



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

SECOND SECTION

CASE OF KARAKOÇ v. TURKEY

(Application no. 28294/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

2 November 2004

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

In the case of Karakoç v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 May 2000 and 12 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 28294/95) 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, Mr Erdal Karakoç (“the applicant”), on 11 April 1995.

2. The applicant, who had been granted legal aid, was represented by Ms A. Stock, a lawyer attached to the Kurdish Human Rights Project in London. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained that he had been a victim of a violation of Articles 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1 to 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. On 30 May 2000, having obtained the parties' observations, the Court declared the application admissible.

5. On 12 March 2004, 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 1 April and 20 September 2004 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1967 and lives in Hozat, Tunceli.

A. Applicant's version of the facts

7. Until October 1994 the applicant lived in Kozluca, a village of the Hozat district in Tunceli, where he owns property.

8. In October 1994 security forces forcibly evacuated Kozluca. They also destroyed the applicant's property. The applicant and his family then moved to Hozat, where they currently live.

9. On 31 October 1994 the applicant petitioned the offices of the Prime Minister, the Tunceli governor and the governor of the state of emergency region. He complained that he had been forcibly evicted from his village by the security forces.

10. On 16 November 1994 the applicant lodged a petition with the Public Prosecutor's office in Hozat and requested that an investigation be initiated against those responsible for the evacuation of his village and the destruction of his property.

11. On 26 January 1995 the Hozat District Governor wrote a letter in reply to the applicant stating that he could not be provided with housing as he did not fulfil the requirements of Law no. 2510 on housing.

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

B. Government's version of the facts

13. The applicant left his village on account of the terrorist activities in the region and there is no evidence indicating that his house was burned down.

14. The Hozat District Governor supplied the applicant with accommodation upon his request. He further received aid for food, heating and rent. However, the applicant did not apply to the authorities to receive the monetary aid which was due at the time.

15. On 11 January 1995 the Chief Public Prosecutor in Hozat, who had received the applicant's criminal complaints concerning his eviction from his village and destruction of his property, issued a decision of non-jurisdiction and referred the investigation file to the District Administrative Council in Hozat in accordance with the Law on the Prosecution of Civil Servants. The investigation is still pending before the Administrative Council.

THE LAW

16. On 20 September 2004 the Court received the following declaration from the Government:

“1. The Government regret the occurrence, as in the present case, 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, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such acts and to remedy such failures. It is accepted that such acts and failures 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 the aforementioned Articles – including the obligation to carry out effective investigations – are respected in the future. It is noted in this connection that there is no obstacle to the return of the applicant to his village. Furthermore, necessary provisions for the restoration of his house will be supplied in accordance with the 'Return to Village and Rehabilitation Project'. It is further noted 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.

2. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant an all-inclusive amount of EUR 48,000 (forty eight thousand euros) with a view to securing a friendly settlement of his application registered under no. 28294/95. 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 be converted into Turkish liras at the rate applicable at the date of payment, 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. 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.

3. 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.

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

17. On 1 April 2004 the Court received the following declaration signed by the applicant's representative:

“1. In my capacity as the representative of the applicant, 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 applicant an *ex gratia* all-inclusive payment of EUR 48,000 (forty eight thousand euros) with a view to concluding a friendly settlement of his case that originated in application no. 28294/95. 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 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 referral 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.”

18. 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).

19. 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 2 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President