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

SECOND SECTION

DECISION

Application no. 60139/09
Mehmet Emin ŞENLİK and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 June 2014 as a Committee composed of:

Nebojša Vučinić, *President,*
Paul Lemmens,
Egidijus Kūris, *judges,*

and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 November 2009,

Having deliberated, decides as follows:

THE FACTS

The applicants, whose particulars are set out in the appendix, were represented before the Court by Mr Mustafa Göncü, a lawyer practising in Mersin.

The circumstances of the case

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.

On 4 June 2004 the body of the applicants' son and brother, Mr İbrahim Şenlik (hereinafter İ.Ş.), was found in the bottom of a well in a location near the town of Silifke. His head had been severed and has never been found. There were no other injuries on the body. As such, it has not been possible to establish the cause of death. It was thought that the body had been in the well for some months.

One of the applicants, Mr Ali Rıza Şenlik, informed the investigating authorities that his brother İ.Ş. had been married but had then eloped with another woman in January 2004. His family were of the opinion that İ.Ş.

had been killed either by the family of his wife, or the family of the woman with whom he had eloped.

An investigation was carried out by the local prosecutors during which a number of persons implicated by the applicants were questioned. Prosecutors were involved in all stages of the investigation and supervised the collection of evidence. Telephone records of İ.Ş. were checked with a view to establishing his movements. The woman with whom İ.Ş. had eloped and who had since moved to Germany was found by the authorities and questioned.

On 22 May 2009 the Silifke prosecutor decided that there was insufficient evidence to prosecute the suspects implicated by the applicants, and closed the investigation.

The applicants lodged an objection against the prosecutor's decision, but it was rejected by the Mersin Assize Court on 22 June 2009.

According to section 102 of the Criminal Code in force at the time of the commission of the offence, the investigation into the killing will not become time-barred until 20 years after the killing of the applicant's relative.

COMPLAINTS

The applicants relied on Articles 5, 6 and 8 of the Convention, and complained that the national authorities had failed to carry out an effective investigation into the killing of İ.Ş.

THE LAW

The Court observes that the applicants complained about the investigation conducted by the national authorities into the killing of their relative which they considered flawed. As such, it considers that the complaints should be examined solely from the standpoint of Article 2 of the Convention.

It is to be noted at the outset that the applicants did not allege the involvement of any agent of the State in the killing. As such, the Court's examination below will be limited to ascertaining whether the authorities have acted in accordance with their procedural obligation to carry out an effective investigation, within the meaning of Article 2 of the Convention.

In this connection the Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official

investigation when individuals have been killed as a result of the use of force (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Kaya v. Turkey*, 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I). In that connection, the Court points out that this obligation is not confined to cases where it is apparent that the killing was caused by an agent of the State (see *Salman v. Turkey* [GC], no. 21986/93, § 105, ECHR 2000-VII).

It is also to be noted that the applicants did not argue that any of the *sine qua non* principles of an effective investigation – such as acting with due diligence and promptness; independence and impartiality of the investigators; or the family's access to the investigation materials – had been breached by the authorities. Instead, they complained, in particular, that their requests for a re-hearing of some of the witnesses already questioned by the authorities had not been accepted. They also considered that those witnesses had lied to the authorities and, as such, they should have been questioned again and a covert investigation should have been conducted by the national authorities to find the perpetrators.

The Court reiterates that the procedural obligation imposed by Article 2 of the Convention to carry out an effective investigation is not an obligation of result but of means; it does not require that every investigation come to a successful conclusion (see *McKerr v. the United Kingdom*, no. 28883/95, § 113, ECHR 2001-III). What it requires is that the authorities must take the reasonable steps available to them to secure the evidence concerning the incident (*Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II).

Having regard to the entirety of the investigation in which the applicants were able to take an active part, coupled with the applicants' failure to refer to any specific aspects of the investigation which they considered flawed, the Court finds that the national authorities did all that could be reasonably expected of them to find the perpetrator and that they cannot be reproached for failing to find the perpetrators or for refusing to re-question the witnesses (see *İlhan and Others v. Turkey* (dec.), no. 23856/07, 27 August 2013; *Gündüz v. Turkey,* no. 19628/05, 10 July 2012).

In this connection the Court also notes that, any evidence which may come into light within the twenty-year period (see "The circumstances of the case" above) with a potential to shed light on the events, can be examined by the national investigating authorities and a new investigation can be opened if necessary.

In light of the foregoing the Court finds that an effective investigation was conducted into the applicants' allegations, and concludes that the applicant's complaints are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Abel Campos
Deputy Registrar

Nebojša Vučinić
President

APPENDIX

1. Mehmet Emin ŞENLİK is a Turkish national who was born in 1952, lives in Malatya
2. Ali Rıza ŞENLİK is a Turkish national who was born in 1969, lives in Malatya
3. Fidan ŞENLİK is a Turkish national who was born in 1983, lives in Malatya
4. Hasan ŞENLİK is a Turkish national who was born in 1974, lives in Malatya
5. Sultan ŞENLİK is a Turkish national who was born in 1950, lives in Malatya
6. Mesudiye TOSUN is a Turkish national who was born in 1975, lives in Malatya