



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

FIRST SECTION

CASE OF AYDIN v. TURKEY

(Applications nos. 28293/95, 29494/95 and 30219/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

10 July 2001

In the case of Aydın 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 June 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in three applications (nos. 28293/95, 29494/95 and 30219/96) 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 12 Turkish nationals, Kasım, Cemal, Sultan, Arife, Nuriye, Kemal, Ali Aziz, Yıldız, Songül, Gülbahar and Eser Aydın and Şirin Erenler-Aydın ("the applicants"), on 3 March 1995, 22 November 1995 and 5 October 1995 respectively.

2. The applicants were represented before the Court by Mr K. Genç, a lawyer practising in Ankara. In addition, the applicant Kasım Aydın was also represented by Mr K. Boyle and Ms F. Hampson, barristers and university lecturers in the United Kingdom. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants complained of the disappearance of their husband and father, Müslüm Aydın, and the alleged destruction by security forces of their family home, property and animals in Sarısaltık village in south-east Turkey. They invoked Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1.

4. Following communication of the applications 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. On 1 February 2000, having obtained the parties' observations, the Court declared the applications admissible.

5. 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. On 25 April 2001 and on 10 April 2001 the applicants' representative Mr Genç, and the Agent of the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. In 1994, the applicants and their husband and father Müslüm Aydın resided in Dürüt (Derindere), a hamlet attached to the village of Sarısaltık in Tunceli Province in south-east Turkey.

7. At the beginning of October 1994, military operations took place in Tunceli Province. At that time, the applicant Kasım Aydın, the oldest son of Müslüm Aydın, was living in Hozat. After having learned of the military operations, he went to Dürüt in order to take his parents and siblings to Hozat. However, his father decided to stay behind in Dürüt to tend his beehives.

8. On 11 October 1994 Kasım Aydın returned to Dürüt, where he found that his family home and possessions had been burned and that a large number of the family's goats had either been shot dead, were injured or missing. Kasım Aydın found traces of footprints of military boots and empty cartridges.

9. Kasım Aydın did not find his father in Dürüt. He learned from inhabitants of a hamlet attached to a neighbouring village that his father had been taken away by soldiers. The villagers told him that they had seen Müslüm Aydın, who had had a rucksack on his back, walking in front of soldiers; he had guided the soldiers.

10. On 14 October 1994 Kasım Aydın filed a petition with the Office of the public prosecutor of Hozat requesting an investigation into his father's disappearance and the destruction of the family home and possessions.

11. On 24 February 1995 the Hozat public prosecutor concluded that he had no jurisdiction to examine the complaint concerning the destruction of property, and the case was referred to the Hozat District Administrative Council (*İlçe İdare Kurulu*). Having obtained information from the Hozat District Gendarmerie Command, to the effect that the security forces in the district had not been involved in the burning of houses in the applicants' village, the District Administrative Council concluded on 26 April 1995 that no investigation of the complaint could be conducted since the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*) stipulated that such investigation required the prior accurate identification of the civil servants concerned.

12. The file relating to the disappearance of Müslüm Aydın was transferred to different investigating authorities on a number of occasions. In 1998 an investigation, currently still pending, into the disappearance was opened by the Office of the public prosecutor at the Malatya State Security Court following a decision of lack of jurisdiction taken by a prosecutor of the Gendarmerie General Command (*Jandarma Genel Komutanlığı Savcısı*) on 29 September 1997. This decision concluded that, although military operations had been conducted in the northern part of Tunceli province between 29 September and 31 October 1994, only terrorist organisations could be responsible for what had happened to Müslüm Aydın and eight other persons who had either disappeared or been found dead in the Hozat region in September and October 1994.

THE LAW

13. On 10 April 2001 the Court received the following declaration from the Government:

“1. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicants the amount of 68,000 pounds sterling with a view to securing a friendly settlement of their applications registered under nos. 28293/95, 29494/95 and 30219/96. This sum, which also covers legal expenses connected with the cases, shall be paid in pounds sterling, free of any taxes that may be applicable, to a bank account named by the applicants, within three months from the date of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final settlement of this case.

2. The Government regret the occurrence of the actions which have led to the bringing of the present applications, in particular the disappearance of Mr Müslüm Aydın and the anguish caused to his family.

3. It is accepted that the unrecorded deprivation of liberty and insufficient investigations into the allegations of disappearance constituted violations of Articles 2, 5 and 13 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded by the authorities and that effective investigations into alleged disappearances are carried out in accordance with their obligations under the Convention.

4. The Government consider 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 be made in this context. To this end, necessary co-operation in this process will continue to take place.

5. Finally, the Government undertake not to request the referral of this case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court’s judgment.”

14. On 25 April 2001 the Court received the following declaration signed by the applicants' representative Mr Genç:

“1. The applicants have taken note of the declaration made by the Government of Turkey and accept the payment by the Government of an amount of 68,000 pounds sterling, with a view to securing a friendly settlement of their applications to the European Court of Human Rights, registered under nos. 28293/95, 29494/95 and 30219/96. The applicants declare that this constitutes a full and final settlement of their claims.

2. The applicants further undertake not to request the referral of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.”

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied, having regard to its case-law (cf. *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, *Çakıcı v. Turkey* [GC], no. 23657/94, to be reported in ECHR 1999-IV, *Timurtaş v. Turkey*, no. 23531/94, to be reported in ECHR 2000-VI), 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).

16. 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 10 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President