

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

SECOND SECTION

DECISION

Application no. 54846/08
Emine ÖZDEMİR and Terzan ÖZDEMİR
against Turkey

The European Court of Human Rights (Second Section), sitting on 12 February 2013 as a Committee composed of:

Peer Lorenzen, *President,*
András Sajó,
Nebojša Vučinić, *judges,*

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

Having regard to the above application lodged on 3 November 2008,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Emine Özdemir and Mr Terzan Özdemir (T.Ö.), are Turkish nationals who were born in 1960 and 1981 respectively and live in Diyarbakır. They are represented before the Court by Mr M. Erbey and Mr H. Güzel, lawyers practising in Diyarbakır.

The facts of the case, as appears from the applicants' submissions and the documents provided by them, may be summarised as follows.

The first and second applicants are the widow and son of the late Mr Mehmet Zeki Özdemir (M.Z.Ö.), who was born in 1945 and who used to live with his family in the village of Kayaballı near Ömerli, a district of Mardin Province in south-east Turkey.

On 6 September 1994 M.Z.Ö. was working with his family in a vineyard, when two soldiers and several village guards appeared. M.Z.Ö. and T.Ö. were taken to the vineyard house by the soldiers, where they underwent an

identity check. Later that day, the family lodged a complaint with the gendarmerie, alleging that M.Z.Ö. and T.Ö. had been subjected to torture which had resulted in M.Z.Ö. being killed.

On 7 September 1994 the security forces arrived at the scene and drafted an incident report.

On 31 November 1996 the Ömerli public prosecutor's office held that it had no jurisdiction to deal with the matter and forwarded the case file to the State Security Court for prosecution.

On 24 April 2002 the Diyarbakır State Security Court also held that it had no jurisdiction and referred the case file back to the Ömerli public prosecutor's office.

On 23 August 2002 the Ömerli district governor decided to authorise the prosecution of the village guards.

On 4 June 2002 the Ömerli public prosecutor's office filed an indictment with the Midyat Assize Court, charging thirty-two village guards with the offences of intentional homicide and injury.

On 7 June 2005 the Mardin Assize Court gave its verdict, acquitting all the defendants.

On 3 July 2007 the Court of Cassation upheld the first-instance court's judgment and served the decision on the applicant's representative on 2 May 2008.

COMPLAINTS

Firstly, the applicants complain under Article 2 of the Convention that M.Z.Ö. was unlawfully killed by the village guards and that the domestic authorities failed to conduct an adequate and effective investigation into his death.

Secondly, the applicants complain under Article 3 that M.Z.Ö. and T.Ö. were subjected to torture and that there was no effective investigation into their allegations of ill-treatment.

Thirdly, the applicants complain that M.Z.Ö. and T.Ö. were deprived of their liberty, in violation of Article 5.

They lastly complain under Article 13 that there are no domestic remedies available through which the incidents of death and torture could be investigated and through which they could seek compensation.

THE LAW

The six-month rule, while technical in nature, serves an important role in the Convention system establishing the temporal limit after which the

European supervision of a complaint is no longer possible. The fundamental purpose of this rule is to ensure legal certainty, avoid stale complaints, and provide for examination of the Convention issues within a reasonable time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-40, 29 June 2012; *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004; and *İpek v. Turkey* (dec.), no. 39706/98, 17 November 2000).

The Court reiterates that, in accordance with its settled case-law, the six-month time-limit starts to run on the day following the public pronouncement of the final decision or, in cases where a decision is not pronounced publicly, on the day following the date on which the final decision is served on the applicant or his representative, and expires six calendar months later, irrespective of the actual length of those months (see *Sabri Güneş*, cited above, § 44).

The Court observes that in the instant case the final domestic decision was that of the Court of Cassation of 3 July 2007, which was served on the applicant's representative on 2 May 2008. The time-limit stipulated in Article 35 § 1 of the Convention therefore started to run from 3 May 2008 and expired on 2 November 2008, six months after the decision had been served. As the application was lodged on 3 November 2008, the Court concludes that it has been lodged out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention (ibid., § 60).

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Peer Lorenzen
President