



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

SECOND SECTION

**CASE OF MEHMET ŞENTÜRK AND BEKİR ŞENTÜRK  
v. TURKEY**

*(Application no. 13423/09)*

JUDGMENT

STRASBOURG

9 April 2013

**FINAL**

*09/07/2013*

*This judgment has become final under Article 44 § 2 of the Convention.*



**In the case of Mehmet Şentürk and Bekir Şentürk v. Turkey,**

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

Guido Raimondi, *President*,

Danutė Jočienė,

Peer Lorenzen,

András Sajó,

Işıl Karakaş,

Nebojša Vučinić,

Helen Keller, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 19 March 2013,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 13423/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr Mehmet Şentürk and Mr Bekir Şentürk (“the applicants”), on 17 February 2009.

2. The applicants, who had been granted legal aid, were represented by Mr S. Cengiz and Mr H.Ç. Akbulut, lawyers practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that there had been a substantive and procedural violation of Article 2 of the Convention on account of the death of their mother and wife, and of the child she was carrying. They claimed to have suffered psychologically on account of her death, and also complained about the suffering endured by the deceased throughout the period when she did not receive treatment (Article 3). They also complained about the excessive length of the proceedings (Article 6) and the absence of an effective remedy (Article 13). Finally, they relied on Article 1 of Protocol No. 1.

4. On 8 July 2010 the Government were given notice of the application. Under the provisions of Article 29 § 1 of the Convention, it was also decided that the Chamber would examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1966 and 1993 respectively, and live in Bayraklı/İzmir.

#### **A. The circumstances surrounding the death of Mrs Menekşe Şentürk**

6. On Saturday 11 March 2000, at about 10.30 a.m., Mrs Menekşe Şentürk, wife of Mehmet Şentürk (“the first applicant”) and mother of Bekir Şentürk, who was then thirty-four weeks pregnant, went to the Karşıyaka Public Hospital with her husband because she was experiencing pain. She was examined by a midwife, G.E., who decided that Mrs Şentürk was not yet at the end of her term and that there was no point calling a duty doctor to examine her.

7. The first applicant then drove his wife to the İzmir Public Hospital Nevval Salih Alsancak İşgören (“Alsancak Public Hospital”), where they arrived between 11 and 11.30 a.m. Mrs Şentürk was examined by a midwife, A.Y., who, noting that the applicant’s wife was not yet at the end of her term and that there were no complications, did not call the duty gynaecologist for an examination.

8. In view of his wife’s continued pain, the first applicant drove her to the Atatürk Research and Teaching Hospital, where they arrived at about 2 p.m. Mrs Şentürk was examined by Dr F.B., an assistant doctor in the emergency department, then transferred to the urology department, where she was examined by Dr Ö.Ç., a urologist. He diagnosed renal colic, prescribed medication, decided to administer an analgesic and advised her to come back for a consultation after she had given birth.

9. As his wife’s pain did not lessen on returning home, the first applicant drove her that evening to the Ege University Medical Faculty Hospital. There, she was initially examined by Dr S.A.A., an emergency doctor, then transferred to the gynaecology and obstetrics department, where she was placed in the care of a team of doctors. After conducting an ultrasound scan, they established that the child she was carrying had died and that immediate surgery was necessary to remove the child. She was then informed that hospitalisation and surgery had to be paid for, and that a deposit of 600 or 700 million Turkish lira was to be paid into the hospital’s operating fund. As the first applicant stated that he did not have the requested sum, his wife could not be hospitalised.

The emergency doctor, Dr S.A.A., arranged for the first applicant’s wife to be transferred to the İzmir (Konak) Gynaecology and Obstetrics Hospital in a private ambulance in which no medical staff were present.

10. Mrs Şentürk died at about 11 p.m. while being transferred by ambulance.

### **B. The investigation by the Ministry of Health**

11. Between 26 October and 23 November 2000, the investigation committee at the Ministry of Health conducted an investigation into the circumstances of Mrs Şentürk's death, in the course of which the following persons were questioned: the first applicant, the individuals who had accompanied Mrs Şentürk to the hospitals, the members of the medical teams (midwives and doctors) in the various hospitals to which the deceased woman had been taken, and the ambulance driver who had driven her to the İzmir (Konak) Gynaecology and Obstetrics Hospital.

12. On 30 October 2000 statements were taken, *inter alia*, from two midwives working at the Karşıyaka district medical centre where Mrs Şentürk was monitored throughout her pregnancy. Their witness statements indicated that Mrs Şentürk had gone to the centre on 3 March 2000 for a check-up; the child's heartbeat had not been heard, as a result of which the midwives advised her to go to a hospital as soon as possible for an ultrasound scan.

13. On 31 October 2000 a statement was taken from G.E., the midwife at Karşıyaka Public Hospital who had examined Mrs Şentürk. Evidence taken on that occasion indicates that she had heard the child's heartbeat and that the child was alive when she examined the mother. In this connection, she specified that she had listened to the child's heartbeat with a Doppler foetal monitor, so that it would have been impossible to miss the sound, as this machine provided information on the number of heartbeats per minute. Having decided that Mrs Şentürk's condition was normal, she had not seen the point of carrying out an ultrasound or having her examined by the duty doctor.

14. On 1 November 2000 a statement was taken from A.Y., midwife at the Alsancak Public Hospital, who stated that she had heard the child's heartbeat when examining the mother, that the child had been alive at that point and that, having found no complications, she had not requested the on-call duty gynaecologist.

15. On 9 November 2000 statements were taken from T.K., S.A. and Ö.Ö., doctors in the gynaecology and obstetrics department at the Ege University Medical Faculty Hospital, who stated that they had informed the first applicant of the need to remove the child by Caesarean section. They denied having told the patient or her husband that they had to pay 600 or 700 million Turkish lira into the operating fund and said that they did not know who could have done so. They also claimed that they had explained the patient's situation to the duty specialist, S.Ö., who had not examined her

but had seen her, and who had available to him all of the information on her case. Each of them also stated, in particular, that:

“... it was explained to the patient’s husband that the baby was dead and that it was necessary to remove him or her by Caesarean section ... I never said to the patient that she had to pay 600-700 million Turkish lira into the operating fund for this surgery ... I don’t know who said that ... The signature under the note [stating that] hospitalisation was not accepted is that of the patient Menekşe Şentürk ... I never said to the patient and her relative that if they did not pay into the operating fund ... we could not operate on her ... It was the patient herself who refused to be hospitalised, who said that she could not pay this sum and who signed the papers. Her husband took the patient away, saying that he could not accept this cost, that he refused hospitalisation and that he was going to take her to the Konak maternity unit ... My colleagues and I, as a team, explained ... to the husband that it was absolutely essential to remove the baby and that he should not take the patient away, but we were unable to persuade him ...”

