



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

FIRST SECTION

CASE OF AĞGÜL AND OTHERS v. TURKEY

(Application no. 33324/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

22 May 2001

In the case of Ağgül 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. 33324/96) 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 eight Turkish nationals, Mr İsmail Ağgül, Mr Hasan Elmas, Mr Alaaddin Elmas, Mr Zeynel Göç, Mr İbrahim Göç, Mr Halit Göç, Hasan Aktaş, Mr Hıdır Akgöz ("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 31 January 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 5 October 1994 the applicants lived in the Karataş village of the Ovacık district attached to the province of Tunceli. Since 1980 security forces had continually intimidated the inhabitants of the applicants' village as they were suspected of giving logistic support to terrorists.

10. On 5 October 1994 security forces arrived in the applicants' village with military carriers. They convened the inhabitants in the Village Square and told them to leave their houses. The applicants, along with their villagers, left the village taking their animals and as many belongings as they could carry. Following the eviction of the inhabitants, the security forces set the village on fire.

11. On 6 October 1994 the applicants filed petitions 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 moved to the Ovacık district, where the Government provided them with public-sector housing for cases of calamity. The applicants then sold their animals and belongings in order to provide for their livelihood. 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 village.

B. Government's version of the facts

13. Following the receipt of the applicants' petition from the Ovacık Public Prosecutor, the District Governor initiated an investigation into the alleged acts. The District Governor assigned a police superintendent (*başkomiser*), Mr Bahri Üstüner, for the investigation.

14. The police superintendent submitted an investigation report to the District Governor and stated, *inter alia*:

"... The above mentioned complainants (the applicants), by their letters of 6, 7, 10 and 13 October 1994, alleged that their houses in the Karataş village of the Ovacık district had been burned during the operations carried out by the security forces. Subsequent to the investigation conducted by the Chief Public Prosecutor's office and [having regard to] the reply warrant of the Gendarmerie, it was understood that the houses in question had not been burned by the security forces but by terrorists wearing military uniforms. It was further found out that following the burning of the houses the terrorists had forced [the complainants (the applicants)] to allege that their houses had been burned by the security forces. The complainants [stated] that they did not know the identities of those who had burned their houses and that they did not have any witnesses. It was established that there was no crime as alleged. Even if such an incident took place it is impossible to identify the perpetrators of the alleged acts, bearing in mind the number of military units and members of the security forces who had carried out operations in the region."

15. On 23 June 1995 Ovacık District Governor's office struck off the application concerning the investigation into the alleged burning of the applicants' houses in view of the above-mentioned investigation report.

THE LAW

16. On 31 January 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 90,000 pounds sterling (GBP) on an *ex gratia* basis to Mr İsmail Ağgül, Mr Hasan Elmas, Mr Alaaddin Elmas, Mr Zeynel Güngör, Mr İbrahim Güngör, Mr Halit Güngör, Ms Zeliha Göç, Mr Hasan Aktaş and Mr Hıdır Akgöz, with a view to securing a friendly settlement of the application registered under no. 33324/96. 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."

17. 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 90,000 pounds sterling (GBP) on an ex gratia basis covering both pecuniary and non-pecuniary damage and costs to Mr İsmail Ağgöl, Mr Hasan Elmas, Mr Alaaddin Elmas, Mr Zeynel Güngör, Mr İbrahim Güngör, Mr Halit Güngör, Ms Zeliha Göç, Mr Hasan Aktaş and Mr Hıdır Akgöz, with a view to securing a friendly settlement of the application no. 33324/96 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."

18. 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).

19. 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