



Lack of medical assistance for a pregnant woman requiring emergency treatment breached Article 2 of the Convention

In today's Chamber judgment in the case of [Mehmet Şentürk and Bekir Şentürk v. Turkey](#) (application no. 13423/09), which is not final,¹ the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 of the European Convention on Human Rights.

The case concerned the death of a pregnant woman following a series of misjudgments by medical staff at different hospitals and the subsequent failure to provide her with emergency medical treatment when her condition was known to be critical. The Court held that the deceased had been the victim of blatant shortcomings on the part of the hospital authorities and had been denied the possibility of access to appropriate emergency treatment. It reiterated that failure by a State to comply with its duty to protect a person's physical well-being amounted to a breach of the substantive aspect of Article 2 of the Convention. In view of its findings concerning deficiencies in the criminal proceedings, the Court also found a violation of the procedural aspect of Article 2.

Principal facts

The applicants, Mehmet Şentürk and Bekir Şentürk, father and son, are Turkish nationals who were born in 1966 and 1993 respectively and live in Bayraklı.

On 11 March 2000 Mrs Şentürk, the first applicant's wife, who was eight months pregnant, went to Karşıyaka State Hospital complaining of pain. She was examined by a midwife, who considered that there was no need to call for the duty doctor.

The couple then went to İzmir State Hospital, where Mrs Şentürk was again examined by a midwife without the duty doctor being called.

As Mrs Şentürk continued to suffer pain, her husband drove her to Atatürk Training and Research Hospital. She was examined this time by a urologist, who prescribed medication for her.

As her pain did not lessen after she returned home, Mrs Şentürk was admitted to Ege University Hospital that evening. She was examined by an emergency doctor and transferred to the gynaecology department, where the doctors found that the child was dead. Mrs Şentürk was told that she would have to be operated on to remove the child and, according to the applicants, was then asked to pay a deposit to cover the costs of her hospital admission and the surgery. As they did not have the sum required, the couple were sent to İzmir Gynaecology and Obstetrics Hospital. Mrs Şentürk died without receiving any medical assistance while being transferred in the ambulance.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

An investigation was carried out by the Ministry of Health to apportion liability for the death.

The first applicant, concerned that the protracted duration of the proceedings might lead to the prosecution becoming time-barred, asked the judge to speed up the investigation. The Criminal Court reached a conviction on 18 March 2008, but the applicants were dissatisfied with the judgment and appealed on points of law. In 2010 the Court of Cassation terminated the proceedings by virtue of the statute of limitations.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants alleged that the right to life of their wife and mother and the child she had been carrying had been infringed as a result of the negligence of the medical staff involved.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), they referred to their own mental distress and the suffering experienced by Mrs Şentürk throughout the time she had not been given treatment.

Lastly, under Articles 6 and 13, they complained about the length of the subsequent criminal proceedings, submitting in addition that the medical and legal system had been ineffective and that no domestic remedies had been available.

The application was lodged with the European Court of Human Rights on 17 February 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 2

First of all, the Court set out to ascertain whether the national authorities had done all that could reasonably have been expected of them to protect the patient's physical well-being, in particular by providing her with appropriate medical care.

The Court observed that some of the medical staff concerned had been found criminally liable by the first-instance court. It accepted the findings of the investigation carried out by the Turkish authorities, which had highlighted several errors of judgment by the doctors and serious deficiencies in relation to the patient's transfer. The Court considered that the patient had not reached an informed decision to refuse treatment and that the national authorities had therefore been under an obligation to treat her, not least because the seriousness of her condition had not been in doubt. Accordingly, the Court held that the deceased had been denied access to appropriate emergency treatment, which in itself amounted to a violation of the substantive aspect of Article 2.

Next, the Court examined whether the investigations by the Turkish authorities had been able to shed light on the events. In the medical sphere, a prompt response by the authorities was vital in maintaining public confidence and support for the rule of law. In this case, however, the proceedings had lasted more than nine years in total, of which some three years had been taken up simply by the administrative procedure of leave to bring a prosecution; this did not satisfy the requirement of a prompt examination.

As regards the procedure pursued, the Court noted that it was possible in Turkey to institute both civil and criminal proceedings in the event of a death in hospital. However, where persons responsible for endangering life were not charged with a criminal offence or prosecuted, this could amount to a violation of Article 2. The Court noted that the same applied in the case of a hospital's failure to provide a patient with medical assistance. In the present case, Turkish criminal procedure had not afforded the opportunity to establish the full responsibility of the medical staff concerned, and this amounted to a second violation of Article 2.

Lastly, the Court considered that it was not necessary to examine whether the applicants' complaint concerning the unborn child fell within the scope of Article 2 of the Convention. In the absence of a European consensus on the scientific and legal definition of the beginning of life, States enjoyed a wide margin of appreciation in this sphere, as the Court had held in a previous case (*Vo v. France*). The life of the foetus was intimately connected with that of the mother and was dependent on the treatment she received. Accordingly, the Court considered that the applicants' complaint in relation to this issue did not require a separate examination.

Articles 3, 6 and 13 of the Convention and Article 1 of Protocol No. 1

Having regard to its finding of a violation of Article 2 of the Convention, the Court considered that there was no need for a separate examination of the other complaints under Articles 3, 6 and 13 of the Convention and Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The court held that Turkey was to pay the applicants 65,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000, less the sum of EUR 850 already received in legal aid, in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.