



Turkish family could not be criticised for waiting nine years to bring complaint about their relative's disappearance to Strasbourg

In today's Chamber judgment in the case of **Er and Others v. Turkey** (application no. 23016/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 2 (right to life and lack of an effective investigation) of the European Convention on Human Rights concerning the disappearance and presumed death of the applicants' relative;

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention on account of the applicants' mental suffering caused by the disappearance of their relative;

a violation of Article 5 (right to liberty and security) concerning the unlawful detention of the applicants' relative at a gendarmerie station; and,

a violation of Article 13 (right to an effective remedy).

The case concerned the disappearance in July 1995 of a Turkish family's 44-year old father and brother, Ahmet Er, following a military operation in their village.

The judgment is of particular interest because the Court:

- confirmed that a less rigid approach was justified when examining the issue of compliance with the Court's six-month time limit² in disappearance cases, not only in the context of an international armed conflict but also in the national context; and,

- found that the applicants could not be criticised for waiting nine years before lodging their complaint about their relative's disappearance as an investigation had been carried out during that period (which had come up with promising new developments) and they had done all that could be expected of them to assist the authorities.

Principal facts

The applicants, Mehmet, Gülşen, İslam, Adnan, Hızır, Hatice, Belkisa, Ali and Mumi Er, are nine Turkish nationals who were born in 1980, 1974, 1978, 1984, 1989, 1990, 1994, 1954 and 1953 respectively and live in Hakkari (Turkey).

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

² Applications must be lodged with the European Court of Human Rights within six months following the last judicial decision in the case, which will usually be a judgment by the highest court in the country concerned.

The applicants alleged that Ahmet was arrested on 14 July 1995 following a clash between the Turkish security forces and the PKK (The Kurdistan Workers' Party, an illegal organisation) in the village of Kurudere and taken to the local gendarmerie station. An elderly uncle, detained at the same time as Ahmet, was released the following day; the applicants have, however, had no news of Ahmet since.

The Government submitted that Ahmet Er had not been taken into custody on 14 July but had helped soldiers with locating landmines planted by terrorists in the area and had been released the following day. The ensuing investigation had shown that he had joined terrorists in northern Iraq.

On 14 July 1995 Ali Er immediately informed the local civilian prosecutor that his brother had gone missing and that he feared for his life. On 16 July 1995 the prosecutor telephoned the Major of the commando unit who told him that Ahmet had just been released, after having helped his soldiers to locate landmines in the area.

On 18 July 1995 the civilian prosecutor launched an investigation into Ahmet's disappearance, which was actively continued until February 1996, with Ali Er, the elderly uncle and a fellow villager being questioned as well as a number of gendarmerie officers, including the commando Major. In his eyewitness statement made in October 1995, the elderly uncle said that he had been taken on 14 July with Ahmet to the gendarmerie station where they had been tied to a pole, beaten up and then left until the next morning. He also alleged that they had been doused with hot water and that Ahmet had had the bones in his feet broken with a stone. On his release he had seen Ahmet being dragged unconscious along the ground by a group of soldiers. The fellow villager also testified in October 1995, stating that he had seen Ahmet, handcuffed, being taken in a military vehicle from the gendarmerie station to the commando unit. The gendarmerie officers confirmed in December 1995 that they had taken Ahmet and his uncle to the station but denied any allegations of torture; they released the two men the next day. Also questioned the major stated that, after his telephone conversation with the prosecutor, he had ordered Ahmet's release. He had, however, later found out that the person who was released had not actually been Ahmet and that he did not therefore know whether his soldiers had taken him away or not.

Further steps were taken in December 2003 when the civilian prosecutor issued a decision finding that, given the evidence, the applicants' allegations concerning the military's involvement in the disappearance were credible and that the military prosecutor therefore had jurisdiction to continue the investigation. During the new investigation launched in January 2004 more information was requested from the local military units and the family and eyewitnesses made further statements to the military prosecutor. In July 2005 the military prosecutor decided that he also lacked jurisdiction to investigate the disappearance and handed the case back to the civil prosecutor. There have, however, been no further developments in the case apart from the issuing of a search and arrest warrant in January 2006 against Ahmet for membership of the PKK.

In the meantime on 29 May 2003, the local district court – acting at the request of the applicants who wished to deal with property matters and the custody of Ahmet's three young children – declared that Ahmet was to be presumed dead.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 5 (right to liberty and security), the family alleged that the Turkish armed forces had been responsible for Ahmet's unacknowledged detention, subsequent disappearance and presumed death and that the authorities had failed to carry out any meaningful investigation into their allegations. They also complained about the suffering caused by their inability to find out what had happened

to their relative, in breach of Article 3 (prohibition of inhuman or degrading treatment). Lastly, they alleged under Article 13 (right to an effective remedy) that they have had no means available to them to obtain either an investigation into Ahmet's disappearance and death or compensation.

The application was lodged with the European Court of Human Rights on 16 May 2004.

