



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

FIRST SECTION

CASE OF AKMAN v. TURKEY

(Application no. 37453/97)

JUDGMENT
(Striking out)

STRASBOURG

26 June 2001

FINAL

26/10/2001

In the case of Akman v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr L. FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr C. BÎRSAN,

Mr J. CASADEVALL, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 21 September 1999, and on 12 and 19 June 2001,

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

PROCEDURE

1. The case originated in an application (no. 37453/97) against the Republic of Turkey lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Faysal Akman ("the applicant"), on 8 July 1997.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr P. Leach, a lawyer attached to the Kurdish Human Rights Project, a non-governmental organisation based in London. The Turkish Government ("the Government") did not appoint an Agent for the purposes of the Convention proceedings.

3. The applicant alleged in particular that his son was unlawfully killed by the security forces of the respondent State in violation of Article 2 of the Convention. He also relied on Articles 6, 8, 13, 14 and 18 of the Convention in connection with his son's death.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

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. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention).

6. By a decision of 21 September 1999, the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. The applicant and the Government each filed information in response to the Court's decision to take evidence in the case in Ankara from 26 to 30 March 2001. In addition, both parties filed proposals with the Registry in the context of friendly-settlement negotiations (Article 38 § 1 (b) of the Convention). No settlement was reached.

8. By letter dated 21 March 2001 the Government requested the Court to strike the case out of its list and enclosed the text of a declaration with a view to resolving the issues raised by the application. On 26 March and 12 April 2001 the applicant filed written observations on the Government's request. The Government replied to the applicant's observations by letter dated 4 May 2001.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Facts submitted by the applicant

9. From about 10 p.m. on 19 January 1997 until about 3.30 a.m. on 20 January 1997 there was the sound of gunfire in the centre of Savur, a town inhabited by about fifteen Kurdish families, the remaining inhabitants being Turkish citizens of Arab origin. At about 6 a.m. there was a knock on the door of the applicant's house accompanied by a shout: "We are the police, open the door!" The applicant opened the door and five members of the security forces entered the house. Three of them were wearing special operations team uniforms, and one a police uniform. They were led by a chief superintendent, Ömer Yüce, who was wearing plain clothes.

10. The house was searched. At the request of one of the security force members, the applicant called his son, Murat, to come out of the bedroom which he shared with his wife, Şemse.

11. Murat came out of his bedroom holding his identity card in his hand. A member of the security forces took the card, looked at it and threw it on the floor. He then started to shoot at Murat using an automatic rifle. The applicant, who at this time was being restrained, was taken to another room. The sound of shooting continued. The applicant and the other family members except for Şemse were kept together in the same room. The telephone was cut off. At the request of the applicant, Şemse, who had been

taken out of the house, was brought into the room. She said that Murat was dead.

12. Subsequently, the applicant was allowed to go to the room where the body of his son lay. He saw the body with an automatic rifle and empty cartridges lying on it. There were marks of gunfire on the walls of the room. Money (5,000 German marks) and a ring had been removed from his son's body. The regular police officers who arrived at the house after the incident told the applicant that it was not them but another team which had been involved in the shooting at his home.

13. The public prosecutor went to the house together with a doctor. Statements were taken from the applicant, his other son, Salih, and from Şemse.

14. After the killing of his son, the applicant left Savur and moved to Mardin because he feared for his safety and that of the remaining family members.

15. On an unspecified date the applicant filed a complaint with the Chief Public Prosecutor of Savur. The applicant met with the Prosecutor who told him that the file was being sent to the Diyarbakır National Security Court.

16. According to the applicant, he is not aware of any investigation having been initiated in respect of the conduct of the security forces at his house on 20 January 1997. In his opinion, no statements have been taken from the members of the security forces whom he alleges were involved in the death of his son, nor has any action been taken against them. The applicant states that he later saw those members of the security forces walking about freely and on duty.

B. Facts submitted by the Government

17. On 19 January 1997 at about 10.30 p.m. a group of terrorists went to Savur and attacked the police station, the school staffroom, the homes of civil servants and gendarmerie sentry posts. A police officer and a gendarme were killed during the attack. A police officer, a gendarme and three civilians were also injured. Police reinforcements had to be brought in from Mardin. Following their arrival, the confrontation ended around 2 a.m. on 20 January 1997.

18. House searches were subsequently conducted since the security forces had come under fire from houses in the town. Around 5 a.m. the applicant's house was searched. During the search, the security forces were fired on from a bedroom in the upper part of the house which was dark. They were obliged to return fire. When the shooting stopped, the security forces went into the bedroom and found the body of Murat Akman. There was a loaded Kalashnikov rifle close to the deceased's right hand. Three full cartridges and several empty shells were found beside his body. The public prosecutor confirmed these details when he was summoned to the house.

