



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

THIRD SECTION

CASE OF BEDİR AND OTHERS v. TURKEY

(Application no. 52644/99)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bedir and Others v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr R. TÜRMEŒ,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 22 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 52644/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Turkish nationals, Mr Şehmus Bedir, Mr Mehmet Bedir, Mr Ahmet Bedir and Ms Zekiye Bedir (“the applicants”), on 21 September 1999.

2. The applicants, who had been granted legal aid, were represented by Mr O. Baydemir, C. Aydın and M. Kılavuz, lawyers practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants alleged that State security forces had destroyed their homes and possessions and had forced them to leave their place of residence with no possibility of return and that they had been denied effective remedies in domestic law in violation of Articles 3, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

6. By a decision of 9 November 2004 the Court declared the application partly admissible.

7. The applicants and the Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants, Mr Şehmus Bedir and his father Mr Mehmet Bedir as well as Mr Ahmet Bedir and Ms Zekiye Bedir, who are respectively the brother and sister-in-law of Şehmus Bedir, were born in 1955, 1924, 1945 and 1938 respectively and currently live in Diyarbakır, in Turkey.

9. At the time of the alleged events giving rise to the present application the applicants were all living in Kışlak, a village of Mazıdağı district in Mardin province, in the then state-of-emergency region of Turkey. Since the 1980s a violent conflict had been going on in the region between the security forces and sections of the Kurdish population in favour of Kurdish autonomy, in particular members of the PKK (*Workers' Party of Kurdistan*). The inhabitants of the applicants' village were suspected of "aiding and abetting terrorists"; and accordingly they were strictly and frequently controlled by the gendarmes stationed near the village.

10. The facts of the case are in dispute between the parties and may be summarised as follows.

A. The applicants' version of the facts

11. Until 28 July 1998 the applicants all lived in Kışlak, where Şehmus Bedir was the mayor of the village (*muhtar*).

12. In April 1994 gendarmerie forces from Mazıdağı, Seyhan and Aksu Gendarmerie stations and Mardin Central Gendarmerie Command, accompanied by village guards from Sultanköy, raided Kışlak. The security forces set the houses of fifteen families on fire on the ground that they supplied aid to the PKK. The men of the village were taken into custody and subjected to ill-treatment on a number of occasions. Subsequent to these events, the families in question left the village. Ten days after their departure, the remaining houses which belonged to these families were also destroyed.

13. In 1996 the applicants' village was again raided by gendarmes from Sultanköy and Bilge. Some of the villagers were kept under arrest and released after being beaten up on suspicion of having aided the PKK. The gendarmes also set five houses on fire, including Şehmus Bedir's house. For

a certain period of time Şehmus Bedir lived in his father's place but then constructed a new house for his family.

14. Following this second military operation, the Aksu Gendarmerie Station took control of Kışlak village. The inhabitants were not allowed to enter or leave the village after certain hours and were subjected to food-rationing. As a result of such pressure, a number of families left the village.

15. From the end of May 1998, the gendarmes visited the village more often and sometimes stayed for a couple of days. This situation lasted until 19 June 1998, the date on which a soldier was killed by one of his fellows during a dispute. Following this incident, a team of soldiers from Mazıdağı Gendarmerie Command arrived in the village. The soldiers summoned the men to the Gendarmerie Command and told them that they would have ten days in which to choose either to work for the State as a village guard or to leave Kışlak. At the end of the ten days' period, two men from the village went to the Gendarmerie Command and told the authorities that they did not want to become village guards. Upon this response, the soldiers arrived in the village and ordered the inhabitants to evacuate the village. The soldiers refused the inhabitants' request to stay in the village until the end of the harvest.

16. On 27 July 1998, between 6 a.m. and 7 a.m., a number of soldiers from Mazıdağı Gendarmerie Command and Sultanköy and Bilge Gendarmerie Stations arrived in Kışlak. They assembled the villagers in the village square telling them that they would carry out a search of the buildings. Then they threw white powder on the buildings and set them on fire. The villagers who attempted to rescue their animals and save their households were threatened with being thrown into the fire. In the course of the events, the soldiers forced Mehmet Bedir, who is illiterate, to sign a document without informing him of its contents. At around 4 p.m. the inhabitants of the village, including the applicants, left the village and went to Diyarbakır where they sought refuge at their relatives' houses.

