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

SECOND SECTION

DECISION

Application no. 52538/09
Bayram TAŞDEMİR and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 28 April 2020 as a Chamber composed of:

Robert Spano, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Arnfinn Bårdsen,
Darian Pavli,
Saadet Yüksel, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 18 September 2009,

Having regard to the declarations submitted by the respondent Government on 23 January 2018 and 4 December 2019, requesting the Court to strike the application out of the list of cases and the applicants' replies to those declarations,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. A list of the applicants is set out in the appendix. They were represented before the Court by Ms Gülizar Tuncer, a lawyer practising in Istanbul.

2. The Turkish Government ("the Government") were represented by their agent.

3. İlkay Taşdemir, the son of the first two applicants and the sibling of the remaining five applicants, lost his life on 6 August 2002 after falling from a window on the fourth floor of the Gayrettepe police station in Istanbul, where he had been taken after his arrest. A complaint by the applicants to the public prosecutor's office to the effect that their relative

had been ill-treated and killed was rejected by a prosecutor who considered that the applicants' relative had taken his own life. Subsequently, a number of police officers were put on trial for neglecting their duties by failing to stop the applicants' relative from committing suicide. They were acquitted on the grounds of lack of sufficient evidence. While the examination of the appeal lodged by the applicants against the police officers' acquittal was pending before the Court of Cassation, the criminal proceedings became time-barred and were discontinued.

4. Disciplinary proceedings were also conducted against the relevant police officers in connection with the incident. At the end of the investigation the police officers were found to have committed, among other disciplinary offences, the offence of negligence in the assessment and performance of their duties. They were subjected to a penalty of short-term suspension of their rights for a period of six months.

5. After the failure of attempts to reach a friendly settlement, the Government informed the Court by a letter of 23 January 2018 that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

6. By a letter of 7 March 2018 the applicants indicated that they were not satisfied with the terms of the unilateral declaration, on the grounds that similar violations were still taking place at police stations in Turkey where suspects were being detained and that no measures were being taken to prevent them, and that the judicial and administrative response to such incidents was unsatisfactory.

7. In its decision of 12 March 2019 the Court, having regard to the terms of the respondent Government's declaration (see paragraph 14 below), decided to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

8. In a letter received by the Court on 4 July 2019 the applicants' legal representative informed the Court that the first two applicants, namely Mr Bayram Taşdemir and Mrs Sevim Taşdemir (who were the parents of İlkay Taşdemir whose death is the subject matter of the present application), had died in 2016 and 2015, respectively. Relying on official documentation, the legal representative informed the Court that the remaining five applicants, namely İlknur Taşdemir, Turgay Taşdemir, Tuncay Taşdemir, Turgut Taşdemir and Umut Taşdemir, were the children and sole heirs of those two deceased applicants. The lawyer asked the Court to revise the decision so that the two deceased applicants' share of the amount of money set out in the Government's declaration could be paid to those remaining five applicants.

9. For practical reasons both Mr Bayram Taşdemir and Mrs Sevim Taşdemir as well as their five children will continue to be called "the applicants", although their five children are now to be regarded as such.

Thus, unless otherwise stated, any references below to "the applicants" are to be understood as relating to all seven applicants.

10. On 22 October 2019 the Court decided to restore the application to its list of cases with a view to requesting an amended unilateral declaration from the Government in light of the demise of two of the applicants.

11. On 4 December 2019 the Government submitted a new declaration (see paragraph 30 below) in which they explained that the amount in respect of the share of the five surviving applicants had already been paid to them, and expressed their readiness to pay the remaining sum (namely the share of the two deceased applicants) to the five surviving applicants. In their letter of 13 December 2019 the five applicants informed the Court that they accepted the terms of this declaration.

