



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

CASE OF MENTEŞ AND OTHERS v. TURKEY

(Article 50)

(58/1996/677/867)

JUDGMENT

STRASBOURG

24 July 1998

SUMMARY¹

Judgment delivered by a Grand Chamber

First three applicants' claims for just satisfaction in respect of Court's findings, in the principal judgment, of violations of Articles 8 and 13 of the Convention

I. PECUNIARY DAMAGE

Court not prevented from making an award for pecuniary damage, although applicants had limited their complaint to Article 8 of the Convention and no ruling had been made as to whether the matter had also given rise to a violation of Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions).

While applicants sought global amounts without substantiating their claims as to the quantity and value of their losses with any documentary or other evidence, Court accepted that, because of the destruction of family records during the burning of the houses and the security situation in the area in question, they had been faced with particular difficulties in adducing evidence to support their claims – in assessing the pecuniary damage, Court took into account, as far as appropriate, estimates provided by Government and awards made in the previous judgments in comparable cases concerning Turkey.

Awards made in respect of first three applicants' houses, household property, agricultural machinery of one applicant and livestock and feed of two applicants.

Conclusion: respondent State to pay specified sums to first three applicants (fifteen votes to four).

II. NON-PECUNIARY DAMAGE

Having regard to the seriousness of the violations found, an award should be made. Claims for punitive and aggravated damages rejected.

Conclusion: respondent State to pay specified sums to first three applicants (fifteen votes to four).

III. REQUEST FOR RESTORATION OF RIGHTS

This was a matter for the Committee of Ministers under Article 54 of the Convention.

Conclusion: claim dismissed (unanimously).

IV. DEFAULT INTEREST

Statutory default interest applicable in United Kingdom was to apply to above awards expressed in pounds sterling.

Conclusion: default interest should be payable (seventeen votes to two).

1. This summary by the registry does not bind the Court.

In the case of Menteş and Others v. Turkey¹,

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A², as a Grand Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
 Mr F. GÖLCÜKLÜ,
 Mr F. MATSCHER,
 Mr C. RUSSO,
 Mr A. SPIELMANN,
 Mr J. DE MEYER,
 Mr N. VALTICOS,
 Mr I. FOIGHEL,
 Mr R. PEKKANEN,
 Mr A.N. LOIZOU,
 Mr J.M. MORENILLA,
 Mr A.B. BAKA,
 Mr G. MIFSUD BONNICI,
 Mr D. GOTCHEV,
 Mr P. JAMBREK,
 Mr P. KÜRIS,
 Mr U. LÖHMUS,
 Mr E. LEVITS,
 Mr V. BUTKEVYCH,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 25 April and 26 June 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

1. The case is numbered 58/1996/677/867. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 17 April 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in an application (no. 23186/94) against the Republic of Turkey lodged with the Commission under Article 25 by four Turkish nationals, Ms Azize Menteş, Ms Mahile Turhallı, Ms Sulhiye Turhallı and Ms Sariye Uvat, on 20 December 1993.

2. In a judgment of 28 November 1997 (“the principal judgment”, *Reports of Judgments and Decisions* 1997-VIII) the Court dismissed the Government’s preliminary objection concerning the exhaustion of domestic remedies under Article 26 of the Convention. The Court then held, with respect to the first three applicants, that there had been a violation of Article 8 on account of the burning of their houses by the security forces on 25 June 1993; that it did not propose to examine further whether the circumstances of the destruction of their homes and their eviction from the village gave rise to a violation of Article 3; and that it was unnecessary to examine whether there had been a violation of the first three applicants’ right to liberty and security of person under Article 5 § 1. The Court did not find it necessary to consider the alleged lack of effectiveness of national remedies under Article 6 § 1 but held that there had been a violation of Article 13. It found no violation of Articles 14 and 18. As regards the fourth applicant the Court held that there had been no violation of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention.

The Court also held that the respondent State was to pay directly to the first three applicants’ United Kingdom-based representatives, within three months, 27,795 pounds sterling (GBP) together with any value-added tax that might be chargeable, less certain sums paid by way of legal aid, in respect of costs and expenses.

