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

SECOND SECTION

DECISION

Application no. 56995/10
İmihan ÖZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 January 2017 as a Chamber composed of:

Paul Lemmens, *Acting President,*
Işıl Karakaş,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani,

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 4 September 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms İmihan Öz, is a Turkish national who was born in 1960 and lives in Malatya. She was represented before the Court by Mr M. Eryaman, a lawyer practising in Ankara.

The circumstances of the case

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

3. On 13 March 2007 the applicant's son Murat Öz, a construction worker, fell from a scaffold while working on a private construction site and died shortly afterwards as a result of the injuries he had sustained.

1. Criminal proceedings concerning the incident

4. Right after the incident, an investigation into the death of the applicant's son was initiated. Accordingly, a report on the scene of the incident was prepared, witnesses were interviewed and the applicant's son's employers were questioned as possible suspects. The Ankara public prosecutor's office also commissioned an expert report to establish the causes of the applicant's son's death, in particular to determine whether his employers bore any responsibility for the fall.

5. The expert report submitted to the Ankara public prosecutor's office on 21 March 2007 found that the applicant's son had been primarily responsible for his fall, on account of his failure to take the necessary precautions to ensure his safety on the scaffold, which he would have been expected to do as an experienced construction worker. It added, however, that the construction site managers and the civil engineer in charge were also responsible for the accident, as they had not set up a system of checks to ensure work safety on the construction site, and had not provided the deceased with sufficient training on safety measures, contrary to the requirements of the relevant legislation.

6. On 22 March 2007 the Ankara public prosecutor's office filed with the Ankara Criminal Court of First Instance a bill of indictment against four people in charge of the construction site in question, for causing the applicant's son's death by negligence. The applicant joined the proceedings as a civil party.

7. On an unspecified date the Ankara Criminal Court of First Instance appointed a panel of three experts, with a view to determining liability for the death of the applicant' s son. The expert report submitted to the criminal court on 15 February 2009 found that the scaffold from which the applicant's son had fallen had not been sufficiently secured, and this was the responsibility of the construction site manager, L.K. Accordingly, the expert report established that L.K. bore the main responsibility for Murat Öz's death.

8. Relying on that second expert report, on 14 October 2009 the Ankara Criminal Court of First Instance convicted L.K. of causing the applicant's son's death by negligence. However, it decided to suspend the pronouncement of the judgment, in accordance with Article 231 of the Code of Criminal Procedure (Law no. 5271).

2. Pension allocated to the applicant by the Social Security Institution

9. Following the death of her son, the Social Security Institution started paying the applicant a monthly "survivor's pension" in the amount of 424.95 Turkish liras (TRY – approximately 227 euros (EUR)) as of 1 April 2007, in accordance with the Social Security Act (Law no. 506).

10. In the meantime, an investigation had been initiated into the death of Murat Öz by the Social Security Institution, which concluded on 12 June 2008 that the accident which had claimed his life had been a "work-related accident".

11. Following that decision, the Social Security Institution allocated the applicant a monthly "work-related accident pension" as of 13 March 2007 in the amount of TRY 175.22 (approximately EUR 90), in addition to the survivor's pension she was already receiving. However, relying on sections 92(2) and 96(5) of the Social Security Act, which concerned the calculation of payments to persons entitled to several different types of pension, it recalculated the amount of the applicant's survivor's pension and reduced it to TRY 63.10 (approximately EUR 32). Moreover, the Social Security Institution asked the applicant to pay back the excess from the survivor's pension she had been receiving up to that date.

12. On 16 March 2009 the applicant filed an action with the Ankara Labour Court against the Social Security Institution, arguing that the latter had erroneously interpreted the relevant sections of the Social Security Act on the calculation of benefits, and had thus miscalculated her survivor's pension.

13. On 17 February 2010 the Ankara Labour Court allowed the applicant's claim and ordered the Social Security Institution to pay her the benefits she was due retrospectively, together with interest.

