



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

FOURTH SECTION

CASE OF YAKAR v. TURKEY

(Application no. 36189/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

26 November 2002

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

In the case of Yakar v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mr R. TÜRMESEN,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr R. MARUSTE,

Mr J. CASADEVALL, *judges*,

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

Having deliberated in private on 16 April 2002 and on 5 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 36189/97) 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 Mehmet Yakar ("the applicant"), on 8 April 1997.

2. The applicant, who had been granted legal aid, was represented by Ms E. Keskin and Ms F. Karakaş, 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, *inter alia*, that his son was killed whilst in the custody of security forces. He further complained of lack of any effective system for ensuring protection of the right to life in domestic law.

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. On 16 April 2002, having obtained the parties' observations, the Court declared the application partially admissible. The applicant's further complaints under Articles 6 (the criminal proceedings in respect of his son), 14, 15 and 18 of the Convention were declared inadmissible.

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

6. On 5 July 2002 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 13 August 2002 and on 27 August 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicant was born in 1949 and lives in Ağrı. He is the father of the deceased Orhan Yakar, who was 16 years old at the time of the events in question.

8. In June 1996 the applicant's son went to Istanbul where he worked as a painter for a couple of months. In September 1996 the applicant lost contact with his son. In November 1996 the applicant went to Istanbul in order to find out his son's whereabouts. Orhan's neighbours told him that his son had disappeared two months earlier.

9. On 13 November 1996 the applicant filed a petition with the office of the Istanbul Public Prosecutor. He requested that his son be found and that those responsible be punished if anything had happened to him. The applicant also filed a petition with the Istanbul Security Directorate as to the whereabouts of his son. Then, he returned to his village in Ağrı.

10. On 17 November 1996 the security forces carried out a search in order to arrest a member of the PKK who had been located near the township of Sancak in the province of Bingöl. The security forces arrested the applicant's son in the course of the search. In an incident report drafted by the gendarmes it was noted that the applicant's son had been carrying a rifle and some ammunition when he was arrested. In a further incident report it was noted that Orhan Yakar had been arrested at 2.45 p.m. and that he had been subsequently transferred to the Interrogation Department in the Provincial Gendarmerie Command (*İl Jandarma Komutanlığı Sorgu Kısım Amirliği*) by a helicopter.

11. Neither reports bore the signature of the applicant's son.

12. On 18 November 1996 the gendarmes, accompanied by the applicant's son, carried out a search in order to find the body of a terrorist. While the gendarmes were 40 or 45 metres away from the location where the body had been left, Orhan, who was walking in front of the gendarmes, stepped on a mine placed by the PKK and died. The gendarmes continued their search and found the body of the terrorist. They also arrested a member of the PKK and seized two rifles.

13. In the meantime, the applicant was told at the Doğubeyazıt Gendarmerie Command that his son had joined the PKK and that he had surrendered to the security forces in Bingöl where he had been held in custody.

14. The applicant went to Bingöl in order to investigate the whereabouts of his son. He was told at the Bingöl Gendarmerie Command that his son, who had just surrendered to the security forces, had died after stepping on a mine.

15. In a letter of 22 November 1996 the Bingöl Gendarmerie Command informed the public prosecutor in Bingöl that the applicant's son had been arrested on 17 November 1996, at 2.30 p.m., in the township of Sancak near the village of Karapınar and had been transferred to the Interrogation Department in the Provincial Gendarmerie Command. During his interrogation the applicant's son had stated that he knew where the body of İhsan Meriç, who had died during the clashes of 16 November 1996, was hidden. The gendarmes, accompanied by Orhan, had carried out a search in order to find out where the body was hidden. However, Orhan had died after stepping on a mine.

16. On 23 December 1996 the applicant filed a petition with the office of the Bingöl public prosecutor. He requested that the corpse of his son be handed over to him.

17. On 6 January 1997 the applicant requested from the Bingöl Gendarmerie Command access to all information and documents concerning the death of his son.

18. In a letter by the Bingöl Gendarmerie Command dated 9 January 1997 the applicant was informed that the documents concerning his son's death had been transferred to the office of the Bingöl public prosecutor and that the Command had no authority to give information to the applicant. The applicant was also informed that he could seek the relevant information from the office of the Bingöl public prosecutor or from the Ministry of Interior.

19. On 14 March 1997 the applicant filed a petition with the Ministry of Interior. The applicant stated that he had been unable to receive any documents or information from the authorities concerning the death of his son. He requested that all relevant information and documents be transmitted to him.

20. On 22 May 1997 the Istanbul Security Directorate transmitted the relevant information and documents provided by the Bingöl Gendarmerie Command to the applicant's lawyer in Istanbul.