In a statement taken on the same date, S.Ö., a gynaecology and obstetrics specialist at the Ege University Medical Faculty Hospital, who had been the duty doctor on the evening in question, said that he had been informed by T.K. about the patient’s situation and had recommended that she be admitted to hospital. He also claimed not to have spoken with the patient’s husband, not to have instructed him to make a contribution to the operating fund, and to have been informed by the team which had examined the patient that hospitalisation had been recommended but refused by her husband.

16. On 23 November 2000 a committee of medical experts issued a report with the following conclusions:

“1. Nurse G.E. examined Menekşe Şentürk and stated that her condition did not necessitate calling the duty doctor. Although this should have been done, the nurse did not feel the need to do so. In such a case, the principle is that patients are to be examined by a specialist doctor, since a nurse does not have a [sufficient] level of knowledge to assess the seriousness of the situation. The nurse should call the specialist for every patient [who comes to the hospital].

2. The midwife and nurse A.Y. did not have sufficient knowledge to make a diagnosis as to the patient’s [condition]. She should have been examined by a specialist. In fact, for a correct diagnosis to be made, all patients who come to a polyclinic should be examined by a specialist.

The duty doctor in the emergency department, F.B., ought to have asked for a KHD [*Kadın Hastalıkları ve Doğum* – gynaecology and obstetrics] consultation. Only a doctor who examined the patient in this way would have been able to determine whether her symptoms at that time indicated a complication of pregnancy.

The duty urologist, Ö.Ç., examined the patient from a purely urological perspective. However ... he ought to have conducted a general examination and asked for a KHD consultation. Only a doctor who examined the patient in this way would have been able to determine whether her symptoms at that time indicated a complication of pregnancy.

3. In the light of the patient's clinical symptoms, the specialist duty doctors at the Ege University Medical Faculty Hospital ought to have insisted that she be hospitalised.

4. The presence of medical staff in the ambulance would have made no difference to the outcome.

In the light of the information available to date, the causes of death cannot be truly determined. [This will be possible] in a definite manner after the autopsy, the results of which will enable the [possible] liabilities for negligence of the above-mentioned members of staff to be established with certitude ...

Causes of death: 1. Rupture of the uterus. 2. Embolism of the mesoderm. 3. Detached placenta. 4. Low probability of aggravated pre-eclampsia.”

17. On 24 November 2000, in the light of this expert report and the statements given by the various parties involved, the head inspector of the Ministry of Health drew up a report concluding that the midwives G.E. and A.Y., employed in the Karşıyaka Public Hospital and the Alsancak Public Hospital respectively, had failed in the duties attached to their functions, in that they had sent the patient home in spite of her continuing pain and without having had her examined by a duty doctor. He also considered that doctors F.B. and Ö.Ç., employed at the Atatürk Teaching and Research Hospital, had failed in the duties attached to their functions, in that they had not requested a consultation with a gynaecology and obstetrics specialist, nor indicated to the patient that she should seek such a consultation. Furthermore, the investigation concluded that a complaint report had been drawn up concerning the issue of the liability of T.K., H.V., S.A. and Ö.Ö., doctors in the gynaecology and obstetrics department at the Ege University Medical Faculty Hospital, so that it was not necessary to rule again in their respect. The head inspector reached the same conclusion as to the liability of the impugned ambulance company, and a separate report had been transmitted on this matter to the İzmir Directorate of Health.

The investigation report noted, however, that doctors T.K., H.V., S.A., and Ö.Ö. had failed in their obligations and thus caused, by their negligence, imprudence and lack of experience, the death of Mrs Şentürk. Finally, the committee considered that Dr S.A.A. from the Ege University Medical Faculty Hospital had committed no error in transferring Mrs Şentürk to the gynaecology and obstetrics department.

The report on the findings of the investigation into the events which occurred at the Ege University Medical Faculty Hospital include the following points:

“After her examination in the emergency department ..., Menekşe Şentürk was transferred to the obstetrics department ... Menekşe Şentürk, who was 34 weeks pregnant, was examined by the duty team at the obstetrics department. During the ultrasound carried out by the duty team ..., the child's heartbeat was not heard and it was ascertained that he or she was dead ... The patient's relatives [were informed] that it was necessary to remove the child, for the sake of the mother's health ... However, as the patient's relatives had stated that they did not have the resources to pay hospital

fees ... the duty team did not admit the patient to hospital and transferred her to the İzmir gynaecology and obstetrics hospital in this condition, after obtaining her signature attesting that she was refusing hospitalisation ... Although by law they ought to have dealt with the procedures concerning costs [only] after admitting the patient to hospital, examining her, reaching a diagnosis and providing care [to the patient], it is understood that the doctors failed in their duty by transferring her without treatment, [although she] was in an emergency situation and suffering persistent pain, and thus caused her death.”

Various witness statements were cited in this investigation report. In particular, some of them read as follows:

“*Statement by Mehmet Şentürk*: ... on Saturday 11 March 2000, at about 10 a.m., I drove my wife ..., who was eight months pregnant, to the emergency department at the Karşıyaka Public Hospital because of the violent pain she was feeling. Our neighbour N.S. was with us ... My wife was examined at the Karşıyaka Public Hospital ... they told me that they could not do anything, that the ultrasound machine was turned off ... [and] that it would be preferable that I drive [her] to the Alsancak Public Hospital ... I drove my wife to the emergency department at the Alsancak Public Hospital at about 11.15 a.m. There, the people in charge of the emergency department ... told me that they were short of staff and that the ultrasound machine was turned off ... the staff on duty then told me to take [her] to another hospital. On hearing that, I took my wife to the Atatürk Yeşilyurt Teaching and Research Hospital ... It was about midday when I accompanied her to the obstetrics department ... The doctor told me to take her to the urology department ... I took her to the urology department. They asked for urological examinations and a renal USG test ... [My wife] waited three or four hours on a stretcher in the emergency department at Atatürk Teaching and Research Hospital. Her pains had become even stronger. On seeing this, I went to see the head of the emergency department. I told him that my wife was feeling very unwell and I asked that she be examined by a doctor from the urology department ... the urologist examined her ... After examining her, he said: “there is still time before the birth, at the moment there is nothing we can do, tell the emergency department to give her painkillers and take her home”, and he issued a prescription ... I said to the doctor that my wife was eight months pregnant and asked him whether the medicines were harmful. He said that it was not necessary to take them all the time, but only if the pain got worse ... Painkillers were administered, but I don’t know what type ... the pain did not go away ... I took [my wife] back home ... it was about 6.30 p.m. when I took her home ... In the evening, at about 8.30 p.m., I saw that my wife’s condition had worsened and, accompanied by Ö.A.G. ..., I drove her to the Ege University Hospital ... The doctor who examined my wife ... told me that the baby had died ... I told him to save my wife ... The doctor told me that I had to pay 600-700 million lira into the operating fund to have the baby removed from the mother by surgery ... I replied that I did not have that amount at that time, but to operate [on my wife] and I would sign a paper [undertaking] to pay. The doctor told me that I had to pay the money ... I asked him to tell me what to do ... They then told me to take her immediately to the Konak maternity hospital ... We called an ambulance ... I asked a woman who was present whether a nurse should accompany [my wife]. She replied “they haven’t sent a nurse” ... We started driving ... We arrived at the Konak Hospital ... the duty staff told me that my wife was dead ... My wife was not cared for with diligence in the hospitals I took her to. If at least an ultrasound had been carried out at the Karşıyaka Public Hospital, the Alsancak Public Hospital or the Atatürk Teaching and Research Hospital, and had I been told that the child was dead, then, given that it was still daytime, I could have got the money together for the operation and saved my



wife. I was not informed that my wife had been examined on 3 March 2000 at the Bayraklı medical clinic and that the child's heartbeat had not been heard ... A day or two before 3 March 2000, she told me that she had twisted her ankle on the last two steps of the staircase and had hit the banister ... but that she was not in pain and did not need to go to the doctor ...