14. On 3 June 2010 the Court of Cassation upheld the judgment of the Ankara Labour Court.

15. Below is a table of the monthly payments received by the applicant from the Social Security Institution following the death of her son, based on the documents she submitted to the Court:

	Survivor's pension	**Work-related accident pension**	**Total pension received**	**Annual minimum wage (net) (as of December)**
2007	TRY 415.96	unknown	unknown	TRY 419
2008	TRY 274	TRY 99	TRY 373	TRY 503
2009	TRY 75	TRY 206	TRY 281	TRY 546
2010	TRY 299	TRY 235	TRY 534	TRY 599
2011	TRY 670	TRY 148	TRY 818	TRY 659
2012	TRY 736	TRY 163	TRY 899	TRY 740
2013	TRY 790	TRY 174	TRY 964	TRY 804
2014	TRY 855	TRY 189	TRY 1,044	TRY 891
2015	TRY 930	TRY 218	TRY 1,148	TRY 1,001
2016	TRY 1,080	TRY 293	TRY 1,373	TRY 1,301 (as of June 2016)

16. In addition to the amounts noted above, the applicant received a lump sum payment of TRY 8,937.5 (approximately EUR 4,335 in December 2010) on an unspecified date in 2010, in accordance with the

judgment of the Ankara Labour Court, to cover the past benefits of which she had been deprived owing to the erroneous calculations of the Social Security Institution.

COMPLAINTS

17. The applicant complained under Article 2 of the Convention that her son's right to life had been violated on account of the failure of the relevant State authorities to inspect and enforce the safety measures on the construction site necessary for the protection of his life, measures which had not been taken by his employer.

18. The applicant also complained under Article 2 that the Social Security Institution had miscalculated the benefits to which she had been entitled following her son's death, which had resulted in the delayed payment of the full benefits.

19. The applicant maintained that, as a result of the erroneous calculations of the Social Security Institution, she had received a meagre amount of benefits for almost three years, in addition to having been forced to return some of the money she had received previously, which amounted to degrading treatment within the meaning of Article 3 of the Convention, considering the magnitude of the loss she had suffered.

20. The applicant lastly argued that, even if her benefits had been calculated correctly from the outset, the amount she was paid was still insufficient to compensate for her losses arising from the death of her son, which also constituted degrading treatment under Article 3 of the Convention.

THE LAW

A. Article 2 of the Convention: the responsibility of the State for the applicant's son's death

21. The applicant complained under Article 2 of the Convention that her son had died on account of the failure of the State authorities to effectively inspect whether the necessary safety measures had been taken at the construction site where he worked. The relevant part of Article 2 of the Convention provides:

> "1. Everyone's right to life shall be protected by law."

22. The Court reiterates 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 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; *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II). This positive obligation has been considered to cover a wide range of sectors (see *Ciechońska v. Poland*, no. 19776/04, §§ 62-63, 14 June 2011), including dangers emanating from building and construction work (see *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003; *Banel v. Lithuania*, no. 14326/11, §§ 67-73, 18 June 2013; *Kostovi v. Bulgaria* (dec.), no. 28511/11, 15 April 2014; and *Cevrioğlu v. Turkey*, no. 69546/12, § 57, 4 October 2016). There is therefore little doubt that the positive obligation enshrined in Article 2 applied to the context in question.

23. The State's duty to safeguard the right to life must be considered to involve not only the taking of reasonable measures to ensure the safety of individuals in public places but also, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Dodov v. Bulgaria*, no. 59548/00, § 83, 17 January 2008; *Ciechońska v. Poland*, no. 19776/04, § 67, 14 June 2011; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 132, ECHR 2014). The Court reiterates that this procedural obligation concerns only the means to be employed and not the results to be achieved (see *Šilih v. Slovenia* [GC], no. 71463/01, § 193, 9 April 2009).

24. In some exceptional situations the Court has held that the authorities' positive obligations under Article 2 of the Convention extend to criminal law remedies (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 93, ECHR 2004-XII, and *Oruk v. Turkey*, no. 33647/04, §§ 50 and 65, 4 February 2014). However, if the infringement of the right to life is not intentional, and save for exceptional situations in the above-mentioned cases where negligence went beyond a mere error of judgment or carelessness, Article 2 does not necessarily require such remedies; the State may meet its obligation by affording victims a civil law remedy, either alone or in conjunction with a criminal law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained (see, among other authorities, *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006, and *Anna Todorova v. Bulgaria*, no. 23302/03, § 73, 24 May 2011).

25. In the instant case, criminal proceedings were brought *ex officio* against the individuals in charge of the construction in question in relation to the death of the applicant's son, and the site manager was convicted by the Ankara Criminal Court of First Instance of causing his death by

negligence. The applicant did not have any complaints in relation to the conduct or outcome of those proceedings.

