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

SECOND SECTION

DECISION

Application no. 26741/09
Arsin SEZER and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 19 September 2017 as a Chamber composed of:

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Işıl Karakaş,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 20 April 2009,

Having deliberated, decides as follows:

THE FACTS

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

The circumstances of the case

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

3. On 23 February 2001 the applicants' wife and mother, Lusaper Sezer, was hit by a car while crossing the street, as a result of which she sustained some injuries, including a broken hip.

1. Criminal proceedings

4. Criminal proceedings were brought against the driver of the car, E.Ş., for causing bodily harm through negligence. According to the expert reports submitted to the criminal case file, the driver had been 100 % responsible for the accident.

5. On 3 March 2002 Lusaper Sezer died. According to the report issued by the Forensic Medicine Institute, her death had no causal link to the injuries she had sustained at the time of the accident on 23 February 2001.

6. On 18 September 2006 the Istanbul Criminal Court of First Instance found E.Ş. guilty of causing bodily harm through negligence, and sentenced him to a fine.

7. On 21 May 2008 the Court of Cassation quashed that judgment on procedural grounds.

8. On 13 October 2008 the Istanbul Criminal Court of First Instance decided to discontinue the proceedings as the prosecution of the offence in question had become time-barred. That judgment, which was not appealed against by any of the parties, became final on 28 October 2008.

2. Civil proceedings

9. On 23 February 2006 the applicants brought compensation proceedings against E.Ş. and his insurance company before the Istanbul Civil Court of First Instance. They requested a total of 20,000 Turkish liras (TRY) in respect of non-pecuniary damage, and TRY 10 as pecuniary damage.

10. On 22 July 2009 the applicants filed a petition to increase their pecuniary damage request in the light of the expert report submitted to the case file regarding their financial losses.

11. On 22 April 2010 the Istanbul Civil Court of First Instance partially accepted the applicants' request and awarded them a total of TRY 6,000 in respect of non-pecuniary damage and TRY 9,260 as pecuniary damage, plus interest on both amounts. The defendants appealed against that judgment.

12. On 13 December 2011 the Court of Cassation upheld the non-pecuniary damage award, but quashed the part of the judgment concerning the pecuniary damage, holding that the request to increase the pecuniary damage award had been submitted outside the five-year time-limit.

13. On 13 June 2013 the Istanbul Civil Court of First Instance complied with the decision of the Court of Cassation and ordered the payment of TRY 10 to the applicants in respect of pecuniary damage. It appears that on 24 June 2014 the Court of Cassation upheld that judgment.

COMPLAINTS

14. The applicants complained under Article 6 § 1 of the Convention that although the driver of the car who had hit Lusaper Sezer had been found to be fully responsible for the accident, he had not been subjected to any punishment by the criminal court as the criminal proceedings had been discontinued for having become time-barred.

15. In response to a request by the Court for further information concerning the civil proceedings, the applicants stated in a letter dated 7 February 2017 that the subject matter of their application concerned solely the criminal proceedings. However, in that letter, they also expressed some dissatisfaction with the length and outcome of the civil proceedings.

THE LAW

A. As regards the complaint lodged by Mr Arsin Sezer

16. According to the information in the case file, one of the applicants, namely Mr Arsin Sezer, died on an unspecified date after lodging his application with the Court. The remaining three applicants, who are the children of the late Mr Arsin Sezer, did not indicate their wish to continue the application in respect of his complaints.

17. 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 inasmuch as it concerns the complaints made on behalf of Mr Arsin Sezer (see, amongst others, *Dinçer and Others v. Turkey*, no. 10435/08, §§ 13-14, 3 November 2011).

18. In view of the above, it is appropriate to strike the case out of the list pursuant to Article 37 § 1 (c) of the Convention insofar as it relates to Mr Arsin Sezer.

B. As regards the alleged violation of Article 6 § 1 of the Convention

19. To the extent that the applicants invoke Article 6 § 1 of the Convention to complain of an infringement of their right to a fair trial on account of the discontinuation of the criminal proceedings at issue, the Court reiterates that the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). Therefore, a victim of an offence may only invoke his or her fair trial rights in connection with the criminal proceedings against the offender if he or she has joined those proceedings as a civil party to obtain damages or to

otherwise protect his or her civil rights (see, for instance, *Hafikli v. Turkey* (dec.), no. 13394/12, 30 August 2016). The Court notes that while the Turkish Code of Criminal Procedure in force at the material time allowed civil parties to request compensation during criminal proceedings (see *Beyazgül v. Turkey*, no. 27849/03, §§ 36 and 39, 22 September 2009), there is no information in the case file to suggest that the applicants had made such a request.

20. In these circumstances, and relying on its settled case-law on this matter, the Court concludes that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention (see *Hafikli*, cited above).

21. The Court notes in addition that the applicants did not raise any complaints regarding the proceedings before the Istanbul Civil Court of First Instance in their application form, and that they subsequently confirmed in their letter of 7 February 2017 that the subject matter of their application was confined to the alleged unfairness of the criminal proceedings at issue. In any event, even if the problems mentioned by the applicants in their letter of 7 February 2017 in respect of the civil proceedings could be taken as new complaints (see paragraph 15 above), the Court notes that they were not submitted within six months of the final decision of the Court of Cassation (see paragraph 13 above).

For these reasons, the Court, unanimously,

Decides to strike the case out of its list of cases insofar as it concerns Mr Arsin Sezer;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 12 October 2017.

Stanley Naismith
Registrar

Robert Spano
President

APPENDIX

1. Arsin SEZER is a Turkish national who was born in 1920, lived in Istanbul and was represented by R. Nacar.
2. Kirkor SEZER is a Turkish national who was born in 1958, lives in Istanbul and is represented by R. Nacar.
3. Vartanuş SEZER is a Turkish national who was born in 1951, lives in Istanbul and is represented by R. Nacar.
4. Zaruhi TEKER is a Turkish national who was born in 1949, lives in Istanbul and is represented by R. Nacar.