*Statement by Ö.A.G.:* ... we drove the patient to the emergency department at the Ege Hospital ... One of the doctors told me that her condition was serious. He said to go and pay 700 million lira into the operating fund ... I don't know the name of that doctor. It was about 10 p.m. at that stage. I had 150 million lira with me. I told the doctor that I had that amount, that I [could] pay it and [could] sign a paper for the remainder ... He said that this would not do, that he could not operate. I insisted that he operate. He refused again. I then asked what [we] should do ... He told us to take her to the Konak maternity hospital. At the same time, he asked us, under duress, to sign a document certifying that we were taking the patient out of hospital of our own free will ...

*Statement by Ahmet Y.:* ... We took Menekşe Şentürk to the Ege University Hospital at about 9 p.m. They admitted us immediately to the emergency department. A woman doctor examined her ... she told us that the baby was dead ... The doctor told us that the baby had to be removed by emergency surgery ... The doctor said that we had to pay the hospital about 700 million [lira] for the operation. The patient's husband said that he could not pay the entire amount immediately, that he could pay some of it but would sign a paper and pay later. The doctor said to talk to the cashier's desk [*vezne*]. The people at the cashier's desk told us that we had to pay the entire amount. We then spoke again with the doctor who had examined the patient. We told her that we had not been able to pay all of the money and asked her what we should do. She told us to take the patient immediately to the Konak maternity hospital ...

*Statement by S.A.A.:* ... Menekşe Şentürk came to the emergency department on 11 March 2000, complaining about stomach pains ... I met the patient ..., [and] carried out an examination ... I sent her to the gynaecology and obstetrics department. About half an hour after being examined in the obstetrics department, the patient came back to the emergency department ... The patient's husband told me that the obstetrics doctors had informed him that the baby was dead ... and that she had to be hospitalised. I asked why they had not hospitalised her instead of taking her back to the emergency department. The patient's husband told me that they had been asked to pay fees ... and as he could not pay that amount he wanted to take his wife to the Konak maternity hospital. At this point he was in a state of panic and emotional. I told him calmly that the baby had to be removed immediately from the mother's stomach, [that he had] to take her back and have the patient hospitalised immediately ... [so that] the child could be removed, otherwise the mother's life could be in danger ... In spite of what I said, the patient's husband wrote on the patient's examination form: "In spite of the doctor's advice, we have refused hospitalisation" and signed it. I exerted no pressure ... to have this statement written ... The patient's husband told me that the doctors in the [gynaecology and obstetrics department] had told him that he had to pay a deposit, if my memory serves me correctly, of 400 million lira ...

*Statement by M.D., driver from the private ambulance company:* ... at about 10.30 p.m. on 11 March 2000 I collected the patient from the obstetrics department and drove her to the emergency department. There, I told the head nurse, S.T., to assign a nurse for the ambulance. She said that that was impossible. Later, I asked the doctor in the emergency department which was transferring the patient if I could have a nurse for the ambulance. But she too said that it was impossible, that the baby was dead in the mother's stomach and that I had to drive her immediately to the Konak

Hospital ... I put the patient in the ambulance ... The patient's husband got in beside her ... There was no nursing staff in the ambulance ... Before we put her in the ambulance, in front of the Ege Hospital emergency department ..., the patient told me not to take her away ... That must have been about 10.40 p.m. When we arrived at Konak ... I saw that the patient had died ... As I had explained [to her] ..., the reason that there was no nursing staff in our ambulance ... was because our duty nurse was occupied with the transfer of another patient ... The doctors and a nurse at the hospital told me that the patient had been dead on arrival. They told me that they had no morgue and that we ought to take her back to the Ege University morgue ...”

According to the statements as recorded, four doctors from the Ege University Medical Faculty Hospital, namely T.K., S.A., Ö.Ö. and S.Ö., denied having told the applicant or the deceased woman that they would have to pay a sum of money in order for the surgical procedure in question to be carried out.

### **C. The criminal proceedings brought against the medical staff**

#### *1. The proceedings against doctors T.K., H.V., S.A. and Ö.Ö.*

18. On 26 February 2001 the management of the Ege University medical faculty opened an investigation in respect of the doctors T.K., H.V., S.A. and Ö.Ö.

19. On 10 September 2001 it decided that there were no grounds for bringing proceedings against those doctors.

20. On 26 August 2002 a committee of investigation, composed of doctors, issued a report concluding that the doctors in question had not committed any error and that, accordingly, there were no grounds for bringing proceedings against them.

21. On 24 October 2002, on the basis of Article 2 of the Convention, Article 3 of the Universal Declaration of Human Rights and Article 17 of the Turkish Constitution, provisions which concern the right to life, the first applicant lodged an objection against that decision. He alleged, *inter alia*, that the committee ought to have verified the legislation in force and Ege University's practice in cases requiring emergency hospitalisation where hospital fees could not be paid.

22. On 22 January 2003 the Supreme Administrative Court set aside the conclusions contained in the investigation report. It noted that the committee had not examined which criteria had to be met in hospitals in order to begin treating a patient whose life was in danger and whose condition required urgent medical intervention. It also noted that the committee had not asked for the investigation to be widened to include Dr S.Ö., gynaecology and obstetrics specialist at the Ege University Medical Faculty Hospital, who had been on duty on the night in question, in order to determine his responsibility with regard to the disputed events. It considered that those shortcomings should be addressed.

23. On 23 January 2004, considering that there had been neither negligence nor carelessness on the part of the doctors in question, the investigation committee adopted a new report, concluding that there was no case to answer. It specified that the case file did not make it possible to determine what should be done in medical emergencies requiring hospitalisation where the corresponding fees were not paid.

24. On 25 February 2004, relying on Article 2 of the Convention, Article 3 of the Universal Declaration of Human Rights and Article 17 of the Constitution, provisions concerning the right to life, the first applicant again lodged an objection against those conclusions. He alleged, in particular, that the fact of not including S.Ö. in the investigation proceedings amounted to a failing in that investigation, and asked that Dr S.Ö. be included in the proceedings.