19. On 27 January 1997 the public prosecutor of Savur issued a decision of non-jurisdiction in respect of the alleged unlawful killing of Murat Akman for reasons of competence in favour of the public prosecutor's office at the Diyarbakır National Security Court.

20. On 2 April 1997 the office of the public prosecutor of Savur decided that it had no jurisdiction in respect of the murder of the gendarme and the police officer and the damage caused to public buildings, and sent the file to the office of the public prosecutor at the Diyarbakır National Security Court, which decided to join it to another file dealing with the same matter.

21. As to the complaint introduced against the members of the security forces who had taken part in the search operation on the applicant's house, the Savur public prosecutor issued a decision of non-jurisdiction and on 4 July 1997 forwarded the file to the local administrative council of Savur in accordance with the law governing proceedings against civil servants. On 24 December 1997 the local administrative council issued a decision of non-jurisdiction.

II. RELEVANT DOMESTIC LAW

22. Relevant provisions of criminal, civil and administrative law are set out in *Kaya v. Turkey* (judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I).

THE LAW

23. By letter dated 21 March 2001, the Deputy Permanent Representative of Turkey to the Council of Europe informed the Registrar of the First Section of the Court:

“... I have the pleasure to enclose herewith the text of a declaration which the Government would be ready to make unilaterally with a view to resolving the above-mentioned application.

The Government kindly requests the Court to decide that it is no longer justified to continue the examination of the application and to strike the case out of the list under Article 37 of the Convention.”

24. The text of the declaration reads as follows:

“1. The Government regrets the occurrence of individual cases of death resulting from the use of excessive force as in the circumstances of Murat Akman's death notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.

2. It is accepted that the use of excessive or disproportionate force resulting in death constitutes a violation of Article 2 of the Convention and the Government undertakes

to issue appropriate instructions and adopt all necessary measures to ensure that the right to life – including the obligation to carry out effective investigations – is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths in circumstances similar to those of the instant application as well as more effective investigations.

3. I declare that the Government of the Republic of Turkey offers to pay *ex gratia* to the applicant the amount of GBP 85,000. This sum, which also covers legal expenses connected with the case, shall be paid in pounds sterling to a bank account named by the applicant. The sum shall be payable, free of any taxes that may be applicable, within three months from the date of the striking-out decision of the Court pursuant to Article 37 of the European Convention on Human Rights. This payment will constitute the final settlement of the case.

4. The Government considers that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary cooperation in this process will continue to take place.”

25. The applicant, in his written reply, requested the Court to reject the Government’s initiative. He stressed, *inter alia*, that the proposed declaration omitted any reference to the unlawful nature of the killing of his son and failed to highlight that his son was unarmed at the material time. In the applicant’s submission, the terms of the declaration did not determine any of the fundamental human rights questions raised by the application. He urged the Court to proceed with its decision to take evidence in the case with a view to establishing the facts.

26. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case (see paragraph 7 above). It recalls that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential. Rule 62 § 2 of the Rules of Court further stipulates in this connection that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings.

The Court will therefore proceed on the basis of the declaration made outside the framework of the friendly-settlement negotiations by the Government on 21 March 2001.

27. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article.

28. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

29. Article 37 § 1 *in fine* states:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

30. The Court has carefully examined the terms of the Government’s declaration. Having regard to the nature of the admissions contained in the declaration as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

31. Moreover, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*). The Court notes in this regard that it has specified the nature and extent of the obligations which arise for the respondent State in cases of alleged unlawful killings by members of the security forces under Articles 2 and 13 of the Convention (see for example, *Kaya*, cited above, pp. 324-26, §§ 86-92, and pp. 329-31, §§ 106-08; *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, pp. 1729-30, §§ 69-73, and pp. 1731-33, §§ 77-82; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2438-41, §§ 98-108, and pp. 2441-42, §§ 112-15; *Oğur v. Turkey* [GC], no. 21594/93, §§ 76-93, ECHR 1999-III; and *Gül v. Turkey*, no. 22676/93, §§ 76-95 and 100-02, 14 December 2000, unreported).

32. Accordingly, the application should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the Government’s declaration and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 44 § 2 of the Rules of Court);
2. *Decides* to strike the application out of the list in accordance with Article 37 § 1 (c) of the Convention.

Done in English, and notified in writing on 26 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’BOYLE
Registrar

Elisabeth PALM
President