



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

SECOND SECTION

CASE OF ATEŞ v. TURKEY

(Application no. 28292/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

22 April 2003

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

In the case of Ateş 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr. T. L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 28292/95) 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, Hüseyin Ateş (“the applicant”), on 3 March 1995.

2. The applicant was represented by Ms A. Stock, a lawyer attached to the Kurdish Human Rights Project, a non-governmental organisation based in London. 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, 14 and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained about his and his family’s alleged eviction from their village and the 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 of the Rules of Court). 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 of the Rules of Court).

5. On 30 May 2000, having obtained the parties’ observations, the Court declared the application admissible in so far as it had been communicated to the Government.

6. On 29 April 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.

7. On 28 February 2003 and on 4 March 2003 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicant was born in 1939 and lives in Hozat district of Tunceli.

A. Applicant's version of the facts

9. On 7 October 1994 military units arrived in the applicant's village of Kozluca. The security forces surrounded the village and set up a camp around the village. The Gendarme Commander of the village told the villagers to vacate their houses and to leave the village as the security forces were going to burn the houses.

10. The villagers left the village and moved to Hozat, where the District Governor placed the applicant and his family in the municipal wedding hall. Other villagers were housed in tents. After they left their village the soldiers burned the houses.

11. On 14 November 1994 the applicant filed petitions with the Prime Minister's office, the Tunceli Provincial Governor's office, the State of Emergency Region Governor's office and the Welfare and Housing Minister's office, complaining about the destruction of his home and requesting housing under the provisions of Housing Law no. 2150.

12. On 12 January 1995 the Deputy Governor, wrote a letter in reply to the applicant, informing him that residences demolished as a result of terrorist raids do not come within the scope of the Law on Disasters (Law no. 7629 - 1051). For this reason, the applicant was not able to benefit from the Housing Law.

13. The applicant did not pursue any other domestic remedy.

B. Government's version of the facts

14. In 1994 security forces took action against PKK terrorists in the province of Tunceli. The PKK terrorists began to threaten and attack villages in order to meet their needs. As a result of the pressure exerted by the PKK, the inhabitants left their villages and fled to larger settlement areas.

15. The applicant left his village along with other villagers and moved to Hozat. The authorities there lodged him and his family in the wedding hall of the Hozat District Municipality. The applicant received financial aid between 1994 and 1996 for food, heating and health-related expenditure.

16. On an unspecified date the inhabitants of the Kozluca village lodged criminal complaints with the Chief Public Prosecutor's office in Hozat. They complained that the security forces in the region had burned their houses. As the case concerned an investigation of acts allegedly committed by the security forces, the public prosecutor issued a decision of non-jurisdiction and referred the investigation file to the Hozat District Governor's office in accordance with the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*).

17. The Hozat District Governor decided to discontinue the investigation on the grounds that the villagers could not identify the perpetrators and the evidence contained in the investigation file led to the conclusion that the village had been burned by PKK terrorists.

THE LAW

18. On 28 February 2003 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 applicant an all-inclusive amount of EUR 49,000 (forty nine thousand euros) with a view to securing a friendly settlement of his application registered under No 28292/95. 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 a bank account named by the applicant and/or his 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 applicant, Hüseyin Ateş, 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 as claimed in the applicant's case constitute 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."

19. On 4 March 2003 the Court received the following declaration signed by the applicant's representative:

"1. I note that the Government of Turkey are prepared to pay me *ex gratia* the sum of EUR 49,000 (forty nine thousand euros) with a view to securing a friendly settlement of my application registered under no. 28292/95. 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 a bank account named by me. 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. I accept the proposal and waive any further claims against Turkey in respect of the facts of this application. I 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 I have reached.

4. I 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."

20. 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).

21. 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 22 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY
Deputy Registrar

J.-P. COSTA
President