



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

FIRST SECTION

CASE OF KEMAL GÜVEN v. TURKEY

(Application no. 31847/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

25 May 2001

In the case of Kemal GÜVEN v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr GAUKUR JÖRUNDSSON,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 30 May 2000 and on 3 May 2001,

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

PROCEDURE

1. The case originated in an application (no. 31847/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Kemal Güven ("the applicant"), on 12 April 1996.

2. The applicant was represented by Ms Naciye Kaplan, a lawyer practising in Istanbul (Turkey). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained that he had been victim of a violation of Articles 3, 5, 6, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of destruction of his property by the security forces. He further alleged, without submitting any medical evidence in support of his allegations, that he was subjected to various forms of torture during his detention at the Malazgirt Gendarmerie Station in the state of emergency region.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case

(Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention).

6. On 30 May 2000, having obtained the parties' observations, the Court declared the application admissible. On 24 January 2001, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention.

7. On 12 February 2001 and on 9 February 2001 the applicant's representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

A. Applicant's version of the facts

8. In May 1994 security forces under the command of Gendarme Captain Osman arrived in the Nurettin village of the Malazgirt district in the province of Muş. They assembled the inhabitants in the village square and told them that they had to be village guards and that those who did not agree would be obliged to move from the village and their houses would be burned down.

9. Two days after this incident, the applicant was taken away from his home, along with 14 other villagers, by a group of security forces composed of approximately 100 special team members and village guards. He was brought to the Malazgirt Gendarme Station, where he stayed for two days. He was then brought to the Muş Gendarme Station for interrogation.

10. The applicant was asked why he had opposed to the State's laws and why he refused to be a village guard. The applicant told his interrogators that he had served his military service and paid his taxes and that he was opposed to becoming a village guard since this could put him in much more danger. The interrogators accused him of being a PKK terrorist since he did not agree to take weapons.

11. The applicant, without submitting any medical evidence in support of his allegations, claimed that he was subjected to various forms of torture during his detention in custody in the Gendarme Headquarters of Malazgirt and Muş.

12. On the last day of his detention the applicant was brought before the Public Prosecutor of Malazgirt, where he was interrogated about whether he confirmed the statements he made at the gendarme headquarters. The applicant wanted the Public Prosecutor to read out his statements before signing. The applicant denied the statement after the Public Prosecutor had

read it. He then stated to the Public Prosecutor that he had never committed any crime in the past and that he was forced to be a village guard. The Public Prosecutor asked him whether he was a PKK member since he did not agree to be a village guard. After replying no, the applicant was released.

13. The applicant returned to his home in the Nurettin village following his release. Three days after he had returned to his home, 50-55 village guards, led by the village head guard A.Ç. and his assistant A.E, came to his home and requested him to leave the village. The village guards threatened all those who did not agree to be village guards.

14. Some time later, 50 soldiers and 50 village guards came to the village with 3 armed personnel carriers, Land Rovers and jeeps, a total of 15 military vehicles. They came to the applicant's house and ordered him and his family to leave. The applicant and his family at first refused, but since they were threatened with death, they left the house. The applicant's house was then set on fire by the security forces.

15. On 15 July 1994 the applicant went to his field to collect crops.

16. He was hindered from collecting his crops by a group of 40-45 village guards. Then the applicant went to Malazgirt and lodged a complaint with Captain Osman. The Captain told him that he would not be allowed to collect his crops if he did not agree to be a village guard. Some days later, the soldiers, along with the village guards, collected all the crops in the village, but did not give them to their owners.

17. On 20 September 1994 the applicant left his village and moved to Istanbul with his family.

18. On 29 September and 10 October 1995 the applicant lodged petitions with the Principal Public Prosecutor's office in Istanbul for submission to the Principal Public Prosecutor's office in Malazgirt. He requested the authorities to initiate an investigation into the destruction of his property and the torture he suffered in custody. He further requested that the security forces and the village guards be brought to justice and the damage he sustained be redressed.

B. Government's version of the facts

19. Custody records kept by the Muş Gendarmerie Station indicate that the applicant was placed in custody on 14 April 1994 at 10 a.m. and was released on 17 April 1994 at 11 a.m.

