 April 1992. The following day he was taken to the accident and emergency department of Diyarbakır State Hospital. Despite the doctors' attempts, he died in the hospital the same day. According to the autopsy report, Mikdat

Kutlu's death resulted from intracranial bleeding caused by head trauma; his skull had been fractured and there were lesions and areas of bruising on his body.

4. A number of police officers put on trial in connection with the killing were acquitted on 4 October 2011 by the Diyarbakır Assize Court, on the grounds that there were uncertainties about the identities of the perpetrators and the circumstances in which the head trauma had been caused. An appeal lodged by the applicants against the acquittals was rejected by the Court of Cassation on 8 May 2013.

5. The trial court also ordered in its judgment of 4 October 2011 that the prosecutor should be informed of the acquittal so that he or she could take action to find the real perpetrators. However, the parties have not informed the Court whether such an investigation has been opened.

6. The Government were given notice of the application.

THE LAW

7. The applicants alleged under Article 2 of the Convention, among other Articles, that their close relative Mikdat Kutlu had been killed as a result of the ill-treatment to which he had been subjected in police custody. They also complained that the investigation into the death had not been effective.

8. After the failure of attempts to reach a friendly settlement, the Government informed the Court by a letter of 30 January 2018 that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

9. The declaration read as follows:

> "The Government regret the occurrence of individual cases of death in in police custody, as in the circumstances of the present case, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.
>
> The Government admit that the treatment to which the applicants' relative was subjected and which resulted in his death and the investigation conducted into the circumstances surrounding the death, did not meet the standards enshrined in Article 2 of the Convention. The Government undertake to adopt all necessary measures to ensure that the right to life – including the obligation to carry out effective investigations – is respected in the future.
>
> The Government of Turkey declare that they offer to pay jointly to the applicants Gülseren Kutlu, Berivan Çelik, Fırat Kutlu and Muhammed Kutlu, with a view to securing an unilateral declaration of the above-mentioned case pending before the European Court of Human Rights, EUR 65,000 (sixty five thousand euros) to cover any and all non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicants.

> These sums will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

10. By a letter of 13 March 2018 the applicants indicated that they were not satisfied with the terms of the unilateral declaration.

11. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under paragraph 1 (a), (b) or (c) of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application".

12. The Court also reiterates that in certain circumstances it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

13. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, and in particular from the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *Jeronovičs v. Latvia* [GC], no. 44898/10, 5 July 2016).

14. The Court notes that the subject matter of the present application concerns, firstly, the member States' obligation to protect the right to life, which also includes, in so far as relevant to the circumstances of the present application, the requirement to protect persons in custody, owing to their vulnerable position (see *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII). Secondly, the case concerns the obligation under Article 2 of the Convention to carry out an effective investigation when individuals have been killed as a result of the use of force (see, *inter alia*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015, and the case cited therein). In this connection the Court has examined a large number of cases concerning the killing of individuals in police custody and in prison in Turkey in suspicious circumstances, and the effectiveness of the investigations conducted into those killings (see, in particular, *Salman*, cited above; *Abdurrahman Orak v. Turkey*, no. 31889/96, 14 February 2002; *Süheyla Aydın v. Turkey*, no. 25660/94, 24 May 2005; *Çelikbilek v. Turkey*, no. 27693/95, 31 May 2005; *Kişmir v. Turkey*, no. 27306/95, 31 May 2005; and *Yelden and Others v. Turkey*, no. 16850/09, 3 May 2012).

15. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)). The Court stresses that its decision is without prejudice to the possibility for the applicants to exercise any other available remedies in order to obtain redress (see *Jeronovičs v. Latvia* (dec.), no. 547/02, § 54, 10 February 2009, and, *mutatis mutandis*, *Jeronovičs*, cited above, §§ 116-18).

16. In this connection the Court notes that Article 172 of the Code of Criminal Procedure was amended in July 2018. Following the amendment, applicants in Turkey now have the opportunity to ask the relevant prosecutor to reopen the investigation into the death of their relatives not only in cases in which the Court has found a violation of the Convention on account of a failure to carry out an effective investigation, but also if their applications have been struck out by the Court on the basis of a friendly settlement or on the basis of a unilateral declaration submitted by the Government.

17. The Court notes that, as mentioned above (see paragraph 5), the trial court ordered in its judgment that the prosecutor should be informed of the police officers' acquittal so that he or she could take action to find the real perpetrators responsible for the killing of the applicants' relative.

18. Although the parties have not informed the Court whether a new investigation has been opened with a view to finding the perpetrators, the Court considers that it is possible for the applicants, if they so wish, to request the prosecutor to open a new investigation on the basis of the above-mentioned legislative amendment (see paragraph 16).

19. In the light of the above considerations, and in particular given the clear and extensive case-law on the topic, referred to above, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

20. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

21. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 2 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 4 April 2019.

Stanley Naismith Registrar	Robert Spano President

APPENDIX

No.	Firstname LASTNAME	Birth year	Nationality	Place of residence	Representative
1.	Gülseren KUTLU	1961	Turkish	Diyarbakır	A. Çağer
2.	Berivan ÇELİK	1981	Turkish	Diyarbakır	A. Çağer
3.	Fırat KUTLU	1983	Turkish	Diyarbakır	A. Çağer
4.	Muhammed KUTLU	1986	Turkish	Diyarbakır	A. Çağer