



Senturk v. Turkey

Application No. 13423/09

Country: Turkey

Region: Europe

Year: 2013

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health care and health services, Health systems and financing, Hospitals, Informed consent, Medical malpractice, Sexual and reproductive health

Human Rights: Right to life

Facts

The first applicant's wife and second applicant's mother, Menekse Senturk, was 34 weeks pregnant when she began experiencing pain. The first applicant took Mrs. Senturk to the Karsiyaka Public Hospital, the Izmir Public Hospital, the Ataturk Research and Teaching Hospital, and the Ege University Medical Faculty Hospital over the course of the day. Only at the Ege Hospital was it finally discovered that the child Mrs. Senturk was carrying had died. The applicants stated that the Ege Hospital demanded a financial deposit in the hospital's operating fund before the doctors would remove the deceased child by Caesarean section. When the first applicant stated that he did not have the money, Mrs. Senturk was transferred to the Izmir Gynaecology and Obstetrics Hospital in a private ambulance in which no medical staff were present. Mrs. Senturk died during the transfer.

The Turkish Ministry of Health instituted an investigation into Mrs. Senturk's death. The investigation noted that four obstetrics doctors at the Ege Hospital "had failed in their obligations and thus caused" the death of Menekse Senturk. The management of the Ege Hospital opened an investigation into the four doctors but concluded that the doctors in question had not committed any wrongdoing. The first applicant then lodged an objection against that decision based on Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention"), Article 3 of the Universal Declaration of Human Rights, and Article 17 of the Turkish Constitution, all provisions concerning the right to life. Over the course of the next six years, criminal proceedings took place which resulted in the conviction and sentencing of seven doctors. All of the sentences were suspended. When the first applicant appealed, the Court of Cassation ruled that the proceedings were time-barred.

Unsatisfied by the Ministry of Health proceedings, the applicants filed an action with the European Court of Human Rights. The applicants claimed there had been a substantive and procedural violation of Article 2 of the Convention based on the death of Mrs. Senturk and the child she was carrying. Applicants also brought claims under Article 3 of the Convention (for the suffering endured by the deceased during the period when she did not receive treatment), Article 6 of the Convention (regarding the "excessive length" of the proceedings), and Article 13 of the Convention (for the absence of an effective remedy). Applicants also relied on Article 1 of Protocol 1.

Decision and Reasoning

The Court found that Turkey's actions breached both the substantive and procedural limbs of Article 2 of the Convention, which protects the right to life. The Court noted that the State has an obligation to protect the "physical integrity" of its citizens. The Court concluded that Turkey failed in this duty and therefore violated Article 2, since its domestic law did not have provisions for preventing the failure to provide the medical treatment required by Mrs. Senturk's condition. The length of the proceedings in Turkey also failed to satisfy the requirement of a prompt examination of the case without unnecessary delays, which the Court held was a violation of the procedural limb of Article 2.

The Court dismissed the concerns raised under Articles 3, 6, and 13 of the Convention, and Article 1 of Protocol 1, stating that the legal questions in the case had been properly addressed.

Decision Excerpts

"According to the Government, emergency medical treatment is provided without a requirement for advance

payment (see paragraph 77 above). In this regard, the Court considers it useful to specify that it is by no means its task in the present case to rule in abstracto on the State's public health policy on access to treatment at the relevant time. It is sufficient for the Court to note, in the light of the findings of the various national bodies regarding the circumstances of Mrs. *Žentürk*'s death, that the provision of treatment at the Ege University Medical Faculty Hospital was subordinated to a prior financial obligation. This dissuasive obligation resulted to the patient's decision to decline treatment within that hospital. However, in view of the investigation report of 24 November 2000 (see paragraph 17 above) and the various statements included in the investigation file, particularly those of S.A.A. and the ambulance driver who transferred the deceased woman (see paragraph 17 above), the Court is of the opinion that this decision to decline treatment cannot in any way be considered as having been made in an informed manner or as being such as to exonerate the national bodies from their responsibility with regard to the treatment which ought to have been provided to the deceased woman. • Para. 95.

• The Court reiterates that while there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Silih*, cited above, § 196). In the present case, the Court can only note that the length of the disputed proceedings failed completely to satisfy the requirement of a prompt examination of the case without unnecessary delays • Para. 101.

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