20. Subsequent to the receipt of the applicant's petitions of 29 September and 10 October 1995 requesting an investigation into the alleged acts, the authorities began an investigation.

21. On 20, 21 and 22 November 1995 the Malazgirt Principal Public Prosecutor as well as the Malazgirt Gendarmerie Station Commander took statements from 10 village guards from the Nurettin village who had

allegedly been involved in the impugned acts. The village guards denied the allegations that they had set the applicant's house on fire. They all stated that the applicant, a PKK sympathiser, had himself burned his house since he did not want the security forces to find out that his house had been used as a shelter by PKK militants. They claimed that nobody collected the applicant's crops in his fields. The village guards further asserted that the applicant did not have 150 acres of land in the village but only 15-30 acres, which were currently unused. They also stated that the total number of village guards in the Nurettin village was 33.

22. On 4 October and 7 November 1996 the Malazgirt Public Prosecutor sent rogatory letters to the Istanbul Principal Public Prosecutor's office requesting that statements be taken from the applicant in relation to his complaints.

23. The Küçükçekmece Principal Public Prosecutor's office in Istanbul carried out an investigation with a view to finding and taking the applicant's statements in relation to the alleged events. In this respect, police officers from the Küçükçekmece Security Directorate went to the address indicated by the applicant in his petition containing his criminal complaints. The police officers, after having visited the address given by the applicant and taken statements from several inhabitants of the neighbourhood, found that the applicant did not live there.

24. On 3 April 1997 the Malazgirt Public Prosecutor went to the applicant's village in order to carry out an investigation. He drew up a survey report of the scene of the incident. He noted that the applicant's house was in ruins, its windows and doors were removed, but no trace of the house having been burned was found. The Public Prosecutor also took statements from the applicant's neighbour, Mehmet Özer, who stated:

"Kemal Güven is my neighbour. He was taken into custody several times before he left the village and settled in the Malazgirt district. I do not remember very well, but one night I saw that his house was burning. I do not know who burned the house. There was no one at the scene of the incident ... Kemal Güven had already removed his belongings and the house was empty."

25. The Public Prosecutor took statements from an inhabitant of the village, Şahismail Kaçak who stated:

"I was in the village at the time of the incident. Kemal Güven bought a house in the Malazgirt district. He had taken his children as well as his belongings to Malazgirt. The house was therefore empty. Kemal had taken away even the wooden parts of the house. The remainder of the house collapsed by itself. I did not see the burning of the house."

26. On 8 April 1997 the Public Prosecutor wrote a letter to the Malazgirt Security Directorate. He requested police officers to find out who was currently using Kemal Dilek's house.

27. On 18 July 1997 the Public Prosecutor sent a letter to the Gendarmerie General Command in Ankara. He asked the military authorities to indicate

whether any operation had been carried out by security forces between May and September 1994 in the Nurettin village of the Malazgirt district.

28. By a letter of 8 September 1997 the Malazgirt District Gendarmerie Commander, Mr Halil İbrahim Pehlivan, informed the Public Prosecutor that no operation had been carried out by security forces between May and September 1994 in the Nurettin village.

29. On 20 April 1998 the Malazgirt Principal Public Prosecutor issued a decision of non-jurisdiction in relation to the prosecution of the security forces and the village guards. He referred the preliminary investigation file to the Malazgirt District Administrative Council in accordance with the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*). The Principal Public Prosecutor noted in the decision that, despite the inquiries made by the Gendarmerie General Command, a soldier named Captain Osman could not be identified.

30. The investigation into the applicant's allegations is still pending before the authorities.

THE LAW

31. On 9 February 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 10,000 Pounds Sterling on an *ex gratia* basis to Mr Kemal Güven with a view to securing a friendly settlement of the application registered under no. 31847/96. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable immediately after the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

32. On 12 February 2001 the Court received the following declaration from the applicant's representative:

"I note that the Government of Turkey are prepared to pay a sum totalling 10,000 Pounds Sterling on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Kemal Güven with a view to securing a friendly settlement of the application no. 31847/96 pending before the Court.

I accept the proposal and waive any further claims in respect of Turkey relating to the facts of this application. I declare that the case is definitely settled.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

33. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

34. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 25 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President