

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

SECOND SECTION

DECISION

Application no. 31848/11
ÖZSÜREN
against Turkey

The European Court of Human Rights (Second Section), sitting on 9 October 2012 as a Chamber composed of:
Ineta Ziemele, *President,*
Danutė Jočienė,
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*
Having regard to the above application lodged on 18 February 2011,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, whose particulars are set out in the appendix, are Turkish nationals. They are the parents and siblings of Mr Muhittin Özsüren who disappeared in 1998. The applicants were represented before the Court by Mr Öztekin Erdönmez, a lawyer practising in Alanya.

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The circumstances of the case

2. The facts of the case, as submitted by the applicants and as they appear from the documents submitted by them, may be summarised as follows.

3. On 29 August 1998 Muhittin Özsüren was performing his military service in the town of Gelibolu when he went missing. No information was given to the family about his disappearance by the military authorities and the family became aware of it when his father Yaşar Özsüren – who is the first applicant – tried to contact him.

4. On 20 November 1998 Yaşar Özsüren petitioned the Gelibolu prosecutor and asked the prosecutor to find his son. On 30 November 1998 the prosecutor concluded that Muhittin Özsüren had not disappeared but gone absent without leave (AWOL), and closed the investigation. The prosecutor's decision was communicated to Mr Özsüren on 17 December 1998.

5. In the meantime, and on subsequent dates, steps were taken by the military authorities to find Muhittin Özsüren who, in their opinion, had gone AWOL.

6. On 15 December 2004 the first applicant, Yaşar Özsüren, sent a letter to the commander of the Turkish Land Forces, and asked for his son to be found. Pursuant to Mr Özsüren's request an administrative investigation was conducted at the military barracks where Muhittin Özsüren disappeared, but that investigation did not yield any results. The investigators recommended that military judges instigate a judicial investigation.

7. In 2005 the military authorities instituted a criminal case against Muhittin Özsüren for having gone AWOL, and issued a warrant for his arrest.

8. Nothing has been heard from Muhittin Özsüren since his disappearance and the criminal proceedings against him are still pending *in absentia*.

COMPLAINTS

9. The applicants relied on Articles 1, 2 and 6 of the Convention and complained about the disappearance of Muhittin Özsüren.

10. They alleged that the State was responsible for Muhittin Özsüren's disappearance because he had gone missing whilst performing his military service. They also complained that no timely investigation had been conducted into the disappearance.

THE LAW

11. The Court considers it appropriate to examine the applicants' complaints solely from the standpoint of Article 2 of the Convention. It also considers that it should first examine whether the applicants have complied with the six-month rule contained in Article 35 § 1 given that they did not lodge their application until 18 February 2011 although their relative disappeared on 29 August 1998, i.e. almost 13 years previously.

12. The Court reiterates that the purpose of the six-month rule is to promote security of law 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, and *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

13. 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 might be calculated from the time 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).

14. 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 the 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, §§ 55-58, 31 July 2012) 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).

15. In the present application the applicants' relative disappeared on 29 August 1998. A short-lived investigation was carried out by the local

civilian prosecutor and on 30 November 1998 that prosecutor closed his investigation because in his opinion the applicants' relative had not disappeared but gone AWOL.

16. The criminal proceedings which are still pending concern the military authorities' attempts to find and punish Muhittin Özsüren for the offence of going AWOL. Those proceedings cannot be regarded, therefore, as an effective remedy capable of providing redress to the applicants for their complaints under Article 2 of the Convention. Thus the applicants, whose complaints about the disappearance of their son while he was performing his military service were rejected by a civilian prosecutor, should have introduced their application within six-months after their receipt of the prosecutor's decision.

17. In the light of the foregoing the Court concludes that the applicants should have lodged their application with the Court within six months from December 1998, whereas they did so on 18 February 2011, that is, more than six months later. The Court thus concludes that the application has been introduced out of time and is inadmissible under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Ineta Ziemele
President

APPENDIX

1. Yaşar Özsüren, 1952, Alanya
2. Aysel Özsüren, 1959, Alanya
3. Mesut Özsüren, 1979 Alanya
4. Kamile Özsüren, 1984, Alanya
5. İsminur Özsüren, 1994, Alanya
6. Ayşe Nur Özsüren, 1995, Alanya