3. As the question of application of Article 50 of the Convention was not ready for decision in respect of pecuniary and non-pecuniary damage, the Court reserved it and invited the Government and the first three applicants to submit in writing, within three months, their observations on the matter and, in particular, to notify the Court of any agreement they might reach.

4. The Government, after having been accorded an extension by the President, submitted their observations under Article 50 of the Convention on 31 March 1998, to which they appended two documents dated 11 February 1998, namely an expert report drawn up by two engineer-agronomists and a letter by the Director of Public Works and Settlement Office. By letter of 2 April 1998, the applicants informed the Registrar that they had no further observations to add to those submitted at the merits stage on 19 January 1997. At the same time they noted that there might be issues in the judgment of the Court in the case of *Akdivar and Others v. Turkey* which would have implications for their claims under Article 50.

No comments were received from the Delegate of the Commission on the submissions received from the Government and the applicants.

5. On 9 February 1998 Mr R. Bernhardt, then Vice-President of the Court and, since 24 March, President, replaced Mr R. Ryssdal who was unable to take part in the further consideration of the case (Rules 21 § 6 and 54 § 2 of Rules of Court A). Subsequently, on 9 March 1998 Mr B. Walsh died.

AS TO THE LAW

6. Article 50 provides as follows:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

7. In its principal judgment the Court found violations of Articles 8 and 13 of the Convention with respect to the first three applicants, but not the fourth applicant. Only the first three applicants sought compensation under Article 50 for damage.

I. PECUNIARY DAMAGE

A. Arguments of those taking part in the proceedings

8. Under the head of pecuniary damage, the first three applicants each claimed:

(a) GBP 25,000 in compensation for the destruction of home, family life and lifestyle, including for damage to home property and livelihood;

(b) GBP 10,000, based on an average of GBP 3,000 per annum, in respect of loss of income and the cost of alternative accommodation.

9. The first three applicants pointed out that their claim of compensation for pecuniary damage was not based on any particular title to real or personal property but on an estimate of the costs of reconstructing their family life in the environment which had been destroyed. They stated that efforts made to obtain the precise costs had been frustrated by the unwillingness of any appropriate expert to travel to the village – allegedly because of security forces and fear for their personal safety. Furthermore, in view of the destruction of family records it had not been possible to provide a breakdown of the family income. The first three applicants' claims for compensation related to the following items:

(a) As regards Azize Menteş a 200 square metre house (with a barn on the first floor and three bedrooms), a 2,100 square metre hay store, a series of household property, including bedding, sitting-room furniture and kitchen equipment, clothes and crops (a number of sacks of wheat, butter beans and barley), twelve tons of logs, agricultural machinery and tools, one hundred acres of cultivated land, thousands of fruit trees and over two hundred poplar trees.

(b) As to Mahile Turhallı a 250 square metre, eight-bedroom house and (next to the house) a 300 square metre barn and 300 square metre garden, a 250 square metre pasture house with 200 square metre garden (2-3 kilometres outside the village), a range of household property, including sitting-room and bedroom equipment, kitchen utensils, a year of food stock, five tons of wheat and two tons of barley, 1,200 kg of wool and livestock (50 goats, 35 cows, 80 sheep, 5 horses and 40 chicken). She in addition submitted that she had paid amounts totalling 228,000,000 Turkish liras (TRL) in rent since she left the village in 1993 until 1997.

(c) As regards Sulhiye Turhallı a 200 square metre, eight-bedroom house, a 200 square metre garden next to the house, a 250 square metre, one-storey pasture house and a 200 square metre garden (2-3 kilometres outside the village); household property, including bedding, furniture, carpets, kitchen utensils, stocks of food and crops, livestock (2 horses, 14 cows, 20 goats, 20 sheep and 20 chicken), 150 acres of cultivated land, hundreds of fruit trees and nut trees, 1,500 poplar trees and 500 logs.

10. The Government, in their initial observations on Article 50 filed at the merits stage on 16 January 1997, argued that, having not alleged a violation of Article 1 of Protocol No. 1, the applicants were barred from attempting to introduce a property element in their Article 50 claim. The Government pointed to a number of matters suggesting that the claim was unsubstantiated.