THE LAW

12. The Court reiterates that an applicant's express agreement to the terms of a unilateral declaration made by a respondent Government can be considered as an implied friendly settlement between the parties (see, for example, *Bakal and Others v. Turkey* (dec.), no. 8243/08, 5 June 2012). Nevertheless, in the present application, as explained above (see paragraph 6) the applicants did not accept the terms of the Government's first and main unilateral declaration which had been submitted to the Court on 23 January 2018 and in which the Government had asked the Court to strike the case out of its list of cases. The Court also considers that the surviving five applicants' acceptance of the Government's subsequent declaration, namely the declaration of 4 December 2019, cannot be interpreted as their acceptance of the terms of the Government's earlier declaration since the declaration of 4 December 2019 concerns, in essence, the issue of payment of the sum of money which was due to their parents. The Court will therefore examine whether the application can be struck out on the basis of the Government's unilateral declaration and against the wishes of the five surviving applicants.

13. The applicants complained under Article 2 of the Convention, among other Articles, that the authorities of the respondent State had acted negligently and had therefore failed to protect their relative's right to life.

14. The Government's above-mentioned declaration of 23 January 2018 (see paragraph 5) provided as follows:

> "The Government regret the occurrence of individual cases of death in police custody caused by failures to protect life, as in the circumstances of the present case, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such failures.
>
> The Government admit that the death of the applicants' relative resulting from the failure to provide protective measures and the judicial proceedings concerning the death did not meet the standards enshrined in Article 2 of the Convention. The

> Government undertake to adopt all necessary measures to ensure that the right to life – including the obligation to conduct such proceedings effectively – is respected in the future.
>
> The Government of Turkey declare that they offer to pay jointly to the applicants Sevim Taşdemir, Bayram Taşdemir, İlknur Taşdemir, Turgay Taşdemir, Tuncay Taşdemir, Turgut Taşdemir and Umut Taşdemir, with a view to securing an unilateral declaration of the above-mentioned case pending before the European Court of Human Rights, EUR 20,000 (twenty thousand euros) to cover any and all non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicants.
>
> These sums will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

15. As set out above, in their letter of 7 March 2018 the applicants indicated that they were not satisfied with the terms of this declaration (see paragraph 6 above).

16. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under paragraph 1 (a), (b) or (c) of that Article. Article 37 § 1 (c) enables the Court, in particular, to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application."

17. The Court also reiterates that in certain circumstances it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

18. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, and in particular from the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *Jeronovičs v. Latvia* [GC], no. 44898/10, 5 July 2016).

19. The Court notes that the subject matter of the present application concerns, firstly, the member States' positive obligation to take steps to protect the right to life (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). With specific reference to the subject matter of the present application, in a number of its judgments the Court has examined allegations of failure to protect the right to life of detainees in Turkey (see, *inter alia*, *Kılavuz v. Turkey*, no. 8327/03, §§ 87-97, 21 October 2008, and *Çoşelav v. Turkey*, no. 1413/07, § 53,

9 October 2012). Secondly, the case concerns the obligation under Article 2 of the Convention to carry out effective investigations (see, *inter alia*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015, and the case cited therein).

20. In this connection the Court reiterates that, in cases concerning persons who have disappeared or have been killed by unknown perpetrators and where there is prima facie evidence in the case file supporting allegations that the domestic investigation fell short of what is necessary under the Convention, a unilateral declaration should contain an admission to that effect, combined with an undertaking by the respondent Government to conduct an investigation that is in full compliance with the requirements of the Convention as defined by the Court in previous similar cases (see *Tahsin Acar*, cited above, § 84, and the cases cited therein). Indeed, the Court has rejected unilateral declarations submitted by respondent Governments in cases in which there was no such undertaking to reopen the investigation, on the ground that respect for human rights required that the examination of the case be continued pursuant to the final sentence of Article 37 § 1 of the Convention (see *Mishina v. Russia*, no. 30204/08, §§ 23-30, 3 October 2017, and the cases cited therein; see also, *mutatis mutandis*, *Toğcu v. Turkey*, no. 27601/95, §§ 10-14, 31 May 2005).

