



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

SECOND SECTION

CASE OF KINAY AND KINAY v. TURKEY

(Application no. 31890/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

26 November 2002

This judgment is final but it may be subject to editorial revision.

In the case of KINAY and KINAY v. Turkey,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
Mr F. GÖLCÜKLÜ, *ad hoc judge*,
and Mr T. L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 5 November 2002 ,

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

PROCEDURE

1. The case originated in an application (no. 31890/96) 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 two Turkish nationals, Mrs Makbule Kınay and Mr Ramazan Kınay (“the applicants”), on 21 May 1996.

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

3. Relying on Articles 3, 5, 6, 8, 13 and 14 of the Convention the applicants complained about their alleged eviction from their village and destruction of their home and possessions by security forces in the state of emergency region of Turkey.

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. 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 to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. On 30 May 2000, having obtained the parties’ observations, the Court declared the application admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

7. On 29 April 2002, after an exchange of correspondence, the Registrar suggested to the parties that they reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 6 June 2002 and on 29 August 2002 the applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicants were both born in 1956 and they are currently living in Istanbul.

9. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Applicants' version of the facts

10. Until 18 September 1994 the applicants lived in the Dirimpınar village of the Malazgirt district in the province of Muş.

11. On an unspecified date, while the applicant Ramazan Kınay was serving a prison sentence in Diyarbakır prison, the mayor of the village (*muhtar*) told the villagers and the applicant Makbule Kınay that their houses would be burned by security forces. Following this information, some of the villagers removed their belongings from their houses.

12. On 18 September 1995, at about 8 p.m., security forces, composed of 50-60 village guards, special team members and gendarmes, arrived in the applicants' village. Some members of the security forces conducted a search of the applicants' house. They seized the valuables belonging to Makbule Kınay. They manhandled and insulted her as well as her three children. Then they poured gas on the applicants' house and set it on fire together with its contents.

13. Makbule Kınay recognised the village guards who had burned her house as being from the Nurettin village of the Malazgirt district.

14. Following the burning of her house, Makbule Kınay moved to her relatives' house in the Bulanık district of Muş. She then moved to İstanbul as a result of intimidation by the security forces. She later learnt that 75 tons of barley had been collected from their fields by the village guards.

15. On 15 March 1995 Ramazan Kınay was conditionally released. On 30 November 1995 Ramazan Kınay filed a petition with the Üsküdar Chief Public Prosecutor's office in İstanbul for submission to the Public Prosecutor's office in Malazgirt. In his petition, he complained about the burning of his and his relatives' houses by village guards. He requested permission to return to his village and compensation for the losses.

16. No investigation was carried out into the applicants' complaints.

B. Government's version of the facts

17. The applicant Ramazan Kınay was convicted of membership of the PKK. He was serving a prison sentence at the time of the alleged events.

18. The authorities carried out an investigation into the applicants' allegations of destruction of their property and their forced eviction from the village.

19. On 5 December 1997 the Malazgirt Gendarmerie Commander took statements from the mayor of the Dirimpınar village. In his statements, the latter denied the applicants' allegations. He stated that there were families still living in the village and that the applicant Makbule Kınay moved out of the village of her own free will.

20. According to the records of the Land Registry, the applicants are the owners of 10,56 acres of land.

21. Subsequent to the investigation carried out by the authorities, it was understood that, at the relevant time, there were no village guards or operations being carried out in the region.

THE LAW

22. On 29 August 2002 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 an all-inclusive amount of EUR 59,000 (fifty nine thousand euros) with a view to securing a friendly settlement of their application registered under No 31890/96. This sum, which also covers legal expenses connected with the case, shall be free of any tax that may be applicable and be paid in euros, to be converted into Turkish liras at the rate applicable at the date of payment, to a bank account named by the applicants and/or their duly authorised representative. This sum shall be payable within three months from the date of the notification 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 the case.

2. The Government regret the occurrence of individual cases of destruction of home, property and possessions resulting from the acts of agents of the State in south-east Turkey, obliging civilians to leave their villages, and of failure by the authorities to carry out effective investigations into the circumstances surrounding such events, as in the case of the applicants, Makbule and Ramazan Kınay, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such acts and to remedy such failures.

3. It is accepted that such acts and failures in the applicants' case constituted a violation of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 and, given the circumstances of the destruction and the emotional suffering entailed, of Article 3 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the individual rights

guaranteed by these Articles – including the obligation to carry out effective investigations – are 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 destruction of property in circumstances similar to those of the instant application and in more effective investigations being carried out.

4. The Government consider that the supervision by the Committee of Ministers of the Council of Europe 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.

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

23. On 6 June 2002 the Court received the following declaration signed by the applicants' representative:

“1. We note that the Government of Turkey are prepared to pay us *ex gratia* the sum of EUR 59,000 (fifty nine thousand euros) with a view to securing a friendly settlement of our application registered under no. 31890/96. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in euros, to be converted into Turkish liras at the rate applicable at the date of payment, to a bank account named by us. The sum shall be payable, free of any taxes which may be applicable, within three months from the date of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights.

2. We accept the proposal and waive any further claims against Turkey in respect of the facts of this application. We declare that this constitutes a final settlement of the case.

3. This declaration is made in the context of a friendly settlement which the Government and we have reached.

4. We further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment.”

24. 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).

25. 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 26 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY
Deputy Registrar

J.-P. COSTA
President