25. On 14 April 2004 the Supreme Administrative Court sent the case back to the Ege University Rector's Office.

26. On 16 May 2005 the investigation committee adopted a new report, which again concluded that there was no case to answer, in the absence of negligence or carelessness that was imputable to the doctors T.K., H.V., S.A., Ö.Ö. and S.Ö.

27. On 13 June 2005 the first applicant submitted an appeal against those conclusions to the Supreme Administrative Court.

28. On 27 September 2005 the Supreme Administrative Court upheld that appeal, considering that there was sufficient evidence that the accused doctors had committed the acts for which they were criticised. It based this finding on the report drawn up on 20 and 21 May 2004 by the General Medical Council (*Yüksek Sağlık Şurası*, see paragraph 45 below), stating that the named doctors were four-eighths liable for Mrs Şentürk's death. It therefore held that they should be subjected to criminal proceedings and transmitted the file to the prosecution service.

29. On 17 November 2005 the İzmir Criminal Court noted that the Supreme Administrative Court had transmitted the case to it directly in the absence of an indictment from the prosecution service, and consequently decided to discontinue the proceedings brought against T.K., H.V., S.A., Ö.Ö. and S.Ö., since the opening of proceedings was subject to the issue of an indictment.

30. On 21 April 2006 the İzmir public prosecutor issued an indictment against doctors T.K., H.V., S.A. and Ö.Ö., calling for their conviction for unintentional homicide (Article 455 § 1 of the Criminal Code).

31. On 11 September 2006 the first applicant applied to intervene in the proceedings, a request which the İzmir Criminal Court granted on the same date.

2. *The proceedings against the midwife G.E.*

32. By a decision of 1 March 2001, the Karşıyaka District Governor authorised the opening of criminal proceedings against the midwife G.E. for breach of her professional duties.

33. On 25 April 2001 the Karşıyaka public prosecutor indicted the defendant for breach of her professional duties (Article 230 § 1 of the Criminal Code) and called for her conviction.

34. On 23 October 2001 the Karşıyaka Criminal Court acquitted the defendant on the ground that another midwife had also been on duty on the day of the events, and that it had not been established that it was the defendant who had examined the deceased and had sent her home without first calling for a specialist to examine her. The court added that, moreover, even supposing that the defendant was the midwife who had examined Mrs Şentürk and sent her home, the breach in her duties had not been intentional, so that the constituent elements of the offence had not been made out.

35. This judgment became final on 31 October 2001.

36. On 14 June 2005, on the basis of the conclusions in the report by the General Medical Council finding that G.E. was two-eighths liable for his wife's death (see paragraph 45 below), the first applicant asked that the criminal proceedings against that midwife be reopened.

37. On 12 October 2005 the first applicant applied to join the proceedings against G.E. as a civil party.

38. On 9 March 2006 the Karşıyaka Criminal Court granted the request for reopening of the proceedings and announced the joinder of this case and the proceedings pending before the İzmir Criminal Court (see paragraphs 51 et seq. below). It also decided to submit to the Criminal Division of the Court of Cassation the dispute as to jurisdiction between those two courts.

39. On 12 June 2006 the Court of Cassation decided to join the criminal proceedings in question and named the Karşıyaka Criminal Court as the court with jurisdiction for examining the remainder of the proceedings.

3. *The criminal proceedings against A.Y., F.B. and Ö.Ç.*

40. On 14 March 2001 the Governor of Konak authorised the opening of proceedings against the midwife A.Y. and the doctors F.B and Ö.Ç.

41. On 12 October 2001 the İzmir public prosecutor charged those individuals with breach of duty (Article 230 § 1 of the Criminal Code) and called for their conviction.

42. On 12 April 2002 the first applicant asked to join the criminal proceedings before the İzmir Criminal Court as a civil party. The court granted that request at the close of a hearing on the same date.

43. On 13 November 2002 the first applicant called for the ambit of the proceedings to be widened, asking in particular for a forensic examination

to determine how much time had elapsed between the deaths of the child and of his wife.

44. On 24 February 2003 the İzmir Criminal Court transferred the case file to the General Medical Council, for a decision by it on the defendants' liability and its extent.

45. On 20 and 21 May 2004 the General Medical Council (*Yüksek Sağlık Şurası*) adopted a decision, the relevant extracts of which read as follows:

“After examining the case file, documents and evidence, the commission has concluded:

– that midwives G.E. and A.Y., who failed to evaluate correctly the situation after examining the patient and did not call the duty gynaecologist in spite of the patient's complaints, are two-eighths liable;

– that doctors Ö.Ç. and F.B., who examined the patient solely from the perspective of their area of expertise, although she was 34 weeks pregnant on arrival at the hospital, hypertensive and complaining of severe pain, and who failed to have her examined by an obstetrician, are three-eighths liable;

– that the duty doctors T.K., H.V., S.A. and Ö.Ö., from the Ege University Medical Faculty Hospital, are four-eighths liable for the patient's death, by having had her transferred, without assistance, to the centre for persons insured with the social security system, on the ground that she had no money, although her condition was not compatible with such a transfer.”

46. On 1 February 2005 the court received the report by the General Medical Council and noted that the defendants' liability had been established, but not to the extent of eight-eighths.

47. On 14 March 2005 the first applicant referred to the report by the General Medical Council, which had concluded that, in addition to the persons accused in the context of the ongoing proceedings, other doctors working in the Ege University Medical Faculty Hospital had been found to be liable, and asked, in consequence, that indictments be issued in respect of those persons.

48. At the close of the hearing on 17 March 2005, the İzmir Criminal Court transferred the case file to the public prosecutor with a view to the adoption of a supplementary indictment against the defendants on the basis of Article 455 of the Criminal Code.

49. On 25 March 2005 the İzmir public prosecutor issued a supplementary indictment with a view to charging the defendants with unintentional homicide (Article 455 § 1 of the Criminal Code), and called for their conviction in that respect.

50. On 4 July 2006 the first applicant asked the İzmir Criminal Court to complete the proceedings as soon as possible. Relying on Article 6 of the Convention, he emphasised that the length of the proceedings breached his right to a fair hearing within a reasonable time. He also stressed that their continued duration raised the risk of statutory limitation and infringement of his right of property, given that he might find himself deprived of any

possibility of obtaining compensation for pecuniary and non-pecuniary damage.

51. On 30 January 2007 the İzmir Criminal Court decided to join the proceedings before it to those being conducted against the doctors T.K., H.V., S.A. and Ö.Ö. for unintentional homicide.

#### *4. The criminal proceedings subsequent to the joinder of the cases*

52. On 7 May 2007 the first applicant's lawyer, on behalf of the first applicant's under-age son, submitted a request to join the proceedings as a civil party. He also complained about the length of the proceedings, emphasising the risk that they would become time-barred. He further submitted a claim for compensation in respect of the damage caused to his client on account of his wife's death and claimed 60,000 Turkish lira (TRY) in respect of the non-pecuniary damage sustained by the first applicant and TRY 50,000 for the non-pecuniary damage sustained by the latter's son, together with a claim for TRY 30,000, jointly, in respect of pecuniary damage.

