



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

FOURTH SECTION

CASE OF HARAN v. TURKEY

(Application no. 25754/94)

JUDGMENT
(Striking out)

STRASBOURG

26 March 2002

FINAL

15/12/2004

In the case of Haran v. Turkey,

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

Mr A. PASTOR RIDRUEJO, *President*,

Mrs E. PALM,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 5 March 2002

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

PROCEDURE

1. The case originated in an application (no. 25754/94) 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, Mehmet Haran (“the applicant”), on 11 November 1994.

2. The applicant, who had been granted legal aid, was represented by Kevin Boyle and Françoise Hampson, both of whom are professors at the University of Essex (the United Kingdom). The Turkish Government (“the Government”) were represented by their Co-Agents and, later on, also by Mr H. Kemal Gür, Minister Plenipotentiary and Deputy Director General for the Council of Europe and Human Rights.

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

4. By a decision of 26 February 1996, the Commission declared the application admissible.

5. Following the Commission's decisions of 7 September 1996 and 18 January 1997, the Delegates took two rounds of oral evidence in Ankara, the first from 16 to 20 June 1997 and the second on 15 June 1998.

6. The application was transmitted to the Court on 1 November 1999 in accordance with Article 5 § 3, second sentence, of Protocol No. 11 to the Convention, the Commission not having completed its examination of the case by that date.

7. 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). By a letter of 14 December 2000, the Government appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

8. In the meantime, the applicant filed his final observations on 16 January 1999 and his just satisfaction claims on 4, 5 and 14 July 2000. The Government submitted their observations in response, respectively on 29 April 1999 and on 18 April 2000. In addition, both parties filed proposals and observations with the Registry in the context of friendly-settlement negotiations (Article 38 § 1 (b) of the Convention). No settlement was reached.

9. By their letter of 9 October 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.

10. On 1 November 2001 the Court effected a change in the composition of its Sections and the present case was re-allocated to the new Fourth Section.

11. By a facsimile sent on 4 January 2002, the applicant's representative reiterated that the applicant was not prepared to accept a friendly settlement of his case and requested the Court to carry on proceedings to a judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Facts submitted by the applicant

12. The applicant lived in the Çelebi hamlet of the Arıklı village of the Lice district in the province of Diyarbakır. In April 1994, security forces burned down the applicant's house, along with the other houses and forced the evacuation on the entire hamlet. The applicant then settled in Arıklı and his son Vahdettin Haran in Lice.

13. On 12 May 1994 Vahdettin went to Arıklı in order to help the applicant to prune grapes in his vineyard. The gendarmes and soldiers arrived at the village and convened all the villagers in the schoolyard. They

then started to burn the houses. At about 11 a.m., as houses were still being burned, the applicant heard the sound of gunfire coming from his vineyard.

14. In the evening villagers who came from the direction of the vineyard said that the gendarmes had taken someone away with them and gone towards Lice. The applicant feared that this might have been his son.

On the morning of the following day, 13 May 1994, the applicant sent his other children to the vineyard, where the body of Vahdettin was found dead.

15. Later on 13 May 1994 the applicant went to Lice and reported the killing of his son to the Public Prosecutor. The Public Prosecutor told the applicant that he would not be able to come to the village as it would be too dangerous for him, but that an autopsy would be carried out if the body could be brought to Lice. The applicant took the body of his son to Lice and an autopsy was conducted by the Public Prosecutor. The applicant was not given any information or any document pertaining to the autopsy.

16. The applicant, with the authorisation of the Public Prosecutor, took his son's body and buried him in the village.

B. Facts submitted by the Government

17. On 12 May 1994, an official autopsy was conducted on the body of Vahdettin Haran. The autopsy report indicated that the death was caused by shattering of internal organs by bullets.

18. On 6 June 1994, the Public Prosecutor of Lice initiated a preliminary investigation into the circumstances surrounding the death. The Court was not informed of the outcome of the investigation.

THE LAW

19. By a letter dated 9 October 2001, the Deputy Permanent Representative of Turkey to the Council of Europe informed the Registrar of the old First Section of the Court:

“... j'ai l'honneur de vous faire parvenir ci-joint la déclaration signée unilatéralement, afin de mettre fin à l'examen de la requête susmentionnée.

Le Gouvernement prie la Cour de bien vouloir décider qu'il ne se justifie plus de poursuivre l'examen de la requête et de la rayer du rôle en application de l'article 37 de la Convention.”

20. The text of the declaration reads as follows:

“1. The Government regrets the occurrence of individual cases of death resulting from the use of unjustified force as in the circumstances of the present case notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.

2. It is accepted that the use of unjustified 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 80.000 GBP¹. 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 striking out judgment 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 co-operation in this process will continue to take place.”

21. The applicant's representative, in his written reply dated 4 January 2002, referred to a declaration made on 25 January 2001 by the applicant in the context of the previous friendly settlement negotiations and requested the Court to reject the Government's initiative.

22. The Court recalls that Article 37 § 1 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), the latter provision enabling 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.”

23. The Court has examined carefully the terms of the respondent 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)), it being satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to decide otherwise (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 Government in cases of alleged unlawful killings by members of the security forces under Articles 2 and 13

1. 129.722,31 euros

of the Convention (see the cases referred to in *Akman v. Turkey* (striking out), no. 37453/97, § 31, ECHR 2001-VI).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's declaration and of the modalities 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 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

A. PASTOR RIDRUEJO
President