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

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 Dragoljub **Popović** (Serbia),
 Isabelle **Berro-Lefèvre** (Monaco),
 András **Sajó** (Hungary),
 Işıl **Karakas** (Turkey),
 Guido **Raimondi** (Italy),

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

Decision of the Court

[Article 2 \(admissibility, Ahmet Er's disappearance and the lack of an effective investigation\)](#)

Admissibility

The Court rejected the Government's submission that the applicants should have lodged their complaint with the European Court of Human Rights within six months of the national decision of 29 May 2003 (finding that their relative was to be presumed dead). The applicants had made that request in order to deal with property and custody matters and the related proceedings had no bearing on the State's obligation to account for their relative's disappearance and to identify and prosecute those responsible.

Moreover, it confirmed that a less rigid approach was justified when examining the issue of compliance with its six-month time limit in disappearance cases, which by their very nature were less clear-cut than cases concerning killings. This approach was to be taken not only in the context of an international armed conflict (as the Court had previously found in the case [Varnava and Others v. Turkey](#) concerning disappearances during the 1974 conflict in Northern Cyprus) but also in the national context, with stricter conditions nevertheless applying as direct access is possible to the investigating authorities. The Court found that the applicants had met these stricter expectations, having immediately informed the authorities of their relative's disappearance and subsequently having cooperated both with the civilian and military prosecutors. The investigation, although sporadic, had been ongoing during the nine years before they lodged their complaint (in May 2004) and had come up with promising new developments (the decision by the civilian prosecutor in December 2003 and the new investigation of 2004). The applicants, who had done all that could be expected of them to assist the authorities, could not therefore be criticised for waiting nine years before lodging their complaint about their relative's disappearance. The Court therefore declared this part of the applicants' complaint admissible.

Disappearance

It had been acknowledged that Ahmet Er had been present at the gendarmerie station. In such circumstances, it was up to the Government to provide a plausible explanation as to what had happened next, namely whether Ahmet had been detained and then released or not. However, no documents had been drawn up concerning his detention or alleged release. Moreover, the prosecutor investigating the disappearance had been given confusing and contradictory information by the commando major, who first

declared that Ahmet had been released and then that he did not actually know. Having particular regard to the failure to keep official records on Ahmet's detention at and release from the military station, the Court found it established that Ahmet had remained in the custody of the State.

Ahmet's disappearance fitted in with a pattern of large numbers of people going missing in south-east Turkey between 1992 and 1996 and the Court had already concluded in a number of other cases that the disappearance of someone at that time in Turkey could be regarded as life-threatening. There has been no news of the applicants' relative since he was detained by the security forces almost 17 years ago and the Court therefore accepted that he had to be presumed dead. The authorities had not accounted for what had happened during Ahmet's detention or given any other reason for his disappearance, such as the gendarmerie officers having had to resort to the use of lethal force. Turkey was therefore liable for Ahmet Er's death, in violation of Article 2.

Investigation

The Court held that there had been a further violation of Article 2 on account of the inadequate investigation into Ahmet's disappearance and the fact that no serious attempts had been made by the prosecuting authorities to find out what had actually happened to him. Notably, although the disappearance had immediately been brought to the attention of the authorities, it was not until two days later that the civilian prosecutor contacted the commando major by telephone. Even though the major confirmed that Ahmet had been taken to the gendarmerie station and his family insisted that he had still not returned, members of the security forces were not questioned until some five months later. Moreover, the prosecutor accepted the military officers' version of events without further investigation and took no steps to ensure that they were at least called to account for Ahmet's unlawful detention at their station.

Article 3 (applicants' mental suffering)

The applicants, the children, brother and sister of Ahmet Er, have close ties to the victim. Some of them even witnessed his being taken away almost 17 years ago. As such, the Court found that the applicants had suffered and continued to suffer distress and anguish as a result of his disappearance and their inability, despite their cooperation with the authorities, to find out what had happened. The manner in which their complaints had been dealt with by the authorities had to be considered to constitute inhuman treatment, in violation of Article 3.

Article 5 (Ahmet Er's unacknowledged detention)

The Court held that the applicants' relative had been held in unacknowledged detention without any of the safeguards contained in Article 5.

Article 13 (effective remedy)

The Court had already found that the Turkish authorities had been responsible for the disappearance of the applicants' relative, in violation of Article 2, and that the applicants were therefore entitled to an effective remedy to obtain either an investigation into Ahmet's disappearance and death or compensation. However, as found above, the authorities had failed to comply with this obligation as the investigation had been inadequate. There had therefore been a violation of Article 13.

Article 41 (just satisfaction)

The Court held that Turkey was to pay Ahmet Er's children 35,000 euros (EUR), jointly, and his brother (Ali) EUR 25,000 in respect of pecuniary damage. In respect of non-pecuniary damage, Turkey was to pay Ahmet Er's brother and sister (Ali and Mumi) EUR

5,000, each, and his children EUR 55,000, jointly. EUR 250 was also awarded for costs and expenses.

The judgment is available only in English.

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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.