17. At the time of the introduction of their application, the applicants were still living in Diyarbakır and making their living from daily employment. On an unspecified date, Mehmet Bedir attempted to return to Kışlak but was arrested by security forces and questioned in relation to his application pending before the European Court.

18. In their written statements dated 8 and 16 August 2000, and in response to the Government's observations, Celal Bedir and Hüseyin Demir claimed the following:

Celal Bedir:

“The applicant Mehmet Bedir is my father, Zekiye Bedir is my mother-in-law and the applicants Şehmus and Ahmet are my brothers. My brothers and I lived in Kışlak village since our birth and until our houses were burned down. At the time of the events, Ahmet and Şehmus were not in the village. From time to time they were

leaving the village for work. During the events in question, their wives and children were in the village. They owned houses and an important number of households. Şehmus and Ahmet also owned houses in Diyarbakır... The report dated 11 September 1998 according to which, 'the houses of Mehmet and Zekiye Bedir caught fire as a result of bullets which burned the herbs on the roof of the house' is not mine... The day after the events [of 27 July 1998] ... a number of soldiers arrived in the village... and set our house on fire... As regards my statements... of 11 September 1998, ... we were made to sign certain documents without being allowed to read their content. If I recall correctly, the documents had been typed. I do not know about their content..."

Hüseyin Demir:

"On 27 July 1998, the date of the events which took place in our village, I was in Ankara, at my son's place. I therefore did not witness the events... The signature, which appears on the report dated 28 July 1998, cannot therefore be mine. It is a fake... In fact, it is the first time I have seen this document..."

19. Finally, the applicants have submitted fourteen photographs showing the current state of their houses in Kışlak village. It appears from these photos that the houses in question seem to have burned down together with their contents. The photos further show that the materials used in the construction of the houses are stone and concrete. It is not possible to identify any bushes or grass but only dry land covered by stones around the houses.

20. The applicants also submitted four newspaper reports concerning the events in question. In its edition of 31 July 1998, a pro-Kurdish newspaper *Gündem* reported that Şivistan village (Kışlak in Turkish) of Mazıdağı district in Mardin province had been burned down on 28 July 1998 by soldiers and that the inhabitants had been forced to leave. The newspaper noted that this village had already been partly burned in 1995. On the same day, another pro-Kurdish newspaper also reported that Şivistan (Kışlak) had been burned down by soldiers.

21. On 15 August 1998 the *Gündem* newspaper reported that on 6 August 1998 Şivistan villagers had submitted criminal complaints, with the assistance of the Diyarbakır Human Rights Association, to the Mazıdağı Public Prosecutor's office. The villagers complained that their houses had been burned down by soldiers. The newspaper also referred to the petition of Zekiye Bedir. On the same day, *Ülkede Gündem* newspaper also reported the criminal complaints filed by the Şivistan villagers. It was further reported that the families who had been forced to leave their village had been living in difficult conditions in Diyarbakır.

B. The Government's version of the facts

22. On 27 July 1998, at around 7.45 a.m., two PKK terrorists raided Kışlak village. The terrorists carrying Kalashnikov rifles and a bazooka asked the inhabitants to assemble in the main square of the village. Since the villagers refused to obey the terrorists, the latter opened fire randomly for

ten minutes on Mehmet Demir's house which resulted in the killing of two children, namely Öznur Demir (four years old) and Emine Demir (14 years old), who were playing in the yard. The house in which the families of Mehmet, Süleyman and Celal Bedir lived partly burned down as the bushes around the house caught fire as a result of the gunfire discharged by the terrorists.

23. Having been informed about the attack, the gendarmes came to the village at around 8.30 p.m. on the same day. They established the above-mentioned facts and were told that the terrorists escaped towards the direction of Elmabahçe village.