However, in their further observations of 31 March 1998, the Government proposed to pay TRL 2,241,083,120 for each of the first three applicants. The Government based this figure on an estimate of one year net annual income of a farmer in Sağgöz (TRL 119,000,000), the average price of a house (80 square metres) in the village (TRL 1,822,083,120, including 70% of inflation) and the average price for household properties (TRL 300,000,000).

As regard the estimates of income and price for an average house, the Government referred to two documents dated 11 February 1998, namely an expert report drawn up by two engineer-agronomists and a letter by the Director of Public Works and Housing Settlement Office. As regards the value of household properties, the Government referred to the expert report which they had submitted in the case of *Akdivar and Others v. Turkey* (*Article 50*) (see judgment of 1 April 1998, *Reports* 1998-II, pp. 715–16, § 6). In addition, the Government supplied the Court with several decisions by the administrative courts concerning compensation for damage to property allegedly in comparable cases.

B. The Court's assessment

11. From the outset, the Court notes that the applicants limited their complaint to Article 8 of the Convention and that the Court's finding of violation in the case at hand was that the security forces had burned the first three applicants' houses, with all their belongings and property inside, and had caused them to leave the village (see paragraphs 34, 69 and 73 of the principal judgment). The fact that no ruling was made as to whether the matter complained of also gave rise to a violation of Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) does not prevent the Court from making an award for pecuniary damage.

12. Turning to the first three applicants' claims, the Court notes that, under each heading, they sought global amounts without substantiating their claims as to the quantity and value of their losses with any documentary or other evidence. The Court accepts that, because of the destruction of family records during the burning of the houses and the security situation in the area, the applicants were faced with particular difficulties in adducing evidence to support their claims.

In assessing the pecuniary damage sustained by the applicants, the Court will as far as appropriate take into account the estimates provided by the Government and the awards made in the above-mentioned *Akdivar and Others* (*Article 50*) judgment and *Selçuk and Asker v. Turkey* judgment of

24 April 1998 (*Reports* 1998-II). Given the limited nature of the evidence adduced under Article 50, the Court's assessment will inevitably involve a degree of speculation (see respectively paragraphs 19 and 106 of the aforementioned judgments).

1. Destruction of home, damage to household property and livelihood

13. As regards the alleged losses of houses, the Court will only make an award for the first three applicants' homes; it has not been established that the barn and pasture houses of Mahile and Sulhiye Turhallı were destroyed. It will base its award on the average rate per square metre proposed by the Government and 50% of the surface area claimed by the applicants (see the above-cited Akdivar and Others (*Article 50*) judgment, p. 718, § 19).

14. On the other hand, no indications have been provided as to the value of the first three applicants' household property, the agricultural machinery and tools of Azize Menteş and the livestock and feed of Mahile and Sulhiye Turhallı. The Court nevertheless considers that compensation should be awarded in the light of equitable considerations and the level of comparable awards made in the Akdivar and Others (*Article 50*) judgment on the basis of an expert report and in the Selçuk and Asker judgment.

15. As to the claims in respect of loss of land, the Court is of the view that, in the absence of any finding of expropriation of property in the principal judgment, these must be rejected (see the above-mentioned Akdivar and Others (*Article 50*) judgment, p. 719, § 23).

16. In view of the above considerations, the Court makes the following awards in respect of lost property:

- (a) GBP 12,000 (Azize Menteş);
- (b) GBP 18,000 (Mahile Turhallı);
- (c) GBP 16,000 (Sulhiye Turhallı).

These amounts, which have been expressed in pounds sterling in view of the high rate of inflation in Turkey, are to be converted into Turkish liras at the rate applicable on the date of settlement.

2. Loss of income and cost of alternative accommodation

17. As regards loss of income the Court does not find that an award can be made on the basis of the average figures provided by the Government.

As to cost of alternative accommodation, the Court notes that only one of the applicants has supplied figures, whereas the Government have not provided any details on the subject.

In respect of the above items the Court, deciding on an equitable basis, awards GBP 6,000 to Azize Menteş and GBP 8,000 each to Mahile and Sulhiye Turhallı, to be converted into Turkish liras at the rate applicable on the date of settlement.