21. The Court accepts that there may be situations where it is *de jure* or *de facto* impossible to reopen criminal investigations into the incidents giving rise to the applications being examined by the Court. Such situations may arise, for example, in cases in which the alleged perpetrators were acquitted and cannot be put on trial for the same offence, or in cases in which the criminal proceedings became time-barred on account of the statute of limitations set out in the national legislation. Indeed, a reopening of criminal proceedings that were terminated on account of the expiry of the statute of limitations may raise issues concerning legal certainty (see *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 145, ECHR 2000-VII) and may thus have a bearing on a defendant's rights under Article 7 of the Convention (see, *mutatis mutandis*, *Kononov v. Latvia* [GC], no. 36376/04, §§ 228-33, ECHR 2010). In a similar vein, putting the same defendant on trial for an offence for which he or she has already been finally acquitted or convicted may raise issues concerning that defendant's right not to be tried or punished twice within the meaning of Article 4 of Protocol No. 7 to the Convention (see *Marguš v. Croatia* [GC], no. 4455/10, § 114, ECHR 2014 (extracts)).

22. In addition to the examples of *de jure* impossibility mentioned in the preceding paragraph, the Court can likewise not overlook the possibility that if a long time has passed since the incident took place, evidence might have disappeared, been destroyed or become untraceable and it may therefore no longer be possible in practice to reopen an investigation and conduct it in an effective fashion.

23. Thus, whether a member State is under an obligation to reopen criminal proceedings, and consequently whether a unilateral declaration should contain such an undertaking, will depend on the specific circumstances of the case, including the nature and seriousness of the alleged violation, the identity of the alleged perpetrator, whether other persons not involved in the proceedings may have been implicated, the reason why the criminal proceedings were terminated, any shortcomings and defects in the proceedings prior to the decision to bring them to an end, and whether the alleged perpetrator contributed to the shortcomings and defects that led to the criminal proceedings being brought to an end.

24. Turning to the circumstances of the present case the Court notes that, although the above mentioned unilateral declaration contains an express acknowledgment by the Government that the death of the applicants' relative resulted from the failure to take protective measures and that the judicial proceedings concerning the death did not meet the standards enshrined in Article 2 of the Convention, it does not contain any undertaking by the Government to reopen the investigation into the death. The question therefore remains whether, in the absence of such an undertaking, the Court can accept the Government's unilateral declaration.

25. The Court observes that the criminal proceedings brought against the police officers for neglecting their duties by failing to stop the applicants' relative from committing suicide became time-barred and were discontinued (see paragraph 3 above). It is therefore *de jure* impossible, under Turkish law, to reopen a criminal investigation into the death of the applicants' relative. Moreover, it was not alleged that other individuals had also been involved in the death of the applicants' relative.

26. The Court notes that the fact that it may be *de jure* impossible to reopen proceedings in cases concerning complaints under Articles 2 and 3 of the Convention is not, in principle, an impediment to the closure by the Committee of Ministers of its examination of the case under Article 46 of the Convention. For example, following the Grand Chamber's finding of a violation of the procedural aspect of Article 3 of the Convention in the case of *Jeronovičs*, cited above, the applicant requested the national prosecutor to reopen the investigation into his allegations. His request was rejected on account of the expiry of the statute of limitations. In its Resolution concerning the Grand Chamber's judgment the Committee of Ministers considered that all the measures required by Article 46 § 1 of the Convention had been adopted, and decided to close its examination of the case (see Resolution CM/ResDH(2017)312).

27. Having regard to the above-mentioned acknowledgment of responsibility by the Government, the disciplinary punishment imposed on the police officers (see paragraph 4 above) and the amount of compensation proposed by the Government in their unilateral declaration, namely 20,000 euros, coupled with the clear and extensive case-law on the topic,

referred to above (see paragraph 19), the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)). The Court stresses that its decision is without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress (see *Jeronovičs v. Latvia* (dec.), no. 547/02, § 54, 10 February 2009, and, *mutatis mutandis*, *Jeronovičs*, cited above, §§ 116-18).

