



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

FIRST SECTION

CASE OF YURTSEVEN AND OTHERS v. TURKEY

(Application no. 31730/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

18 December 2003

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

In the case of Yurtseven and Others v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 14 November 2002 and 04 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 31730/96) 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, Ali Yurtseven, Haşim Yurtseven, Abdullah Özeken and Sabri Sarıtaş (“the applicants”) on 26 April 1996.

2. The applicants were represented by Ms Ş. Sarıhan, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court

3. The applicants complained of the disappearance of their three relatives in south-east Turkey and also of the anguish caused to their families because of their inability to discover what has happened to their disappeared relatives. They invoked Articles 2, 3, 5, 6, and 7 of the Convention.

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.

5. On 14 November 2002, having obtained the parties' observations, the Court declared the application admissible.

6. On 7 May and on 26 June 2003 the applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicants were born in 1966, 1975, 1934 and 1971 respectively and live in the town of Yüksekova, in south-east Turkey.

8. On 27 October 1995, soldiers belonging to the Yüksekova Commando Battalion under the command of Major Mehmet Emin Yurdakul came to Ağaçlı village to conduct a military operation.

9. Şemsettin Yurtseven, the father of the first and the second applicants, Mikdat Özen, the son of the third applicant and Münür Sarıtaş, the younger brother of the fourth applicant, were singled out and put in a military vehicle and taken away by the soldiers. They were not released afterwards. Şemsettin Yurtseven was 73 years of age and was living in Ağaçlı village. Mikdat Özen who was 18 years old and Münür Sarıtaş who was 13 years old, had come to Ağaçlı village that day to collect wood.

10. The applicants applied to the Yüksekova Commando Battalion and asked for information about their relatives. Major Yurdakul denied the arrest of the applicants' relatives.

11. Since the arrest of their relatives on 27 October 1995 the applicants have obtained no information about their relatives' whereabouts.

12. According to the Government, no security operation was conducted in Ağaçlı village on the day in question and that the applicants' relatives were not arrested.

13. On 13 June 1997 the Hakkari chief public prosecutor filed a bill of indictment with the Hakkari Assize Court (*Hakkari Ağır Ceza Mahkemesi*). The chief public prosecutor stated that the information obtained indicated that Şemsettin Yurtseven had been beaten to death by Major Mehmet Emin Yurdakul after he was taken into custody during an operation conducted in Ağaçlı village between 25 and 28 October 1995. Mikdat Özen and Münür Sarıtaş, who had witnessed this killing, were themselves later shot dead by Kahraman Bilgiç and Nihat Yiğiter, a confessor [*Note: İtirafçı* (confessor): a term used to describe a defected member of an illegal organisation who provides the authorities with information about that organisation.] and an army captain respectively.

14. On 12 November 1999 the Hakkari Assize Court acquitted Mehmet Emin Yurdakul, Nihat Yiğiter and Kahraman Bilgiç for lack of sufficient evidence to prove that they had killed the applicants' relatives.

15. The Hakkari Assize Court reached, *inter alia*, the following findings in its reasoning:

“In the light of the evidence set out above, and in particular the testimonies of the villagers in whose village the operation took place, there is corroborating evidence that an operation was conducted in Karlı village on 27 October 1995 by the Yüksekova Mountain Commando Battalion and that Şemsettin (Abdulkerim) Yurtseven, Mikdat Özen and Münür Sarıtaş were taken away by the soldiers in a military vehicle. There is, however, no evidence in the file to show what happened to these persons subsequently. In other words, their fates are unknown. There is no

evidence in the file other than the allegations made by Kahraman Bilgiç during the course of the preliminary investigation on 25 February 1997 -which he later repeated during the trial proceedings - to prove that the disappeared persons were taken to the Battalion after the operation, that Şemsettin died as a result of having been beaten up by the commander Mehmet Emin Yurdakul, or that the other two were killed because they had witnessed the killing of Şemsettin...Finally, the fact that the bodies were never recovered casts doubt on the accuracy of the claims that these persons did indeed die”.

16. The court also decided to request the prosecutor to open an investigation into the disappearance of the three persons as there was evidence in the file indicating that Mehmet Emin Yurdakul had exceeded his powers and detained these persons without authorisation.

17. An appeal lodged by the applicants' lawyer against the Hakkari Assize Court's judgment was rejected by the Court of Cassation (*Yargıtay*) on 2 April 2001.

THE LAW

18. On 1 July 2003 the Court received the following declaration from the Government:

“1. The Government regret the occurrence of the actions which have led to the bringing of the present application, in particular the disappearance of the applicants' three relatives.

2. It is accepted that the unrecorded deprivation of liberty and insufficient investigations into allegations, as in the instant case, of subsequent disappearance of detainees, constitute violations of Articles 2 and 5 of the Convention and, having regard to the anguish caused to the applicants and their families, a violation of Article 3 of the Convention.

3. 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 of detainees are carried out in accordance with their obligations under the Convention. 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 disappearance of detainees as well as more effective independent investigations into allegations of disappearance such as those made by the applicants.

4. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicants an all-inclusive amount of 160,000 EUR (one hundred and sixty thousand euros) with a view to securing a friendly settlement of their application registered under no. 31730/96. 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 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. In the event of failure to pay this sum within the said three month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. 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.

6. 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 15 May 2003 the Court received the following declaration signed by the applicants' representative:

"1. In my capacity as the representative of the applicants, I have taken cognisance of the terms of the declaration of the Government of Turkey and of the fact that they are prepared to make to the applicants, Mr Ali Yurtseven, Mr Haşim Yurtseven, Mr Abdullah Özeken and Mr Sabri Sarıtaş, an *ex gratia* all-inclusive payment of 160,000 EUR (one hundred and sixty thousand euros) with a view to concluding a friendly settlement of their case that originated in application no. 31730/96. This sum, which also covers the costs and expenses related to 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 applicants, I accept that offer and they, in consequence, waive 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 applicants, have reached."

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 18 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President