II. NON-PECUNIARY DAMAGE

18. The first three applicants each claimed GBP 30,000 in compensation for suffering and moral damage. They also claimed GBP 15,000 each for punitive damages in respect of the violation of their Convention rights. They submitted that the award should reflect the particular character of the violations suffered by them and also serve as a deterrent in respect of violations of a similar nature by the respondent State. In addition, the applicants sought GBP 20,000 in compensation for aggravated damage. They maintained that in the event that the Court found that they had been the victims of an administrative practice, this factor should be reflected in the award.

19. The Government, being of the view that the finding of violations of the Convention in itself constituted adequate just satisfaction for the purposes of Article 50 of the Convention, requested the Court to reject the applicants' claims in respect of non-pecuniary damage. The Government strongly contested the applicants' claims for punitive and aggravated damages.

20. The Court considers that an award should be made under the head of non-pecuniary damage, bearing in mind the seriousness of the violations which it has found in respect of Articles 8 and 13 of the Convention (see the principal judgment, *Reports* 1997-VIII, p. 2701, § 34, and pp. 2711, 2715-16, §§ 73, 89-91).

It awards the applicants GBP 8,000 each, to be converted into Turkish liras at the rate applicable on the date of settlement.

21. It rejects the claims for punitive and aggravated damages (see the above-mentioned *Akdivar and Others (Article 50)* judgment, p. 722, § 38; and the above-cited *Selçuk and Asker* judgment, p. 918, § 119).

III. REQUEST FOR RESTORATION OF RIGHTS

22. The first three applicants further requested the Court to confirm that a necessary implication of an award of just satisfaction was that it was incumbent on the respondent State to bear the costs of infrastructural repairs in Sağgöz village which were necessary to enable them and their spouses, dependants and other family members to recreate their livelihood and way of life in the village. If damages and compensation were to be awarded on this basis, but the applicants were nevertheless prevented by the State from returning to their lands, this could result in their being victims of further violations of the Convention. The applicants believed that the village of Sağgöz was now part of an area prohibited to civilian access and asked the Court to confirm that it would be inconsistent with its findings in their case for the respondent State to prevent them from returning to their village.

23. The Government maintained that the restoration of rights was not feasible due to the emergency conditions prevailing in the region. However, resettlement will take place when the local inhabitants feel themselves to be safe from terrorist atrocities.

24. The Court recalls that, according to its case-law (see, for instance, the above-mentioned *Akdivar and Others (Article 50)* judgment, pp. 723-24, § 47; and the above-mentioned *Selçuk and Asker* judgment, p. 918, § 125), a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to such breach (Article 53 of the Convention) and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). However, if *restitutio in integrum* is in practice impossible the respondent States are free to choose the means whereby they will comply with a judgment in which the Court has found a breach, and the Court will not make consequential orders or declaratory statements in this regard. It falls to the Committee of Ministers acting under Article 54 of the Convention to supervise compliance in this respect.

IV. DEFAULT INTEREST

25. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by fifteen votes to four that the respondent State is to pay the first three applicants, within three months, the following sums to be converted into Turkish liras at the rate applicable on the date of settlement:
 - (a) in respect of pecuniary damage
 - (i) 18,000 (eighteen thousand) pounds sterling to Azize Menteş,
 - (ii) 26,000 (twenty-six thousand) pounds sterling to Mahile Turhallı,
 - (iii) 24,000 (twenty-four thousand) pounds sterling to Sulhiye Turhallı;
 - (b) in respect of non-pecuniary damage the sum of 8,000 (eight thousand) pounds sterling each;
2. *Holds* by seventeen votes to two that simple interest at an annual rate of 7.5% shall be payable on the above amounts from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 24 July 1998 pursuant to Rule 55 § 2, second sub-paragraph, of Rules of Court A.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the joint partly dissenting opinion of Mr De Meyer, Mr Gölcüklü, Mr Matscher and Mr Gotchev is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

JOINT PARTLY DISSENTING OPINION OF JUDGES
DE MEYER, GÖLCÜKLÜ, MATSCHER AND GOTCHEV

For the reasons stated in our opinions concerning the merits of this case¹,
no compensation should have been awarded to the applicants.

1. *Reports of Judgments and Decisions* 1997-VIII, pp. 2722–28, 2730–31 and 2734.