28. As in the above-mentioned judgment in the case of *Jeronovičs* (ibid., § 117), the Court deems it important to stress that the unilateral declaration procedure is an exceptional one. As such, when it comes to breaches of the most fundamental rights contained in the Convention, it is not intended either to circumvent the applicant's opposition to a friendly settlement or to allow the Government to escape their responsibility for such breaches. In the present case the Court has examined all the circumstances surrounding the death of the applicants' relative and the ensuing criminal proceedings concerning the death in the light of the clear and extensive case-law on the topic, mentioned above (see paragraph 19).

29. In the light of the above considerations, and in particular given the clear and extensive case-law on the topic, referred to above, 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 (Article 37 § 1 *in fine*). In particular, the Court considers that the nature and extent of the obligations arising under the Convention for the respondent State in cases of alleged failure to protect the right to life of detainees have already been specified in a number of its judgments (see, *mutatis mutandis*, *Tahsin Acar*, cited above, § 81). Furthermore, the aforementioned issues prevailing in Turkey have also been brought sufficiently to the attention of the Committee of Ministers and are being followed up under the terms of Article 46 § 2 of the Convention.

30. At this juncture the Court notes that the amended declaration submitted by the Government on 4 December 2019 (see paragraph 11 above) provided as follows:

> "The Government of Republic of Turkey would like to reiterate in the first place its previous unilateral declaration dated 23 January 2018 and its undertakings mentioned therein.
>
> The Government would also like to remind that following the submission of the above- mentioned unilateral declaration, the Court, in its decision notified on 4 April 2019, decided to strike the application out of its cases in accordance with Article 37 § 1 of the Convention.
>
> Following the Court's decision, in the scope of the procedure regarding the payment of the amount of compensation indicated in the unilateral declaration, the amount of compensation allocated for the applicants İlknur Taşdemir, Turgay Taşdemir, Tuncay Taşdemir, Turgut Taşdemir and Umut Taşdemir was deposited in the account of these applicants' lawyer. However, the amount of compensation (5,714.28 EUR) allocated for other applicants Sevim Taşdemir and BayramTaşdemir could not be paid since they had died on a prior date.

> The Government thus offers to pay, under the same conditions mentioned in its previous unilateral declaration, the applicants İlknur Taşdemir, Turgay Taşdemir, Tuncay Taşdemir, Turgut Taşdemir and Umut Taşdemir, as they are the legal heirs of the deceased applicants, EUR 5,714.28 allocated for the latter in line with the unilateral declaration dated 23 January 2018.
>
> This sum will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

31. As noted above, the five surviving applicants accepted the terms of this declaration (see paragraph 11). The Court also notes from this declaration that the sum in respect of the five surviving applicants was already paid to them by the national authorities and that the Government undertake to pay the remaining sum of EUR 5,714.28 to them in their capacity of the heirs of the two deceased applicants.

32. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

33. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration of 23 January 2018 under Article 2 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Takes note also of the information contained in the respondent Government's declaration of 4 December 2019, namely that the sum in respect of the five surviving applicants İlknur Taşdemir, Turgay Taşdemir, Tuncay Taşdemir, Turgut Taşdemir and Umut Taşdemir was already paid to them by the national authorities and that the Government undertake to pay to them the remaining sum of EUR 5,714.28 in their capacity of the heirs of the two deceased applicants;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 28 May 2020.

Stanley Naismith Registrar	Robert Spano President

Appendix

No.	Applicant's Name	Birth year	Nationality	Place of residence
1	Bayram TAŞDEMİR	1946	Turkish	TEKİRDAĞ
2	Sevim TAŞDEMİR	1963	Turkish	TEKİRDAĞ
3	İlknur TAŞDEMİR	1980	Turkish	TEKİRDAĞ
4	Tuncay TAŞDEMİR	1984	Turkish	TEKİRDAĞ
5	Turgay TAŞDEMİR	1986	Turkish	TEKİRDAĞ
6	Turgut TAŞDEMİR	1991	Turkish	TEKİRDAĞ
7	Umut TAŞDEMİR	1996	Turkish	TEKİRDAĞ