24. On 28 July 1998 gendarmes attached to the Mazıdağı Gendarmerie Command carried out an inspection in the village. According to the incident report drawn up by three gendarmes and signed by Hüseyin Demir and Celal Bedir, thirty-two cartridges discharged from Kalashnikov rifles were retrieved from the scene of the shooting. There were bullet holes on the walls of Mehmet Demir's house. The gendarmes found that gunfire discharged by two PKK terrorists had caused the killing of two children and partial burning of Mehmet Demir's house.

25. On 11 September 1998 statements were taken from Celal Bedir, the son of Mehmet Bedir and an inhabitant of Kışlak village, by two gendarme officers. Celal Bedir stated that he had moved to Çınar together with his family following the attack perpetrated by PKK terrorists on Kışlak on 27 July 1998. On the latter date, at around 7-7.30 a.m., he heard gunfire on his way from Bağlıca village to Kışlak. He had not seen the persons who had fired but later learned from his wife that PKK members opened fire on Hatice Demir's house. He immediately went to the house of Hatice Demir to see what had happened. Hatice Demir told him that the PKK militants had opened fire and had killed her younger daughter and wounded the elder. When he returned to his home, where he lived together with his father, he saw that the grass on the roof had caught fire. He immediately informed the gendarmerie instead of trying to put out the fire.

26. Celal Bedir further claimed that his brothers, Şehmus and Ahmet, had not been living in Kışlak during the last ten years and that they did not own property in the village. Furthermore, they had been involved in the pro-Kurdish political party, the HADEP. Having been influenced by this party, they made the allegation that their property had been burned down by the security forces in order to obtain compensation. On 27 July 1998, only one house – that of his father – caught fire and was partly damaged because of the gunfire discharged by the terrorists.

27. Subsequent to the impugned events, the inhabitants of Kışlak village left their place of residence and moved to other parts of the country. According to a report dated 27 March 2000, which was drawn up and signed by three gendarme officers, it appears that the villagers started returning to their homes and that there are currently seven families living in Kışlak.

28. In their supplementary observations dated 7 February 2005, the Government submitted that the number of families that had returned to Kışlak village had reached twenty-five. They noted that these people had left the village due to terrorism, or for economic or other reasons. Currently the village is open to settlement. The applicant Ahmet Bedir left the village before 28 June 1998 and the remaining applicants also left the village voluntarily and settled in Diyarbakır.

29. The applicants Mehmet Bedir and Süleyman Bedir (the husband of Zekiye Bedir) still live in Kışlak. Zekiye Bedir lives in Istanbul with her children and goes to the village only in summer in order to cultivate her lands.

30. Şehmus and Ahmet Bedir live in Diyarbakır, where they run a grocery store, and frequently travel to Kışlak in order to cultivate their lands.

C. The investigation carried out into the applicants' complaints

31. On 18 August 1998 Şehmus Bedir, as the *muhtar* of the village, and Ahmet and Zekiye Bedir filed petitions with the Offices of the Mazıdağ District Governor, the Mardin Governor, the Governor of the state-of-emergency region in Diyarbakır, the General Command in Ankara, the Chief of Staff, the Ministers of Defence and the Interior, the Prime Minister, the President of the Republic and, finally, the central offices of eight political parties in Ankara. They asked the aforementioned authorities to remedy the damage that they had sustained and to allow them to return to their village. However, they did not receive any response to their petitions.

32. In their observations, the Government disputed Şehmus Bedir's allegation that he was the *muhtar* of Kışlak at the relevant time. In his observations in reply to those of the Government, Mr Bedir admitted that he had not been the *muhtar* of the village and that he had signed those petitions as the *muhtar* in order to draw the attention of the authorities to the events in question.

33. Meanwhile, on 6 August 1998 the applicants lodged a petition with the Mazıdağı Chief Public Prosecutor's office complaining that the gendarmes from the local gendarmerie station had burned down their houses together with their households and inflicted ill-treatment on the inhabitants.