26. Instead, the applicant complained to the Court of the relevant State authorities' failure to fulfil their duties to inspect the construction site in question and ensure the implementation of the relevant safety measures. The Court notes, however, that the applicant did not raise these complaints concerning the responsibility of the State for her son's death before any competent domestic authorities. In this connection, although as a civil party to the criminal proceedings she was aware that those proceedings had been instituted only against the individuals in charge of the construction, she did not ask the Ankara public prosecutor's office to extend the scope of the investigation so as to determine liability on the part of any State agents, nor did she lodge a separate criminal complaint to that effect. She similarly did not bring proceedings before the administrative courts against relevant State authorities to establish any administrative shortcomings that may have led to her son's death, which, in the absence of any arguments to the contrary, may have provided effective redress in relation to her particular complaints.

27. The Court notes that the only legal action taken by the applicant in the aftermath of her son's death was bringing a claim against the Social Security Institution to contest the calculation of her social security benefits. Bearing in mind that the payment of the benefits in question did not depend on the establishment of any liability for the death on the part of the employer or the State, and that the benefits were paid to families of deceased workers upon the simple fulfilment of certain legal conditions, those benefits could not be considered to provide a relevant remedy in relation to the applicant's complaints under Article 2 (see, *mutatis mutandis*, *Kukayev v. Russia*, no. 29361/02, § 72, 15 November 2007).

28. In these circumstances, having regard to the Court's relevant case-law under Article 2 of the Convention (see, for instance, *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, §§ 128-145, ECHR 2008 (extracts)), and to the general principles developed in its case-law regarding the rule of exhaustion of domestic remedies (see, for instance, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 220-226, ECHR 2014 (extracts); and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 115-116, ECHR 2015)), the Court considers that the applicant has failed to pursue her claims concerning the alleged violation of Article 2 of the Convention at domestic level.

29. As a result, the Court declares this part of the application inadmissible for non-exhaustion of domestic remedies.

B. Article 2 of the Convention: erroneous calculation of the benefits

30. The applicant also complained under Article 2 of the Convention of the failure of the Social Security Institution to correctly calculate the benefits to which she had been entitled as a result of her son's death, thereby depriving her of full payment for some years.

31. The Court has already established above that the benefits in question did not seek to remedy the non-pecuniary damage suffered by the applicant as a result of the death of her son on the basis of the employer or the State being liable for that death within the meaning of Article 2, but were paid in accordance with the Social Security Act to provide financial support to the family of the deceased as part of the social security policy. In that respect, neither the applicant's dispute with the Social Security Institution nor the benefits she received from them had any bearing on her rights under Article 2 of the Convention, alone or in conjunction with Article 13.

32. The Court notes that the present complaint regarding the erroneous calculation of the benefits may potentially raise an issue under Article 1 of Protocol No. 1 to the Convention (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 54, ECHR 2005-X; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 64, ECHR 2010; and *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009). Having said that, it also notes that the applicant's initial disagreement with the Social Security Institution as to the calculation of her benefits was resolved promptly by the Ankara Labour Court, and the applicant was able to receive her full entitlement, together with interest, shortly afterwards. The applicant did not complain of any delay or other shortcomings in the proceedings before the labour court.

33. In these circumstances, the applicant has failed to establish how any of her rights protected under Article 2 or any other provisions of the Convention were infringed on account of the initial miscalculation of her social security entitlements arising from her son's death.

34. The Court therefore considers that this part of the application is manifestly ill-founded and must be declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

C. Article 3 of the Convention: the amount of benefits received

35. The applicant lastly maintained under Article 3 that the amount of benefits she received from the Social Security Institution as a result of her son's death, even on the basis of a correct application of the Social Security Act, was too little in view of the magnitude of her loss, which constituted degrading treatment in the circumstances. Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

36. The Court has already established in some previous cases that a wholly insufficient amount of pension and social benefits may, in certain circumstances, raise an issue under Article 3 of the Convention, which prohibits inhuman or degrading treatment (see *Larioshina v. Russia* (dec.), no. 56869/00, 23 April 2002, and *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

37. In the instant case, the applicant did not specify whether, following her son's death, she depended on the pensions she received from the Social Security Institution for her subsistence and livelihood. Nor did she claim that those pensions, the total of which more or less equalled the monthly minimum wage (see above table), were insufficient to meet her basic human needs. She merely claimed that they failed to reflect the magnitude of her loss.

38. The Court notes once again that the monthly payments the applicant receives from the Social Security Institution are not intended to remedy the non-pecuniary damage which she suffered as a result of the tragic death of her son, and that it was open to her to seek judicial remedies appropriate for that purpose, as mentioned above.

39. In these circumstances, the Court has no grounds to find that the amount of the applicant's pension has caused damage to her physical or mental health capable of attaining the minimum level of severity falling within the ambit of Article 3 of the Convention.

40. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 26 January 2017.

Stanley Naismith	Paul Lemmens
Registrar	Acting President