53. At the close of the hearing of 8 May 2007 the Karşıyaka Criminal Court noted that the indictment contained no mention of Dr S.Ö., although the latter's name had appeared alongside those of the defendants in the proceedings before the İzmir Criminal Court. Consequently, it asked for clarification as to whether, after the decision terminating the proceedings (see paragraph 29 above), charges had been dropped against S.Ö. or whether there had been an error. It added that, in the latter case, the omission ought to be rectified.

54. At the hearing of 27 November 2007, the Karşıyaka Criminal Court noted that the prosecutor had replied that charges had not been dropped against S.Ö. and that there may have been an error. The court asked that measures be taken in this regard.

55. On 11 February and 18 March 2008 the applicant's lawyer lodged a memorial with the court, complaining about the length of the proceedings.

56. At the hearing of 12 February 2008, the court noted that the opening of proceedings against S.Ö. had not been such as to influence the ongoing proceedings but could protract the case. Consequently, it decided not to wait for those proceedings to be opened.

57. On 18 March 2008 the criminal court found A.Y., Ö.Ç., F.B., T.K., H.V., Ö.Ö. and S.A. guilty of unintentional homicide and sentenced them to two years' imprisonment and a fine of TRY 91. In application of the provisions of the Criminal Code on the remission of sentences, it commuted A.Y.'s sentence to a fine of TRY 468; that of Ö.Ç. and F.B. to a fine of TRY 703; and that of T.K., H.V., S.A. and Ö.Ö. to a fine of TRY 937. In addition, all of the sentences were suspended. The court dismissed the request for conviction of defendant G.E., noting that, although the report by the General Medical Council had established that she was two-eighths

liable, that circumstance did not amount to a ground for reopening the criminal proceedings against her under Article 314 of the Code of Criminal Procedure. In consequence, it upheld her acquittal as pronounced at the close of the first criminal proceedings.

The relevant part of the criminal court's reasoning reads as follows:

“... [I]t emerges from the case file as a whole that: – Menekşe Şentürk, who was eight months pregnant, was driven to the Karşıyaka Public Hospital in İzmir by her husband on Saturday 11 March 2000 on account of severe pain; – she was examined there by midwife G.E. ..., the doctor was not informed, no measure was taken and, since labour had not begun, the patient was sent home; – she was then driven to the emergency department at the Alsancak Public Hospital, where she was examined by midwife A.Y., and she was sent home because labour had not begun; – towards 2 p.m., she was taken to the emergency department at the Yeşilyurt Atatürk Hospital, where she was examined by doctor F.B.; on account of pain on her left side she was sent to the urology department, where she was examined by doctor Ö.Ç. who diagnosed renal colic, administered painkillers and sent her home; – as the pain persisted after the patient's [husband] had taken her home, ... she was taken to the Ege University Medical Faculty Hospital; she was transferred by the emergency doctor ... to the maternity unit; there, it was established that the patient was eight months pregnant but that the [child's] heartbeat could not be heard; although the doctor advised that the baby be removed, hospitalisation was not accepted, in the absence of financial resources; – the patient was then transferred to the İzmir gynaecology and obstetrics hospital, but died during the journey; – on account of this event [and] as was established by the General Medical Council, midwives G.E. and A.Y. were two-eighths liable, doctors Ö.Ç. and F.B. were three-eighths liable, doctors T.K., H.V., S.A. and Ö.Ö. were four-eighths liable; – in those circumstances, the defendants [ought] to be punished for the offences with which they are charged ...”

58. On 21 May 2008 the applicants lodged an appeal on points of law. In their pleadings they emphasised that the criminal court had not responded to the request, submitted on behalf of the applicant's son, to join the proceedings as a civil party, nor to the claim for compensation submitted by them. They also challenged G.E.'s acquittal, given that her liability in the death had been established, and the fact that the prison terms imposed on the defendants had been suspended and commuted to fines. Furthermore, relying on Article 2 of the Convention, they alleged that there had been a breach of the right to life and that the State had failed in its positive obligations in this respect; they considered that the fact that the first applicant and his wife had been obliged to go from one hospital to another amounted to treatment contrary to Article 3. Relying on Articles 6 and 13, they complained about the length of the proceedings and the lack of any remedy to end the related damage. Finally, they submitted that the judgment had breached their right of property.

59. On 21 January 2009 the Principal Public Prosecutor at the Court of Cassation submitted his observations and asked that court to uphold the first-instance judgment in so far as it concerned G.E., to set it aside in respect of the other defendants on the ground that the offence was time-barred, and to end the proceedings.

60. On 7 October 2010 the Court of Cassation upheld the first-instance judgment in so far as it concerned G.E. It set aside the part of the judgment concerning the other defendants on the ground that the offence provided for in sections 102(4) and 104(2) of Law no. 765 had become time-barred. It thus terminated the proceedings on the ground that they were time-barred, in accordance with Article 322 of the Code of Criminal Procedure.

*5. Proceedings brought against S.Ö.*

61. On 4 January 2008 the İzmir public prosecutor dropped the charges against S.Ö. noting, in particular, that in its report of 20 and 21 May 2004 the health committee had not identified responsibilities attributable to him, that there was insufficient evidence against him and that the events for which he was criticised were now time-barred.

62. The first applicant lodged an objection against that decision.

63. On 14 January 2009 his objection was dismissed by the Karşıyaka Assize Court.

## II. RELEVANT DOMESTIC LAW

64. The relevant domestic law is described in *Sevim Güngör v. Turkey* ((dec.), no. 75173/01, 14 April 2009).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

65. The applicants alleged that there had been a breach of the right to life of their wife and mother, and of the child she was carrying, in violation of Article 2 of the Convention, the relevant part of which is worded as follows:

“1. Everyone’s right to life shall be protected by law ...”

66. The Government contested that allegation.

#### **A. Admissibility**

67. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.



## **B. Merits**

### *1. The applicants' submissions*

#### **(a) The alleged substantive violation of Article 2 on account of the death of Mrs Menekşe Şentürk**

68. The applicants alleged that Mrs Şentürk lost her life on account of serious negligence by the doctors and midwives involved. They considered that this death could easily have been prevented if the doctors and/or midwives had acted in accordance with their duties and their professional code. On the contrary, they had been in grave breach of their duties. In this respect, the applicants also submitted that the events in question should not be classified as mere negligence, but as homicide.

69. According to the applicants, the deceased person was transferred under duress to the Konak Hospital maternity unit, despite the fact that the doctors at the Ege University Medical Faculty Hospital had established that her condition was critical. Thus, the first applicant was told to transfer his wife to another hospital because he was unable to pay a sum of about 1,000 euros (EUR) for her operation. Referring to the Court's finding in *Oyal v. Turkey* (no. 4864/05, §§ 53-54, 23 March 2010), the applicants pointed out that the State had an obligation to provide the necessary medical care, since it managed and/or controlled the health-protection system.