21. On 27 May 1997 the Bingöl public prosecutor made a written request to the Bingöl Gendarmerie Command to summon the gendarmes who had witnessed the death of the applicant's son. The prosecutor stated that he would hear them within the preliminary investigation into the death of the applicant's son.

22. On 10 July 1997 Major Muharrem Fındık gave a statement before the Bingöl public prosecutor. He stated that the applicant's son had died in the course of an operation carried out in order to find the body of İhsan Meriç. Major Fındık had been walking 40 or 45 metres behind the

applicant's son when he heard an explosion. The gendarmes had been unable to collect the dismembered body owing to heavy weather conditions.

23. The gendarmes, Gürbüz Beyiktaş, Mehmet Tutak and Niyazi Patır, who also appeared before the public prosecutor, reiterated the Major's statement.

24. In a letter dated 11 July 1997 the Bingöl public prosecutor reported the death of the applicant's son to the Populations Office (*Nüfus Müdürlüğü*) in Bingöl.

25. On 22 August 1997 the public prosecutor at the Diyarbakır State Security Court decided that no prosecution should be brought against Orhan Yakar on account of his membership of the PKK as he had died on 18 November 1996.

26. On 23 September 1999 the applicant gave a statement to Sergeant Süleyman Üçkuyulu. He stated that he had been trying to find out the whereabouts of his son since 1996. The authorities had told him that his son had died after stepping on a mine. However, despite his requests, his corpse had not been handed over to him. He had lodged an application with the European Court of Human Rights and this application was pending before the Court. He requested that his son's corpse be handed over to him.

27. In the course of the investigation into the death of the applicant's son the Bingöl Provincial Administrative Council issued a decision, on 23 August 2000, stating that no prosecution should be brought against the members of the security forces. In its view, Orhan Yakar had died after stepping on a mine, which had been placed by the PKK. The security forces had been unable to collect Orhan's body owing to heavy weather conditions and the possible existence of other mines in the region. It was concluded that the security forces had performed their duty with diligence.

28. On 3 October 2000 the Doğubeyazıt Gendarmerie Command transmitted the Bingöl Provincial Administrative Council's decision of 23 August 2000 to the Sarısu Gendarmerie Command. The Doğubeyazıt Gendarmerie Command requested that the applicant be notified of this decision.

29. In a letter dated 16 October 2000 the applicant informed his lawyer that he had been forced to sign some papers at the Sarısu Gendarmerie Command without having read them. He had requested to see the papers but he had been given them after his lawyer had telephoned the Command. Then, he had been asked why he had appointed Ms Keskin as his lawyer. It had been suggested to him that he withdraw his application before the Court and he had been advised to claim compensation from the national authorities.

30. On 16 October 2000 the applicant filed an objection with the Bingöl District Administrative Court (*Bölge İdare Mahkemesi*) against the decision of the Bingöl Provincial Administrative Council.

31. The case is still pending before the Bingöl District Administrative Court.

THE LAW

32. On 27 August 2002 the Court received the following declaration from the Government:

“1. The Government regret the occurrence of individual cases of death resulting from the failure of the authorities to take the necessary measures to safeguard the lives of individuals as in the circumstances of the death of Orhan Yakar, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions. It is accepted that the failure of the authorities to protect the right to life of the applicant’s son in the instant case constituted a violation of Article 2 of the Convention. The Government undertake 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.

2. I declare that the Government of Turkey offer to pay *ex gratia* to the applicant the amount of EUR 40,000 (forty thousand euros). 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, free of any taxes that may be applicable, to a bank account named by the applicant, 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 the case.

3. 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 continue to be made in this context. To this end, necessary co-operation in this process will continue to take place.

4. Finally, the Government 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”

33. On 13 August 2002 the Court had received the following declaration previously signed by the applicant’s representative:

“1. In my capacity as the representative of the applicant Mr Mehmet Yakar I have taken cognisance of the declaration of the Government of Turkey that they are prepared to make to the applicant an *ex gratia* all-inclusive payment of EUR 40,000 (forty thousand euros) with a view to concluding a friendly settlement of his case that originated in application no. 36189/97. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, will be paid in accordance with the terms stipulated in the said declaration within three

months after notification of the Court's judgment delivered pursuant to Article 39 of the European Convention on Human Rights.

2. Having duly consulted the applicant, I accept that offer and he, in consequence, waives all other claims against the Republic of Turkey in respect of the matters that were at the origin of the application. We declare that the case has been settled finally and we 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.

3. This declaration is made within the scope of the friendly settlement which the Government and I, in agreement with the applicant, have reached."

34. 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).

35. 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.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President