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

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Application concerning death of Gezi Park protester rejected for failure to exhaust domestic remedies

In its decision in the case of Cömert and Others v. Türkiye (application no. 17231/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the death of the applicants' relative, Abdullah Cömert, from a head wound caused by a tear-gas canister fired by a member of the security forces during a demonstration held in Hatay in June 2013 to protest against the demolition of Gezi Park in Istanbul.

The Court held that the application was inadmissible for failure to exhaust domestic remedies because several domestic cases concerning the applicants' complaints remained pending before the national authorities, including the Turkish Constitutional Court.

Nonetheless the Court noted that, should the national proceedings prove so unavailing, on account of their duration or the manner in which they were conducted, as to be rendered ineffective within the meaning of its case-law, and in particular should the decision of the Constitutional Court on the individual application pending before it fall short of meeting the applicants' concerns, it would be open to them to make a fresh application to the Court. In any event the Court reserved the possibility, ultimately, of ascertaining whether the case-law of the Constitutional Court was compatible with its own.

A legal summary of this case will be available in the Court's HUDOC database (link).

Principal facts

The applicants are six Turkish nationals who were born between 1951 and 1985. They live in Hatay, Türkiye.

In 2011 the Istanbul Metropolitan Municipal Council (*Istanbul Büyükşehir Belediye Meclisi*) approved a plan to demolish Gezi Park, one of central Istanbul's few green spaces, to make way for a shopping centre. Professional associations including the Chamber of Architects and the Chamber of Landscape Architects brought various administrative-law challenges seeking to have the plan set aside.

In 2013, after the start of demolition work in Gezi Park, environmental activists and local residents opposed to the park's removal occupied it in an attempt to prevent its destruction. A few days later the police intervened to remove the people occupying the park. There were confrontations between the police and the demonstrators.

Subsequently the protests escalated and, in June and July 2013, spread in the form of meetings and demonstrations to several towns and cities in Türkiye. It was during that time that a demonstration was held in Hatay on 3 June 2013 at which Abdullah Cömert sustained a head wound from a tear-gas canister fired by a police officer. He died of his injuries, and criminal charges were brought against the police officer.

In 2018 the Assize Court convicted the police officer of involuntary homicide for negligently causing Abdullah Cömert's death and sentenced him to a term of imprisonment of 6 years, 10 months and 15 days. That decision was upheld by the Court of Cassation in 2019.

Meanwhile, in 2016, the applicants brought a claim against the Ministry of the Interior in the Hatay Administrative Court seeking damages for the death of their relative. In 2019 they succeeded and

the Ministry of the Interior was ordered to pay them about 52,098 euros (EUR). The award was paid in 2021, but the case remains pending before the Supreme Administrative Court.

On two occasions the applicants also lodged an individual application with the Constitutional Court. Their first application was rejected for non-exhaustion of remedies and the second remains pending.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 January 2017.

Relying on Article 2 (right to life) of the Convention, the applicants complained of the death of their relative.

Relying on Articles 6 (right to a fair hearing) and 13 (right to an effective remedy), they argued that the persons actually responsible for his death had not been held liable.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

The Court reiterated that Article 35 § 1 (admissibility criteria) of the Convention permitted it to deal with a case only after all domestic remedies had been exhausted – States were not accountable to an international body until they had had an opportunity to put matters right within the domestic legal order. Litigants who wished to invoke the Court's supervisory jurisdiction in relation to complaints against a State were therefore under an obligation, first, to pursue the remedies afforded by the national legal system of that State. The obligation to exhaust domestic remedies required applicants to make normal use of the remedies that were available and sufficient in respect of their Convention grievances.

Here, the Court observed that several cases concerning the applicants' complaints remained pending before the national authorities and concluded that the applicants had not put forward any grounds for applying to it prematurely.

In this regard the Court expressed the view that the proceedings pending in the domestic legal order were surely an effective forum in which to redress the complaints raised by the application. Accordingly, it would not examine the case further, as the application was manifestly premature.

Nonetheless the Court noted that, should the national proceedings prove so unavailing, on account of their duration or the manner in which they were conducted, as to be rendered ineffective within the meaning of its case-law, and in particular should the decision of the Constitutional Court on the individual application pending before it fall short of meeting the applicants' concerns, it would be open to them to make a fresh application to the Court. In any event the Court reserved the possibility, ultimately, of ascertaining whether the case-law of the Constitutional Court was compatible with its own.

Accordingly, the application was rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for failure to exhaust domestic remedies.

Useful link

Q&A – Exhaustion of Domestic Remedies: link

The decision is available only in French.

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