70. The applicants also submitted that the doctors had been aware of the patient's critical condition. Referring to the case of *Jasinskis v. Latvia* (no. 45744/08, §§ 67-68, 21 December 2010), they argued that the Government were responsible for her death, in that the necessary care had not been provided, and had therefore breached Article 2 of the Convention in its substantive aspect.

#### **(b) The alleged procedural violation on account of the death of Mrs Menekşe Şentürk**

71. The applicants pointed out that the Court of Cassation had discontinued the criminal proceedings brought against the defendants as being time-barred, so that the latter had remained unpunished, and alleged that this illustrated the ineffectiveness and inadequate nature of the proceedings. It was evident that the domestic system protected medical staff rather than patients. The applicants observed, in particular, that they had had to wait until 2005, that is, five years after the events, for proceedings to be brought against the four accused doctors from the Ege University Medical Faculty Hospital, and then only through the intervention of the Supreme Administrative Court. The university committee, made up of medical personnel working in the same medical faculty, had proved highly reluctant to authorise criminal proceedings. In fact, that committee had done its best

to hinder the investigations, without which the criminal proceedings against the defendants in question would be null and void.

72. In addition to the ineffectiveness of the criminal investigation in respect of the university staff, the main file of the case had been constantly transferred between several criminal courts. Yet, according to the applicants, there was no rational basis for those postponements and transfers.

**(c) The alleged violation of Article 2 of the Convention on account of the death of the unborn child**

73. The applicants pointed out that the child carried by the deceased woman died on 11 March 2000. They referred to the statements made by the various doctors and midwives, finding that he or she had died prior to birth as a result of a failure by the health system to identify possible problems. They alleged that the Government were responsible for the death of this child, given that the mother had not been provided, in a timely fashion, with the treatment required by her condition. Although a child who died before birth was not considered a person under the domestic criminal law, other countries, notably the United States of America, considered a child who died before birth as a person under criminal law.

74. As to the procedural aspect of the violation of Article 2 with regard to the death of the unborn child, the applicants alleged that no investigation had been conducted for the purpose of determining the time of death. Their requests concerning that death had been completely ignored by the domestic authorities. In this connection, the applicants criticised the authorities for acting as though that child had never existed. They alleged, however, that a child who died before birth had legal personality under civil law, so that the authorities ought to have opened an investigation and proceedings with a view to determining the time and cause of his or her death. In this respect, the applicants referred to the cases of *Calvelli and Ciglio v. Italy* ([GC], no. 32967/96, § 49, ECHR 2002-I), and *Öneryıldız v. Turkey* ([GC], no. 48939/99, ECHR 2004-XII).

75. In addition, according to the applicants, Turkish criminal law did not contain any provision allowing for proceedings on account of the death of an unborn child, except in cases of a deliberately caused miscarriage. That being said, under civil law, an unborn child had rights while in the mother's womb, subject to the proviso that he or she was born alive. The applicants alleged in this respect that the current structure of domestic law was inconsistent with international standards in this area and the common approach of member States of the Council of Europe.

*2. The Government's submissions*

76. The Government submitted that the events and the responsibilities of all the persons involved in the disputed circumstances had been examined

by the relevant judicial bodies at all levels in an independent manner, on the basis of numerous scientific reports, and that, in consequence, those responsible had been convicted and punished appropriately, in accordance with the legal provisions in force.

77. As to the hospital fees, the Government stated that patients arriving in an emergency condition were not obliged to pay hospital fees in advance, even if they were not insured with the social security system. They explained that once the necessary treatment had been given, those patients had to pay hospital fees if they had no social security cover. However, if the patient had neither social security cover nor the resources to pay the hospital fees, he or she was required, according to the Government, to obtain a certificate of poverty from the local solidarity foundations, in order to be exempted from paying hospital fees.

78. As to the legal status of the unborn child, the Government stated that, under Article 28 of the Civil Code, legal personality was attributed to children who were born alive and viable.

### 3. *The Court's assessment as to Mrs Menekşe Şentürk's right to life*

#### (a) **The general principles**

79. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. These principles apply also to the area of public health (see, *inter alia*, *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V, and *Calvelli and Ciglio*, cited above, § 48). It cannot be excluded that the acts and omissions of the authorities in the context of public-health policies may, in certain circumstances, engage their responsibility under the substantive limb of Article 2 (see *Powell*, cited above).

80. However, where a Contracting State has made adequate provision to secure high professional standards among health professionals and to protect the lives of patients, it cannot accept that matters such as error of judgment on the part of a health professional or negligent coordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (*ibid.*).

81. That being so, the Court reiterates that the positive obligations imposed on the State by Article 2 of the Convention imply that a regulatory structure be set up, requiring that hospitals, be they private or public, take appropriate steps to ensure that patients' lives are protected. They also imply the obligation to put in place an efficient and independent judicial system by which the cause of death of an individual under the responsibility of health professionals can be established, whether they are working in the

public sector or employed in private structures, and, as the case may be, to ensure their accountability for their actions (see, in particular, *Calvelli and Ciglio*, cited above, § 49).

82. A requirement of promptness and reasonable expedition is implicit within this context. Rapid examination of such cases is important for the safety of users of all health services (see *Byrzykowski v. Poland*, no. 11562/05, § 117, 27 June 2006). The State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009).

83. Moreover, even if the Convention does not as such guarantee a right to have criminal proceedings instituted against third parties, the Court has stated on many occasions that the effective judicial system required by Article 2 may, and under certain circumstances must, include recourse to the criminal law (see *Calvelli and Ciglio*, cited above, § 51). However, if the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (*ibid.*, § 51).

**(b) Application of those principles to this case**

*(i) The alleged violation of the substantive limb of Article 2 of the Convention*

84. In the instant case, the applicants do not allege that Mrs Şentürk's death was intentional. They submit, however, that the events for which the medical staff in question were criticised ought not to be classified as mere negligence, but ought to be considered as amounting to homicide. Under the substantive limb of Article 2, they thus allege that the members of the medical staff were in breach of their professional duties on account of the serious negligence ascribed to them, but also on account of the failure to provide medical treatment to Mrs Şentürk because the deceased woman and her husband did not have the necessary financial resources (see paragraphs 68-70 above).

85. The Court notes at the outset that the facts complained of by the applicants differ considerably from those it had occasion to examine in the above-cited cases (see paragraphs 79-83 above). Accordingly, it considers

that the criteria and principles developed in the above-mentioned case-law, drawn up as they were in a substantially different context from the present case, cannot be transposed *per se* to the present case, but must, however, guide it in assessing the circumstances of the case.

