



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

FIRST SECTION

CASE OF CEMAL AND NURHAYAT GÜVEN v. TURKEY

(Application no. 31848/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

22 May 2001

In the case of Cemal and Nurhayat 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. 31848/96) 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 two Turkish nationals, Mr Cemal Güven and Mrs Nurhayat Güven ("the applicants"), on 12 April 1996.

2. The applicants were 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 applicants complained that they had been victims 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 their property by the security forces 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.

7. 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.

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

THE FACTS

A. Applicants' version of the facts

9. Cemal Güven is the husband of Nurhayat Güven. They lived in the Nurettin village of the Malazgirt district in the province of Muş.

10. On 27 March 1994 Cemal Güven was elected to the Village Elders' Council (*Köy İhtiyar Meclisi*) in the local elections. A.E., who had stood as a candidate to be the mayor of the village (*muhtar*), lost the elections whereupon he agreed to be a village guard.

11. Subsequent to the local elections A.E. denounced Cemal Güven, the muhtar and other members of the Village Elders' Council to the Malazgirt Gendarmerie Command alleging that they were assisting PKK terrorists.

12. Following the denunciation, approximately 150 soldiers arrived in the Nurettin village with 3 personnel carriers and two military vehicles. They surrounded the houses of the muhtar and the members of the Village Elders' Council.

13. The soldiers conducted a search in Cemal Güven's house and shop. They found a Kalashnikov rifle in the shop. The soldiers then destroyed the goods in the shop. The village guards and the soldiers seized 50,000,000 Turkish liras belonging to the applicant and his daughters' two earrings, four gold bracelets, two necklaces and 3-metre-long gold necklace.

14. On 6 April 1994 Cemal Güven was taken to the Malazgirt Gendarmerie Headquarters, where he was held in custody for two days. He was accused of winning the elections with the PKK's help. He was then brought before the Malazgirt Public Prosecutor and detained on remand on 8 April 1994 by the Malazgirt Magistrates' Court.

15. On 6 May 1994 Nurhayat Güven filed a petition with the Malazgirt Chief Public Prosecutor's Office complaining about the misconduct of the soldiers and village guards. She also reported her complaints to a first lieutenant from the Malazgirt Gendarmerie Headquarters. The first lieutenant

interrogated the special team members and the village guards, who told him that they were not responsible and that they had not taken anything from the applicants.

16. Subsequent to Nurhayat Güven's return, the village guards came to her house and took away one ton of chickpeas and two tons of wheat.

17. The following day the village guards and special teams came to the applicants' house again and ordered them all out of the house. The village guards, A.Ç. and A.E., threw white-coloured dust on the applicants' house, which the applicants later understood to be fire-dust. The village guards then set the applicants' house on fire.

18. Thereafter the villagers were convened in the Village Square on the security forces' orders. The Gendarme Commander Osman Çakar told the villagers that the houses of those who do not agree to be village guards would be burned like the applicants'. Then, the village guards visited all the houses in the village and requested the villagers to agree to be village guards. Since the villagers did not agree to be village guards, almost 100-150 houses were burned down. The applicants and the inhabitants left the village following the burning of their houses.

19. Nurhayat Güven and her children settled in the Malazgirt district. Fifteen days later, the village guard, H.K., came to her house in Malazgirt and told her not to submit any complaints to the authorities.

20. On 13 July 1994 Cemal Güven was released and returned to his home in the Malazgirt district.

21. On 10 October 1995 Cemal Güven filed a criminal complaint with the Chief Public Prosecutor's Office in Istanbul for submission to the Public Prosecutor's Office in Malazgirt. He complained about the impugned events and requested the judicial authorities to begin an investigation into his complaints.

B. Government's version of the facts

22. The authorities began an investigation into the complaints lodged by the applicants on 6 May 1994. The Muş Chief Public Prosecutor's Office instituted criminal proceedings against the village guards, Abdullah Büyükdağ and Zilkif Polat, who were alleged to be the perpetrators of the burning of the applicants' house.

