



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

FIRST SECTION

**CASE OF İŞÇİ v. TURKEY**

*(Application no. 31849/96)*

JUDGMENT  
(Friendly settlement)

STRASBOURG

25 September 2001

This judgment may be subject to editorial revision.



**In the case of İşçi v. Turkey,**

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

Mrs E. PALM, *President*,

Mr L. FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr B. ZUPANČIČ,

Mr T. PANȚÎRU,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 20 March and on 4 September 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 31849/96) 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 a Turkish national, Mr Şevket İşçi ("the applicant"), on 12 April 1996.

2. The applicant was represented before the Court by Mrs Bedia Buran, Mrs Filiz Köstak and Mrs Naciye Kaplan, lawyers practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained that he had been a victim 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 his house and removal of his property by 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 20 March 2000, having obtained the parties' observations, the Court declared the application admissible.

7. On 28 March 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. On 28 June 2001 and on 4 July 2001 the applicant's representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

## THE FACTS

### A. Applicant's version of the facts

8. In early 1994 the applicant went to Istanbul in order to work. His family stayed in the Nurettin village of the Malazgirt district in the province of Muş.

9. In May 1994 the applicant's relatives living in the Nurettin village phoned the applicant and told him that his family had moved to the Malazgirt district since his village had been burned down.

10. The applicant left Istanbul for Malazgirt in order to see his family. His wife told the applicant that they had not been given sufficient time to remove their belongings before the burning of their house by village guards.

11. The day after his arrival in Malazgirt, the applicant went to his village. He saw that his house, along with some 100 houses in the village, had been burned down. His relatives in the village told him that the village guards had taken the chairs and tables in his coffee-house as well as the goods in his shop. The applicant learned that some of his tables and chairs were still in a village guard's, Müfit Polat's house and shop.

12. After having spent the overnight in the village, the applicant went to the Malazgirt District Gendarmerie Command, where he talked to a gendarme captain on duty. He asked the captain the reason for the burning of his village. The captain told the applicant that he had not heard anything about the alleged burning of the village. He added that the village head guard, Ahmet Çelik, might have been responsible for the burning. The captain then summoned Ahmet Çelik to the Gendarmerie Command.

13. The applicant asked Ahmet Çelik why he had set his house, coffee-house and shop on fire. The latter told the applicant and the captain that he and his fellow village guards had burned the houses in the village on account of its inhabitants' refusal to be village guards and their support to the PKK. Ahmet Çelik threatened the applicant telling him that his life would be in danger in Malazgirt if he did not agree to be a village guard.

14. Ten days after this meeting, the applicant was at a café in Malazgirt along with his nephew and son-in-law. Two village guards, Bahattin Polat and Nizamettin Çelik, and four police officers came to the café and took them to the Malazgirt police station, where they requested the applicant to agree to be a village guard. They were released on the same day subsequent to the questioning of the applicant's nephew and son-in-law by the police officers.

15. Two months later, the applicant went to his village along with his wife and mother in order to collect his crops. The village guards stopped the applicant at the entrance of the village and told him that he had nothing left in the village. The applicant then returned to Malazgirt. He learned that his crops had been collected by the village guards and had been sold in the province of Van.

16. During his stay in Malazgirt, the village guards and special team members of the security forces in the region intimidated the applicant. The applicant then rented his house in Malazgirt to his elder sister and moved to Istanbul along with fourteen members of his family.

17. Following the applicant's departure from Malazgirt, the village guards threatened his elder sister with killing her son if she did not leave the applicant's house.

18. In September 1995 the applicant's elder sister was forcibly evicted from the house by the village head guard, Ahmet Çelik. The applicant sold his house to H.A. and took his car in exchange for the house. But, the applicant returned the car to H.A. since the village guards did not allow the latter to enter the house.

19. On 18 July and 29 September 1995 the applicant filed petitions with the Chief Public Prosecutor's office in Istanbul for submission to the Malazgirt Chief Public Prosecutor's office. He complained of the destruction of his property and the seizure of his house in Malazgirt by the village guards. He requested that his damage be redressed and that those responsible for the impugned events be brought to justice.

## **B. Government's version of the facts**

20. The authorities began an investigation into the alleged events on receipt of the applicant's petitions.

21. On 20 and 21 November 1995 the Malazgirt K. Kuran Gendarmerie Station Commander, Mustafa Akgün, took statements from nine village guards from the Nurettin village. The village guards denied the applicant's allegations. They stated that the applicant had left the village with his own will since he had been involved in the PKK. They maintained that the applicant had removed his belongings before his departure and that nobody had destroyed or seized his property. The village head-guard, Ahmet Çelik, stated also that neither him nor his guards would give any damage to the

applicant since he is married to his elder sister. Ahmet Çelik stated also that they are close relatives with the applicant.

22. On 21 November 1995 the Malazgirt Public Prosecutor questioned seven village guards in relation to the applicant's allegations. The village guards denied the allegations. They alleged that the applicant had been aiding and sheltering PKK militants and that he had left the village since security forces would arrest him. They claimed that the applicant's fields were unused and nobody had destroyed or seized his property.

23. On 4 March 1996 the Malazgirt Chief Public Prosecutor filed an indictment with the Malazgirt Criminal Court charging ten village guards with the destruction of the applicant's property and the seizure of his house and belongings.

24. On 10 July 1996 the Küçükçekmece Criminal Court in Istanbul heard evidence from the applicant at the request of the Malazgirt Criminal Court. The applicant stated before the court that he had a house, a coffee-house and fields in the village which had been seized by the village guards. He alleged that his tenants had been forcibly evicted from his house by the village guards. He requested the court to ensure that his property be returned to him from the accused village guards.

25. According to the Government's letter of 27 November 2000, the criminal proceedings against the village guards are still pending before the Malazgirt Criminal Court.

## THE LAW

26. On 4 July 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 15,000 (fifteen thousand) pounds sterling on an *ex gratia* basis to Mr Şevket Işçi with a view to securing a friendly settlement of the application registered under no. 31849/96. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable, free of any taxes that may be applicable, within three months after the notification of the judgment delivered by the Court pursuant to the 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."

27. On 28 June 2001 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Turkey are prepared to pay me, free of any taxes that may be applicable, within three months after the notification of the judgment delivered by the Court pursuant to the Article 39 of the European Convention on Human Rights, a sum totalling 15,000 (fifteen thousand) pounds sterling on an *ex gratia* basis

covering both pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of application no. 31849/96 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 I 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."

28. 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).

29. 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 25 September 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Elisabeth PALM  
President