86. Firstly, the Court considers it necessary to point out that the interpretation of the domestic-law provisions, in this case the issue of the criminal classification of the alleged offences, comes within the sole province of the domestic courts (see *Prado Bugallo v. Spain* (dec.), no. 21218/09, 18 October 2011). Moreover, in the circumstances of the present case, it notes that the conduct of certain of the medical staff accused by the applicants was classified in domestic law as unintentional homicide, as defined in Article 455 of the Criminal Code (see paragraphs 30, 49 and 57 above).

87. The Court also observes that a record of the successive instances of medical negligence to which the applicants' wife and mother was subjected, and also the incompetence of certain members of the medical staff who examined her, was set out in the investigation and expert reports. It further notes that the responsibility of the accused medical staff was clearly established by those reports (see paragraphs 16, 17 and 45 above). Equally, the Supreme Administrative Court, when asked to determine whether proceedings could be brought against the doctors in the Ege University Medical Faculty Hospital, considered that the conduct of those doctors was a matter for criminal prosecution and called for proceedings to be brought against them (see paragraph 28 above). Finally, the responsibility of part of the accused medical personnel in Mrs Şentürk's death was recognised by the first-instance criminal court (see paragraph 57 above).

88. In this connection, the Court points out that an issue may arise under Article 2 where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care they have undertaken to make available to the population in general (see *Cyprus v. Turkey* [GC], no. 25781/94, § 219, ECHR 2001-IV, and *Nitecki v. Poland* (dec.), no. 65653/01, 21 March 2002).

89. In the circumstances of this case, the Court is therefore required to determine whether the domestic authorities did what could reasonably be expected of them and whether, in particular, they fulfilled, as a matter of principle, their obligation to protect the patient's physical integrity, particularly through the administration of appropriate medical treatment. In so doing, the Court attaches weight to the sequence of the events which led to Mrs Şentürk's tragic death as set out in the case file, and to the deceased's medical files. It also considers that a distinction must be made in this respect between the care provided to her prior to her arrival at the Ege University Medical Faculty and the events which occurred subsequent to her arrival at that hospital.

90. The investigation conducted at the domestic level established that Mrs Şentürk's death had been due not only to the errors of judgment made by health professionals – this was particularly the case prior to the deceased's arrival at the Ege University Medical Faculty Hospital – but also to a failure to provide treatment to the deceased woman on account of her inability to pay the hospital fees in advance (see paragraphs 16, 17, 45 and 57 above).

91. In this connection, the Court notes, in the light of the material in the file and particularly the findings of 24 November 2000 as set out in the report from the Ministry of Health's investigation, that it is established that the doctors at the Ege University Medical Faculty Hospital caused their patient's death by having her transferred without treatment and failed in their duties in that they had concerned themselves with payment of the fees for medical care (see paragraph 17 above).

92. Equally, duty doctors T.K., H.V., S.A. and Ö.Ö. from the obstetrics department at the Ege University Medical Faculty Hospital were found by a committee of experts to be four-eighths liable for the death of the first applicant's wife "by having had her transferred, without assistance, to the centre for persons insured with the social security system, on the ground that she had no money, although her condition was not compatible with such a transfer" (see paragraph 45 above).

93. The Court also notes, having read the criminal court's reasoning of 18 March 2008 and on the basis of the material in the file, that the first applicant and his wife refused the hospitalisation recommended by the doctors in that hospital "in the absence of financial resources" (see paragraph 57 above).

94. Finally, it notes the investigation committee's conclusions, dated 23 January 2004, on the appropriateness of bringing criminal proceedings against that hospital's medical staff, conclusions which stated that the file did not enable the committee to determine what should be done in medical emergencies requiring hospitalisation where the corresponding fees were not paid (see paragraph 23 above).

95. 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 Şentürk'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 in 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.

96. Indeed, the Court emphasises that there was no doubt as to the seriousness of the patient's condition when she arrived at the Ege University hospital, nor as to the need for immediate surgery, the absence of which was likely to have extremely serious consequences. While in no way speculating as to Mrs Şentürk's chances of survival had she received medical treatment within the Ege University Medical Faculty Hospital, the Court notes that the medical staff at that hospital were perfectly aware of the risk to the patient's health were she to be transferred to another hospital (see paragraph 17 above). In addition, it appears that the case file did not enable the committee which refused to authorise proceedings against those members of staff to assess what should be done in situations of medical emergency when the fees due could not be paid (see paragraphs 23 and 94 above). It appears that the domestic law did not have provisions in this area capable of preventing the failure in this case to provide the medical treatment required by the deceased woman's condition.

97. Thus, the deceased woman, victim of a flagrant malfunctioning of the hospital departments, was deprived of the possibility of access to appropriate emergency care. This finding is sufficient for the Court to conclude that the State failed in its obligation to protect her physical integrity. Consequently, it concludes that there has been a violation of the substantive limb of Article 2 of the Convention.

*(ii) Alleged violation of the procedural limb of Article 2 of the Convention*

98. The Court emphasises that the applicants' complaints also concern the fact that the doctors and midwives who were accused and found to be criminally responsible for Mrs Şentürk's death at first instance had not received criminal sanctions, since the prosecution had been discontinued as being time-barred (see paragraph 71 above). In this connection, it notes, having regard to the evidence in the file, that there had indeed been no final conviction of those presumably responsible for Mrs Şentürk's death as a result of the offence in question becoming time-barred.

99. In the light of the information submitted by the parties, the Court notes that the applicants had used only a domestic criminal-law remedy to complain about the failings of the doctors and midwives responsible for caring for the deceased woman. It is therefore required to examine whether the investigations conducted by the authorities following the applicants' criminal complaint satisfied the requirements of promptness, effectiveness and reasonable diligence arising from the procedural limb of Article 2 (for a

similar approach, see *Eugenia Lazăr v. Romania*, no. 32146/05, § 72, 16 February 2010).

100. In this connection, the Court notes that the administrative phase of prior authorisation for proceedings, essential in order to have criminal proceedings opened against doctors T.K., H.V., S.A. and Ö.Ö., who had been involved in the impugned events, lasted almost three years, until the Supreme Administrative Court – faced with the relevant investigation committee’s systematic refusal [to act] – decided to send, of its own motion, the case before the criminal courts so that proceedings could be brought (see paragraph 28 above). It further notes that on 7 October 2010, after more than nine years of proceedings, all of the proceedings brought against the medical staff in question were discontinued as being time-barred – with the exception of those concerning G.E., whose acquittal was upheld.

101. 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 *Şilih*, 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 (see, for a similar conclusion, *Eugenia Lazăr*, cited above, § 75).

102. Furthermore, the Court notes that the criminal proceedings appear to have been characterised by an initial omission, namely the failure to commence prosecution of S.Ö., and that this situation persisted until 2008, when charges were dropped (see paragraphs 24, 53-54 and 61-63 above).