23. On 9 November 1994 the Muş Chief Public Prosecutor filed an indictment with the Muş Assize Court charging the two village guards with deliberate burning of the applicants' house and requesting their punishment under Article 370 of the Turkish Criminal Code.

24. On 8 November 1995 the Muş Assize Court acquitted the two village guards on account of lack of sufficient evidence. The court held:

“The complainant [Cemal Güven] alleged that the accused Abdullah Büyükdağ and Zilkif Polat had burned his house in Malazgirt while he was in prison and after his wife and children had abandoned it.

The scene of the incident report was examined. The complainant had his belongings and materials in his shop and house removed to Malazgirt whilst he was in prison. The house [in the village] was therefore empty. Only the wooden materials of the roof were burned and the walls were in good state. No one witnessed the impugned incident. The investigation report concluded that the complainant might have asked someone to burn his house. No objection was filed against this report.

The witnesses heard, Ahmet Özen, Ahmet Güzel, Kerim Aslan, stated that they had not seen the burning of the house and that the complainant’s wife and children were not in the village but in Malazgirt. They further stated that they did not know who had burned the house.

There is no sufficient and convincing evidence to convict the accused on account of the alleged deliberate burning of the complainant’s house. Having regard to the witnesses’ statements, the scene of the incident report, the complainant’s complaints and the accused’s defence, it was decided to acquit the accused on account of the lack of evidence that they had committed the alleged crime...”

25. On 27 November 1995 the President of the Muş Assize Court informed the Chief Public Prosecutor’s Office that the two village guards, Abdullah Büyükdağ and Zilkif Polat, who had been charged with the burning of the applicant’s house, had been acquitted. He ordered the Public Prosecutor to continue the investigation until a new suspect or new evidence was found.

26. Subsequent to the receipt of the order issued by the Muş Assize Court, the Muş Chief Public Prosecutor issued a decision of non-jurisdiction transferring the file to the Malazgirt Chief Public Prosecutor’s Office.

27. On 25 June 1996 the Malazgirt Chief Public Prosecutor instructed the District Gendarme Command to continue the investigation and to report to him every three months concerning any further evidence about the burning of the house.

28. On 10 September 1997 the Malazgirt District Gendarme Commander informed the Chief Public Prosecutor’s Office that no evidence had been obtained and that the investigation continued with a view to finding the perpetrators of the impugned act.

29. In the meantime, on 6 April 1994, during a search conducted by the security forces an unregistered Kalashnikov rifle, five cartridge clips and ten bullets were found in Cemal Güven’s shop.

30. On 7 April 1994 Cemal Güven was questioned by the Malazgirt Chief Public Prosecutor in relation to the rifle. On the same day he was brought before the Malazgirt Magistrates’ Court which ordered his detention on remand.

31. On 13 April 1994 the Malazgirt Chief Public Prosecutor filed an indictment with the Criminal Court charging Cemal Güven with possessing

an unregistered fire arm contrary to the Fire Arms Act (Law no. 6136) and requesting his punishment.

32. On 16 November 1994 the Malazgirt Criminal Court convicted Cemal Güven on account of his unlawful possession of an unregistered firearm and sentenced him to five years' imprisonment and to a fine of 1,650,000 Turkish liras. The court further ordered the seizure of the Kalashnikov rifle.

33. On 3 October 1995 the Court of Cassation upheld Cemal Güven's conviction.

THE LAW

34. 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 Cemal Güven and Ms Nurhayat Güven with a view to securing a friendly settlement of the application registered under no. 31848/96. 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."

35. On 12 February 2001 the Court received the following declaration from the applicants' 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 Cemal Güven and Ms Nurhayat Güven with a view to securing a friendly settlement of the application no. 31848/96 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 applicants 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."

36. 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).

37. 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 22 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President