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

SECOND SECTION

DECISION

Application no. 64964/09
Zekine TERCAN and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 19 September 2017 as a Committee composed of:
Nebojša Vučinić, *President,*
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*
Having regard to the above application lodged on 26 October 2009,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mrs Zekine Tercan, Mr Murat Tercan and Mr Ali Rıza Tercan, are Turkish nationals who were born in 1951, 1972 and 1976 respectively and live in Istanbul. They were represented before the Court by Ms Gülbeyaz Karadeniz, a lawyer practising in Istanbul.

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. At around midnight on 10 November 1996 the first applicant's son and the remaining two applicants' brother 18-year old Uğur Tercan was sitting in a parked car in Istanbul together with three other male and two female friends when a police vehicle approached them. C.Y., who was sitting in the driver's seat but who did not have a driver's licence, panicked and started the car's engine. At that moment police officers fired 8 rounds of

bullets at the car. One of the bullets hit the applicants' relative Uğur Tercan on the head. He died on the way to hospital.

4. Two police officers were tried for and acquitted of the offence of homicide. In the course of the trial the two defendant police officers stated that when they had approached the vehicle they heard two females screaming "help us, we are being kidnapped". They had then fired in the air to warn the occupants of the car and when the occupants of the car had not heed their warning and started to drive off, they had aimed at the tyres of the car and fired.

5. The two females who had been in the car at the time of the events told the trial court that the applicant's relative and the remaining males were their friends, and denied the police officers' accusations that they were being kidnapped or that they had shouted for help.

6. In its judgment of 7 May 1999 the trial court accepted the police officers' defence arguments and acquitted them. In the same judgment the trial court also considered that there was no evidence to show that the offence of kidnapping had been committed and acquitted the male occupants of the car who had been charged with that offence.

7. The judgment became final after it was upheld by the Court of Cassation. The Court of Cassation's judgment was communicated to the applicants on 30 March 2001.

8. An application introduced by the applicants on 26 April 2002 (*Tercan and Others v. Turkey*, no. 13928/02), in which the applicants complained about the killing of their relative under, *inter alia*, Article 2 of the Convention, was declared inadmissible on 16 March 2006 by a Committee of three judges on account of the applicants' failure to comply with the requirements set out in Articles 34 and 35 of the Convention.

9. In the meantime, on 27 December 1997 the applicants brought a compensation claim against the Ministry of the Interior before the Istanbul Administrative Court. In its decision of 29 November 2000 the Administrative Court noted that the justification relied on by the defendant police officers had not been proven as there was no evidence to show that the two female occupants of the car were being kidnapped. It therefore considered that the police officers had not used their powers to use firearms with due care and attention and that they had therefore caused pecuniary damage to the first applicant and non-pecuniary damage to all three applicants. It awarded the applicants the total sum of 2,650,000 Turkish liras (approximately 4,500 euros at the time). In accordance with the applicable procedure, that sum was paid to the applicants on 8 August 2002, even though the Ministry lodged an appeal against the Administrative Court's decision.

10. Following the Supreme Administrative Court's decision to quash the Istanbul Administrative Court's above mentioned decision, the latter adopted a second decision and rejected the claim made by the applicants.

The appeal lodged by the applicants' against that second decision was rejected by the Supreme Administrative Court. The final decision was communicated to the applicants on 1 June 2009. Subsequently, the Ministry brought proceedings to recover the sum of compensation which had been paid to the applicants on 8 August 2002.

COMPLAINTS

11. The applicants complained that their relative Uğur Tercan had been killed in breach of Article 2 of the Convention because the circumstances had not justified the use of lethal force against him.

12. Relying on Article 6 of the Convention the applicants complained that the failure of the administrative courts to award them compensation, notwithstanding the existence of a causal link between the actions of the police officers and the damage suffered by them, had breached their right to a fair trial. Under the same provision the applicants also complained that the proceedings before the administrative courts had not been concluded within a reasonable time.

THE LAW

A. The complaint under Article 2 of the Convention

13. The applicants complained that their relative Uğur Tercan had been killed in violation of Article 2 of the Convention by police officers who had used unnecessary force against him.

14. The Court reiterates that, in cases concerning deprivations of life, Contracting States have an obligation under Article 2 of the Convention to conduct an effective investigation capable of leading to the identification and punishment of those responsible (see, *inter alia*, *Özcan and Others v. Turkey*, no. 18893/05, § 54, 20 April 2010 and the cases cited therein). The relevant domestic remedy for the applicants' complaint which would have had the potential to offer adequate redress for the killing of their relative was, therefore, the criminal trial. However, as noted above (see paragraph 7 above), the final decision taken at the end of that trial was communicated to the applicants on 30 March 2001, that is, more than six months before the introduction of the present application and, indeed, more than six months before the introduction of the first application mentioned above (see paragraph 8).

15. The Court also reiterates that the Contracting States' above mentioned obligation would be rendered illusory if, in respect of complaints under Article 2 of the Convention, an applicant's victim status were to be remedied by merely awarding damages (*ibid*.). The Court finds, therefore, that although the applicants introduced the present application within six-months from the notification to them of the final decision taken at the end of the compensation proceedings (see paragraph 10 above), those proceedings do not affect the running of the six-month period (see also, *mutatis mutandis*, *Alkın v. Turkey*, no. 75588/01, § 33, 13 October 2009; *Erkan v. Turkey* (dec.), no. 41792/10, §§ 64-65, 28 January 2014; and *Jørgensen and Others v. Denmark* (dec.), no. 30173/12, §§ 62-63, 28 June 2016). It follows that the starting point in time of the six-month period in respect of this complaint was the date of communication to the applicants the final decision taken at the end of the criminal proceedings, namely 30 March 2001.

16. In the light of the foregoing, the Court finds that the applicants have failed to comply with the six-month rule in respect of their complaint under Article 2 of the Convention. This complaint must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. The complaints under Article 6 of the Convention

1. Fairness of the administrative proceedings

17. The applicants complained that it was not disputed that their relative had been killed by police officers and there was, therefore, a causal link between the actions of the agents of the state and the damage they suffered. Thus the state was liable to compensate their damages stemming from the tortious actions of its employees. In the alternative, the administrative courts could have made an order to compensate their damages in accordance with the "objective responsibility" of the State which did not require prior establishment of fault or attribution of responsibility. By failing to follow one of these two avenues, the administrative courts had acted in breach of their right to a fair trial within the meaning of Article 6 of the Convention.

18. The Court notes that the applicants essentially complain about the unfavourable outcome of the proceedings and reiterates that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case. This complaint must therefore be declared inadmissible for being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Length of the administrative proceedings

19. Finally, the applicants complained that the compensation proceedings brought by them in 1997 before the administrative courts had not been concluded within a reasonable time, in breach of the requirements of Article 6 § 1 of the Convention.

20. The Court observes that a new domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013), the Court declared an application inadmissible on the ground that the applicants had failed to exhaust domestic remedies, that is to say the new remedy. In so doing, the Court considered in particular that this new remedy was *a priori* accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

21. In view of the above, the Court concludes that this part of the application should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President