



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

FIRST SECTION

CASE OF İ.İ., İ.Ş., K.E. and A.Ö. v. TURKEY

(Applications nos. 30953/96, 30954/96, 30955/96 and 30956/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

6 November 2001

This judgment may be subject to editorial revision.

In the case of İ.İ., İ.Ş., K.E. and A.Ö. 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 30 May 2000 and on 16 November 2001,

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

PROCEDURE

1. The case originated in four applications (nos. 30953/96, 30954/96, 30955/96 and 30956/96) 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 four Turkish nationals, İ.İ., İ.Ş., K.E. and A.Ö. ("the applicants"), on 18 March 1996.

2. The first applicant lodged his complaint on behalf of his son, İ.İ., who disappeared while in custody. The second applicant lodged his complaint on behalf of his son, A.Ş., who disappeared while in custody. The third applicant lodged her complaint on behalf of her husband, B.E., who disappeared while in custody. The fourth applicant lodged his complaint on behalf of his brother, A.Ö., who disappeared while in custody.

3. The applicants were represented before the Court by Mr Oktay Bağatır, a lawyer practising in Batman. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

4. The applicants complained Articles 2 and 5 of the Convention that their relatives were taken from their village by a helicopter following a military swoop on 13 August 1994 and that they have not been seen or heard of since that time.

5. 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.

6. 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 and Rule 29 § 1).

7. On 30 May 2000, having obtained the parties' observations, the Court declared the applications admissible.

8. On 22 August 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 5 September 2001 and on 14 September 2001 the applicants' representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. The applicants were living in the Kırkağaç village together with their families. In 1994, all the inhabitants of Kırkağaç were evacuated on the instructions of the security forces and moved to the Fındıklı village.

10. On 13 August 1994 an operation was carried out in the village by gendarmes from the Fındıklı district gendarme station in Fındıklı. The gendarmes searched all the houses in the village but found nothing. The applicants' relatives were taken from their houses and flown by helicopter to an unknown place. The applicants state, without submitting supporting documentation, that two gendarme officers, Captain Namık, and a non-commissioned officer, Mustafa Pehlivanlı, were commanding the gendarme forces during this operation.

11. On 14 and 19 September 1994 two of the disappeared persons' relatives, but not the applicants, applied to the Gendarme Division in Şırnak in connection with their relatives' whereabouts.

12. Without submitting supporting documents, the applicants all allege that they applied several times to the Office of the Public Prosecutor in Şırnak, to the Ministry of Justice, the Ministry of Interior and the Office of the Governor of the state of emergency region about the whereabouts of their relatives.

13. On 5 May 1995 the applicants, İ.Ş. and İ.İ., applied to the Human Rights Association requesting their help in obtaining information about their missing relatives.

14. According to the Government, on 6 March 1995 the Office of the Eruh Public Prosecutor took statements from İ.Ş. and İ.İ.. The public prosecutor invited B. E. and A. Ö. as well as two of their relatives, A.Ö. and H.E., to give statements. These statements have not been provided by the Government.

15. The public prosecutor issued a decision of non-jurisdiction on the ground that Mustafa Pehlivanlı, the non-commissioned officer accused by the applicants of having kidnapped their relatives, was a military officer. On 12 June 1995 the public prosecutor sent the file to the Diyarbakır Public Prosecutor attached to the Diyarbakır 7th Military Army Corps.

16. On 23 June 1995 the Diyarbakır Public Prosecutor attached to the Diyarbakır 7th Military Army Corps issued a decision of non-jurisdiction and sent the file to the Diyarbakır Public Prosecutor attached to 2nd Tactics Air Forces Command on the grounds that Mustafa Pehlivanlı, the non-commissioned officer accused by the applicants of having kidnapped their relatives, was attached to the Fındık 6th Gendarme Commando Battalion Command and that the latter Command had jurisdiction to take his statement.

17. On 13 February 1996 the Konya Public Prosecutor, attached to Konya Provincial Gendarme Command, took a statement from Mustafa Pehlivanlı.

18. In his statement Mustafa Pehlivanlı declared that on 13 August 1994 he had no information about the conduct of a possible military operation; nor did he know about the taking of the applicants into custody.

19. The Diyarbakır Public Prosecutor attached to 2nd Tactics Air Forces Command wrote to the Office of the Eruh Public Prosecutor in order to obtain the statements of F.Ş., İ.İ., A.Ö., A.Ö., B.E., İ.Ş. and İ.İ.. The Eruh Public Prosecutor in turn wrote to the Güçlükönak District Gendarme Command in order to locate these persons.

20. In a letter dated 9 July 1996 the Güçlükönak District Gendarme Command stated that all these persons had left the Fındık village two years ago and had moved to Cizre. Their new addresses were unknown. By letter dated 30 July 1996 the Diyarbakır Public Prosecutor attached to 2nd Tactics Air Forces Command informed the Office of the Cizre Public Prosecutor of this development.

21. On 14 August 1996 the Office of the Cizre Public Prosecutor wrote to the Cizre District Security Directorate requesting that these persons be found. Attempts to locate them proved unsuccessful.

22. By letters dated 6 December 1996, 3 March 1997 and 12 May 1997 the Diyarbakır Public Prosecutor attached to 2nd Tactics Air Forces Command ordered the Offices of the Public Prosecutors in Eruh and Şırnak to step up their enquires in order to locate them.

THE LAW

23. On 14 September 2001 the Court received the following declaration from the Government:

“1. I declare that the Government of Turkey offer to pay *ex gratia* to the applicants the amount of 34,000 (thirty four thousand) pounds sterling with a view to securing a friendly settlement of the applications registered under nos. 30953/96, 30954/96, 30955/96 and 30956/96. 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 the Article 39 of the European Convention on Human Rights. This payment will constitute the final settlement of these cases.

2. The Government regret the occurrence of the actions which have led to the bringing of the present applications, in particular the disappearance of the applicants’ close relatives and the anguish caused to their 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 further 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.”

24. On 5 September 2001 the Court received the following declaration signed by the applicants’ representative:

“1. The applicants have taken note of the declaration made by the Government of Turkey and accept the payment by the Government, within three months from the date of the judgment delivered by the Court pursuant to the Article 39 of the European Convention on Human Rights, of an amount of 34,000 (thirty four thousand) pounds sterling, with a view to securing a friendly settlement of their applications nos. 30953/96, 30954/96, 30955/96 and 30956/96. 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 cases to the Grand Chamber under Article 41 § 1 of the Convention after the delivery of the Court’s judgment.”

25. 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).

26. 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 6 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President