



## Death of new-born baby after being refused admission to public hospitals

In today's **Chamber judgment**<sup>1</sup> in the case of **Asiye Genç v. Turkey** (application no. 24109/07) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 2 (right to life)** of the European Convention on Human Rights

The case concerned a prematurely born baby's death in an ambulance, a few hours after birth, following the baby's transfer between hospitals without being admitted for treatment.

The Court found, firstly, that the State had not sufficiently ensured the proper organisation and functioning of the public hospital service, or its health protection system. The child died because it had not been offered any treatment. Such a situation constituted a denial of medical care such as to put a person's life in danger.

Secondly, the Court found that the Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death.

### Principal facts

The applicant, Mrs Asiye Genç, is a Turkish national who was born in 1976 and lives in Burdur (Turkey). On 30 March 2005 the applicant, who was pregnant and in pain, was taken by her husband to the public hospital of Gümüşhane. She gave birth the next day by caesarean section to a boy who was premature. The baby shortly afterwards developed breathing difficulties.

As there was no suitable neonatal unit in that hospital, the doctors decided to transfer the baby to another public hospital 110 km away, KTÜ Farabi.

On 1 April 2005 at around 1.15 a.m. that hospital refused to admit the child on the ground that there was no space in the neonatal intensive care unit. Around 2 a.m., the child was transferred to the Medicosurgical and Obstetrics Centre, where the duty doctor explained that there were no incubators available and suggested that the parents take him back to the public hospital. On their arrival there, the doctors again refused to admit the baby owing to a lack of space in the neonatal unit. The child subsequently died in the ambulance.

On 6 April 2005 Mr and Mrs Genç filed a criminal complaint and two investigations were opened. The criminal investigation against the medical staff was discontinued and the administrative investigation initiated by the Ministry of Health was closed on the ground that there was no case to answer, as no fault had been committed by the staff.

### Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicant complained about alleged deficiencies in the investigation into her son's death. Under Article 3 (prohibition of inhuman or degrading treatment), she also complained about the circumstances in which he died. Lastly, under Article 13 (right to an

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](http://www.coe.int/t/dghl/monitoring/execution).

effective remedy), she submitted that she had no effective remedy in domestic law by which to have established the facts and responsibilities that led to the death.

The Court found that the applicant's complaints called for examination solely under Article 2 of the Convention.

The application was lodged with the European Court of Human Rights on 28 May 2007.

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

**Guido Raimondi** (Italy), *President*,  
**Işıl Karakaş** (Turkey),  
**András Sajó** (Hungary),  
**Helen Keller** (Switzerland),  
**Paul Lemmens** (Belgium),  
**Robert Spano** (Iceland),  
**Jon Fridrik Kjølbro** (Denmark),

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

## Decision of the Court

### Article 2

The Court was called upon to ascertain whether the domestic authorities had done what could have been reasonably expected of them to prevent this tragedy and, in particular, whether they had satisfied their obligation to adopt measures to ensure the protection of the child's life.

The Court noted that the public hospital could not have been unaware of the risk for the life of the new-born baby in the event of refusal to admit it to another hospital. Before choosing to transfer it, the staff of that public hospital of Gümüşhane had not taken the necessary measures to ensure that the child would definitely be admitted for treatment in the other hospital. The State had not sufficiently ensured the proper organisation and functioning of the public hospital service, or its health protection system. The child had died not because of negligence or any error of judgment in the care dispensed to it, but because it was offered no treatment at all. Such a situation constituted a denial of medical care such as to put a person's life in danger.

The Court further took the view that, on account of the refusal by the administrative authorities, the fact that there had been no proceedings against the staff who had failed to admit the baby for treatment raised a problem under Article 2 of the Convention.

It was legitimate to expect that the authorities to which the case had been referred would verify whether and to what extent the failings established in the present case remained compatible with the imperatives of the public health service and the hospital regulations, and that they would if necessary determine liability on that basis. However, there had been no attempt to ascertain how the protocols applicable to the admission of new-born babies to the emergency unit or to coordination between the neonatal services had been implemented, or to establish the reasons for the lack of basic facilities in those services, in particular incubators.

The Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death. The investigation had not been complete, because none of the crucial factors specific to the failings in the management of the health service had been the subject of any investigation.

The Court concluded that in the light of the circumstances leading to the lack of indispensable emergency care and the inadequacy and insufficiency of the investigations carried out internally in

this connection, it could be considered that the State had failed in its obligations under Article 2 of the Convention in respect of the child, Tolga Genç, who had died a few hours after birth.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Turkey was to pay the applicant 65,000 euros (EUR) in respect of non-pecuniary damage.

#### Separate opinion

Judges Lemmens, Spano and Kjølbros expressed a separate opinion which is appended to the judgment.

*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.