103. Admittedly, the Court has already held that, in cases of death through medical negligence, the Turkish legal system affords injured parties, on the one hand, criminal proceedings and, on the other, the possibility of bringing an action in the relevant civil court, together with the possibility of disciplinary proceedings if civil liability is established. It has thus concluded that the Turkish legal system offers litigants remedies which, in theory, meet the requirements of Article 2 (see *Sevim Güngör v. Turkey* (dec.), no. 75173/01, 14 April 2009; *Pak v. Turkey* (dec.), no. 39855/02, 22 January 2008; and *Alhan v. Turkey* (dec.), no. 8163/07, 14 September 2010).

104. The Court sees no reason to call into question those findings, which remain valid in the context of the case currently before it, given that the various forms of negligence and medical error to which the victim was subjected prior to her arrival at the Ege University Medical Faculty Hospital are in issue. Nonetheless, it reiterates that it has found, in the particular light of the conclusions of the investigations conducted by the domestic authorities, that in the circumstances of this case the negligence attributable to that hospital’s medical staff went beyond a mere error or medical



negligence, in so far as the doctors working there, in full awareness of the facts and in breach of their professional obligations, did not take all the emergency measures necessary to attempt to keep their patient alive.

105. It reiterates, moreover, that the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may entail a violation of Article 2, irrespective of any other types of remedy which individuals may exercise on their own initiative (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 93 *in fine*, and *Kalender v. Turkey*, no. 4314/02, § 52, 15 December 2009). The Court considers that the same applies where a patient is confronted with a failure by a hospital department to provide medical treatment and this results in the patient's life being put in danger.

106. Consequently, and in view of the findings concerning the shortcomings in the criminal proceedings in question (see paragraphs 100-02 above), the Court concludes that there has been a procedural violation of Article 2 of the Convention.

#### 4. *The Court's assessment as to the foetus's right to life*

107. The Court reiterates that in its judgment in *Vo v. France* ([GC], no. 53924/00, § 82, ECHR 2004-VIII) the Grand Chamber held that, in the absence of any European consensus on the scientific and legal definition of the beginning of life, the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere. The Grand Chamber thus found that "it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the Convention" (*ibid.*, § 85).

108. Since then, the Grand Chamber has had an opportunity to reaffirm the importance of this principle in *A, B and C v. Ireland* ([GC], no. 25579/05, § 237, ECHR 2010), in which it pointed out that the rights claimed on behalf of the foetus and those of the mother are inextricably interconnected (see, to the same effect, the review of the Convention case-law at paragraphs 75-80 in the above-cited *Vo* judgment).

109. In the circumstances of the present case, the Court sees no reason to depart from the approach adopted in those cases, and considers it unnecessary to examine whether the applicants' complaint as regards the foetus falls within the scope of Article 2 of the Convention. It considers that the life of the foetus in question was intimately connected with that of Mrs Şentürk and depended on the care provided to her. That circumstance has been examined in the light of the infringement of the deceased woman's right to life (see paragraphs 87-97 above). Accordingly, the Court considers that the applicants' complaint in this connection does not require a separate examination.

## II. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

110. Relying on Article 3 of the Convention, the applicants allege that they themselves suffered psychologically as a result of the death of their wife and mother, and complain about the suffering endured by the deceased woman throughout the entire period in which she did not receive treatment.

Under Article 6 of the Convention, they also complain about the excessive length of the proceedings and the absence of reasoning in the judgment issued by the criminal court. On the basis of Article 13 of the Convention, the applicants also complain about the ineffectiveness of the medical and legal system in responding to complaints such as theirs. In this respect, they explain that they had to wait five years in order to obtain administrative authorisation for prosecution of the doctors from Ege University. They further allege that no domestic remedy was available that would have enabled them to obtain compensation for the damage arising from the excessive length of the judicial proceedings.

Finally, the applicants claimed that the criminal courts at first instance had failed to rule on their claims for damages, and allege, under Article 1 of Protocol No. 1, that the fact that the proceedings became time-barred had deprived them of the possibility of pursuing an action for compensation.

111. Having regard to its finding under Article 2 of the Convention (see paragraphs 97 and 106 above), the Court considers that it has examined the legal question raised by the present application. Having regard to the facts of the case and the parties' arguments, it considers that it is no longer necessary to examine separately the other complaints under Articles 3, 6 and 13 of the Convention and Article 1 of Protocol No. 1 (for a similar approach, see *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

113. The first applicant, Mehmet Şentürk, claimed 542.20 euros (EUR) in respect of the pecuniary damage which he claimed to have sustained, and submitted as evidence a breakdown assessing the loss of financial support caused by his wife's death at 1,172.35 Turkish lira. He also claimed

EUR 100,000 in respect of non-pecuniary damage; Bekir Şentürk claimed EUR 200,000 under this head.

114. The Government contested these claims. With regard to the amounts claimed in respect of pecuniary damage, they alleged that these had not been substantiated in any way, so that they found it impossible to understand what tangible criteria had been used in calculating the alleged loss.

115. The Court reiterates that there must be a clear causal link between the damage claimed and the violation of the Convention and that the award of just satisfaction may, in an appropriate case, include compensation for loss of financial support (see, among many other authorities, *Kavak v. Turkey*, no. 53489/99, § 109, 6 July 2006). In the present case, it has found (see paragraph 97 above) that the domestic authorities were responsible under Article 2 of the Convention in that they had not protected the life of Mrs Şentürk. It emphasises, however, that the calculation submitted by the applicant specifies that the deceased woman had no independent source of income. In those circumstances, it considers that the alleged pecuniary damage has not been sufficiently proved. It therefore rejects the applicant's request under this head.

116. The Court further considers it appropriate to award the applicants jointly the sum of EUR 65,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

117. The applicants also claimed EUR 1,931.25 in respect of the costs and expenses incurred before the domestic courts, EUR 11,562.50 in respect of lawyer's fees for the proceedings before the Court, and EUR 216 in respect of the costs incurred before the Court. They produced as evidence an hourly breakdown of the work carried out by their lawyer, and receipts.

118. The Government contested these claims.

119. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the instant case, and having regard to the documents available to it and to its case-law, the Court considers it reasonable to award the applicants jointly EUR 4,000 for costs and expenses, less the EUR 850 received by way of legal aid, for the proceedings before it.

### **C. Default interest**

120. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the application admissible as to the complaint under Article 2 of the Convention concerning Mrs Menekşe Şentürk's death;
2. *Holds* that there has been a substantive violation of Article 2 of the Convention on account of the death of Mrs Menekşe Şentürk;
3. *Holds* that there has been a procedural violation of Article 2 of the Convention;
4. *Holds* that there is no need to examine separately the remainder of the complaints;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish lira at the rate applicable on the date of settlement:
    - (i) EUR 65,000 (sixty-five thousand euros) jointly to the two applicants, plus any tax that may be chargeable to the applicants, in respect of non-pecuniary damage;
    - (ii) EUR 4,000 (four thousand euros) jointly to the two applicants, less the EUR 850 (eight hundred and fifty euros) received by way of legal aid, plus any tax that may be chargeable to the applicants, for costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 9 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Guido Raimondi  
President