



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

FIRST SECTION

CASE OF AYGÖRDÜ AND OTHERS v. TURKEY

(Application no. 33323/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

22 May 2001

In the case of Aygördü and Others 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 19 September 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. 33323/96) 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 five Turkish nationals, Mr Paşa Aygördü, Mr Mustafa Aygördü, Mr Efendi Aygördü, Mr Müslüm Güngör and Mr Cevdet Güngör ("the applicants"), on 5 September 1996.

2. The applicants were represented by Mr Özcan Kılıç and Mr Mehmet Ali Kırdök, lawyers 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, 14 and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of eviction of them from their village and destruction of their home and possessions by security forces in the state of emergency region of Turkey.

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 19 September 2000, having obtained the parties' observations, the Court declared the application admissible.

7. On 16 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 27 January 2001 and on 9 February 2001 the applicants' representatives and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

A. Applicants' version of the facts

9. Until 4 October 1994 the applicants lived in the Kızıilveren hamlet of the Hanuşağı village attached to the Ovacık district in the province of Tunceli. Since 1980 the inhabitants of the applicants' village had been continually intimidated by security forces as they were suspected of giving logistic support to terrorists.

10. On 4 October 1994 military units arrived in the applicants' hamlet. They convened the inhabitants in the hamlet square and told them to leave their houses. The applicants, along with their fellow villagers, left the hamlet taking their animals and as many belongings as they could carry. Following the eviction of the inhabitants, the security forces set the hamlet on fire.

11. On the same day, 4 October 1994, the applicants filed a petition with the chief public prosecutor's office in the Ovacık district complaining of the burning of their houses and requesting compensation for the damage they had suffered. As the case concerned an investigation of acts allegedly committed by the security forces, the public prosecutor issued a decision of non-jurisdiction and referred the investigation file to the Ovacık District Governor's office in accordance with the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*).

12. The applicants first moved to the Ziyaret village attached to the Ovacık district, where the Government provided them with public-sector housing designated for cases of calamity. Following their arrival, the applicants sold their animals and belongings in order to provide for their livelihood. After a certain lapse of time, they moved out to live with their relatives in Istanbul.

13. On 25 October 1995 the District Governor of Ovacık wrote a letter in reply to the applicants. He stated that no house had been burned by the security forces and that no prosecution had been started since the perpetrators of the alleged acts could not be identified. The District Governor's letter was served on the mayor of the village (*muhtar*) on 15 February 1996 as the applicants had left the hamlet. The applicants allege that they were informed of the District Governor's letter on a much later date.

B. Government's version of the facts

14. At the time of the alleged incidents, the inhabitants of the villages of the Tunceli province lived in a daily atmosphere of intense terrorist campaign. The terrorists in the region attacked villages with a view to sustaining their needs. As a result of the pressure exerted by the terrorists the inhabitants left their villages in order not to place their lives at risk. The terrorists distributed announcements amongst the villagers threatening them that they would seize their property and punish them if they were to leave their villages.

15. There is no information or any document indicating that the security forces carried out operations in the Kızılveren hamlet of the Hanuşağı village on 4 October 1994.

16. The authorities carried out investigation into the alleged destruction of the villages in the Tunceli province. To that end, statements were taken from Mr Mahmut Atlı and Mr Rahmi Kızılçayır living in the Işıkvuran and Çat villages respectively, both attached to the Ovacık district. Mr Mahmut Atlı stated that they had been repeatedly threatened by terrorists and that their houses had been burned by the PKK terrorists on the ground that 6 young men abducted from their village had returned to their homes and refused to rejoin the organisation. Mr Rahmi Kızılçayır stated that their houses had been burned by the terrorists who wanted to punish villagers on account of their refusal to give logistic support to the terrorists.

17. Upon their request, District Governor of Ovacık supplied the applicants with lodging in the public buildings. They received each monetary aid and food from the authorities.

THE LAW

18. 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 50,000 pounds sterling (GBP) on an *ex gratia* basis to Mr Paşa Aygördü, Mr Mustafa Aygördü,

Mr Efendi Aygördü, Mr Müslüm Güngör and Mr Cevdet Güngör, with a view to securing a friendly settlement of the application registered under no. 33323/96. 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.”

19. On 27 January 2001 the Court received the following declaration from the applicants’ representatives:

“We note that the Government of Turkey are prepared to pay a sum totalling 50,000 pounds sterling (GBP) on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Paşa Aygördü, Mr Mustafa Aygördü, Mr Efendi Aygördü, Mr Müslüm Güngör and Mr Cevdet Güngör, with a view to securing a friendly settlement of the application no. 33323/96 pending before the Court.

We accept the proposal and waive any further claims in respect of Turkey relating to the facts of this application. We 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.

We 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.”

20. 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).

21. 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