

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

SECOND SECTION

DECISION

Application no. 40787/10
TAŞÇI AND DUMAN
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 7 May 2010,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, whose particulars are set out in the appendix, are Turkish nationals. They are the wife and children of Mr Osman Nuri Taşçı, who disappeared in 1987. They were represented before the Court by Mr Yurdan Dağaşan, a lawyer practising in Oltu, near Erzurum.

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 4 July 1987 Osman Nuri Taşçı and two men were seen getting into a white car outside Osman Nuri Taşçı's shop in the town of Oltu. Nothing has been heard from Mr Taşçı since that date.

4. On 7 July 1987 Mr Taşçı's son, Necati Taşçı, who is one of the applicants, applied to Oltu police headquarters and informed them of the disappearance of his father.

5. Police officers subsequently questioned three witnesses, one of whom informed them that two persons, fitting the description of the men who had taken Mr Taşçı away, had asked him for directions to Mr Taşçı's shop. The remaining two witnesses told the police officers that they had seen Mr Taşçı getting into the car together with the two persons.

6. On 15 July 1987 the Oltu prosecutor took statements from a petrol station attendant who claimed that the two persons had bought petrol for the white car in question and paid with a cheque. It was later established that the cheque belonged to a bank account of the National Intelligence Service (hereinafter "the MIT") but that it had been given to the petrol station at an earlier date by one of the two persons who was seen together with Mr Taşçı on the day of the incident.

7. On 24 July 1987 Necati Taşçı submitted a petition to the office of the Oltu governor, and complained about the disappearance of his father. In his petition Mr Taşçı claimed that his family was worried about the fate of his father and that, in his opinion, his father had been abducted by members of the MIT. The governor forwarded the petition to the Oltu police headquarters the same day.

8. Further investigative steps were taken by the police and the prosecutor in the coming days and months. During that investigation a number of other eyewitnesses confirmed having seen Osman Nuri Taşçı in a white car together with the two persons who, it was later established, were members of the MIT. The Director of the MIT denied that his service had taken away Osman Nuri Taşçı.

9. On 11 February 1988 the Oltu prosecutor issued a continuous search order for Mr Taşçı, and asked the police to give him progress reports every three months. Police officers complied with this instruction and gave progress reports to the prosecutor on a regular basis.

10. Fifteen years later, the Oltu prosecutor sought permission to prosecute three MIT officers in relation to the abduction. In May 003 permission was granted and the officers were questioned by the prosecutor. They all denied the accusations. On 16 January 2004 the Oltu prosecutor

rendered a decision not to prosecute the three MIT officers for lack of sufficient evidence.

11. The police continued their search for Mr Taşçı and kept the prosecutor informed about their progress. No further information came to light about Mr Taşçı's fate. On 11 June 2008 the investigation was closed due to the expiry of the statute of limitations. The applicant objected to the decision terminating the investigation, but that request was rejected by the Erzurum Assize Court on 23 February 2010.

COMPLAINTS

12. Referring to Articles 1, 2, 3, 5 and 6 of the Convention the applicants complained about the disappearance of Osman Nuri Taşçı.

THE LAW

13. The applicants argued that no effective steps had been taken in the investigation to find their relative. They also complained that the investigation had continued for a long period of time and had thus prevented them from applying to the Court at an earlier stage, as they had had to wait for the investigation to come to an end in order to comply with the obligation to exhaust domestic remedies.

14. The Court 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 7 May 2010 although Osman Nuri Taşçı disappeared on 4 July 1987, i.e. almost 23 years previously.

15. 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).

16. 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).

17. 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 introducing their application with the Court, were held to have complied with the six-month rule because an investigation was being conducted at national level into the disappearance (see also *Yetişen v. Turkey* (dec.), no. 21099/06, 10 July 2012).

18. In the present application the applicants' relative disappeared on 4 July 1987. When the applicants informed the police about the disappearance on 7 July 1987 a criminal investigation was instigated and several witnesses were heard. No active steps appear to have been taken in the investigation between 11 February 1988, when the prosecutor issued a continuous search order, and 2003, when the prosecutor questioned three MIT officers who had been implicated in the disappearance.

19. The only steps taken during that period of fifteen years were the preparation of short notes by police officers with a view to informing the prosecutor at three-monthly intervals of their inability to find Mr Taşçı. In a number of its judgments the Court has examined this particular method of investigation in Turkey, and considered that such notes prepared by law enforcement officers could not be taken as proof of any meaningful investigation (see *Çelikbilek v. Turkey*, no. 27693/95, § 93, 31 May 2005, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 184, 24 May 2005). The Court notes that such information notes are prepared by law enforcement officials pursuant to continuous search orders issued by prosecutors, and are aimed at informing prosecutors about any developments in the search for the victim or the perpetrator of an offence. They are sent to the prosecutor at three-monthly intervals until expiry of the statute of limitations foreseen in domestic law for the offence in question.

20. In the light of the foregoing the Court considers that the absence of a meaningful investigation must have been apparent to the applicants long before the prosecutor decided to question the MIT members in 2003.

21. As for the applicants' argument that they lodged their application within six months after the adoption of the final decision in the process of exhaustion of domestic remedies, the Court notes that the final decision referred to by the applicants is the decision rejecting their objection against the termination of the investigation on account of the expiry of the statute of limitations (see paragraph 11 above). The Court reiterates its misgivings about that investigation, and considers that it cannot be regarded as an effective investigation capable of satisfying the requirements of Articles 2 or 13 of the Convention. Having regard to the principle that only the remedies which are sufficient to afford redress in respect of the breaches alleged should be exhausted (*Akdıvar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV), the Court finds that the applicants, who waited for a period of over twenty years for an ineffective investigation to come to an end, failed to comply with the six-month time limit.

22. To the extent that the questioning of the three secret service agents in 2003 and the decision taken by the prosecutor on 16 January 2004 not to prosecute them, constituted a significant new development capable of reviving the procedural obligation to investigate the disappearance of the applicants' relative (*Gasyak and Others v. Turkey*, no. 27872/03, § 63, 13 October 2009), the Court observes that the applicants failed to lodge their application within six-months of that decision. In that connection the Court notes that that decision effectively cleared all the persons whom the applicants considered had been involved in the disappearance of Mr Taşçı.

23. In light of the foregoing the Court finds 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	Ineta Ziemele
Registrar	President

APPENDIX

1. Zeynep Taşçı, 1955, Oltu
2. Ayişe Taşçı, 1966, Oltu
3. Mehmet Taşçı, 1960, Oltu
4. Kenan Taşçı, 1963, Oltu
5. Durdane Taşçı, 1931, Oltu
6. Necati Taşçı, 1958, Oltu
7. Hacer Duman, 1953, Oltu