34. In the absence of any response from the authorities, the applicants sought the assistance of a lawyer in order to pursue their complaints in domestic law. Thus, on 21 December 1998 the applicants' legal representative applied to the Chief Public Prosecutor's office and requested information on the state of the proceedings concerning the criminal complaints filed by the applicants.

35. The Public Prosecutor informed the applicants through their legal representative that, subsequent to their complaints, an investigation had

been commenced against Lieutenant U.Ö., who was the commander of the Mazıdağı Gendarmerie Station at the relevant time, and that the case file had been transferred to the Directorate General of Criminal Affairs of the Ministry of Justice requesting leave to instigate criminal proceedings.

36. By a letter of 4 February 1999, the above-mentioned Directorate informed the applicants' legal representative that the investigation carried out into the applicants' allegation indicated that there was no ground to commit Lieutenant U.Ö. for trial.

II. RELEVANT DOMESTIC LAW

37. A full description of the relevant domestic law may be found in *Doğan and Others v. Turkey* (nos. 8803-8811/02, 8813/02 and 8815-8819/02, §§ 31-35, ECHR 2004-...).

THE LAW

I. COMPLAINTS UNDER ARTICLES 3 AND 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

38. The applicants complained that the circumstances surrounding the deliberate destruction of their homes and possessions by the security forces had given rise to breaches of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 3 of the Convention

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8 of the Convention

“1. Everyone has the right to respect for his private and family life [and] his home...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

39. In their supplementary observations, the Government raised a preliminary objection concerning non-exhaustion of domestic remedies in the light of the 'Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism' adopted on 14 July 2004. This Law provided for a sufficient remedy capable of redressing the Convention grievances of the applicants who had suffered damages during the authorities' struggle against terrorism. The Government therefore asked the Court to suspend the examination of this application and to require the applicants to avail themselves of the new remedy introduced in domestic law.

40. The applicants disputed the Government's objection and argued that they could not be required to exhaust a new remedy after the admissibility decision of the Court.

41. The Court recalls at the outset that the question of admissibility can be revisited at any stage of the proceedings in accordance with Article 35 §§ 1 and 4 *in fine* of the Convention (see *Azinas v. Cyprus* [GC], no. 56679/00, § 42, ECHR 2004-III and *S.S. and M.Y. v. Turkey*, no. 37951/97, §§ 24-31). This being so, it observes that under the compensation law of 27 July 2004 it is open to persons, such as the applicants in the present case whose applications are pending before the Court, to lodge an application with the compensations commissions in order to claim compensation for the damage they had sustained as a result of their displacement, destruction of property and inability to gain access to their possessions in their villages in south-east Turkey.

42. The Court has already examined that remedy and found it effective in respect of complaints about the alleged forced displacement and denial of access to possessions in the villages in south-east Turkey. In particular, it considered that the new remedy was accessible and provided reasonable prospects of success (see *Aydın İçyer v. Turkey* (dec.), no. 18888/02, §§ 73-87, 12 January 2006).

43. In the light of the above, the Court considers that there are no exceptional circumstances capable of exempting the applicants from the obligation to exhaust domestic remedies.

44. The Court therefore upholds the Government's preliminary objection on non-exhaustion of domestic remedies.

II. COMPLAINT UNDER ARTICLE 13 OF THE CONVENTION

45. The applicants complained that they had been denied an effective remedy with which to challenge the destruction of their houses and their forced eviction by the security forces. They relied on Article 13 of the Convention, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

46. The applicants complained under Article 13 of the Convention that they had no effective remedy available in respect of their Convention grievances.

47. The Government disputed the above allegations, arguing that there were effective domestic remedies of which the applicants had failed to avail themselves. They, alternatively, contended that there had been no shortcomings in the investigation and that the authorities had conducted an effective inquiry into the applicants' allegations.

48. The Court has already found that the Compensation Law does provide the applicants with an effective remedy in respect of their complaint concerning the alleged forced displacement, destruction of property and denial of access to their property. That finding is valid in the context of the complaint under Article 13 of the Convention.

49. There has therefore been no violation of Article 13 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Upholds* the Government's preliminary objection on non-exhaustion of domestic remedies;
2. *Holds* that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President