



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SEYFETTİN ACAR AND OTHERS v. TURKEY

(Application no. 30742/03)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Seyfettin Acar and Others v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 30742/03) 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 six Turkish nationals, Mr Seyfettin Acar, Mr Talat Acar, Mr Yusuf Acar, Mr Süleyman Acar, Mrs Narinci Acar and Mrs Hasbiye Acar (“the applicants”), on 17 July 2003.

2. The applicants were represented by Ms Türkan Aslan, a lawyer practising in İzmir. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicants alleged, in particular, that the authorities of the respondent Government had injured two of them and killed two of their relatives, in breach of the right to life guaranteed by Article 2 of the Convention.

4. On 25 March 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1945, 1967, 1945, 1953, 1957 and 1959, respectively. Mr Talat Acar lives in İzmir. The other applicants live in Midyat.

6. At the time of the events the applicants were living in the village of Çalpınar, which is located within the administrative jurisdiction of the town of Midyat, in south-east Turkey.

7. On 20 April 1992 a number of villagers from Çalpınar village were travelling in two vehicles. Some time after they left their village the vehicles were stopped by a group of village guards¹. The village guards then opened fire on the villagers and killed six of them, including the first applicant's brother and the sixth applicant's husband, Mr Süleyman Acar². A number of other villagers were injured. Two of the injured persons, including the second applicant's brother and the fifth applicant's husband, Mr Sabri Acar, died the following day in hospital. The third and the fourth applicants were among those injured in the incident. The third applicant, Yusuf Acar, was shot in the leg and his injuries required a month to heal. The fourth applicant, Süleyman Acar, had broken bones and a bullet had split in his body. The doctors did not deem it necessary to remove the bullet pieces as they were not life-threatening.

8. The same day the Midyat prosecutor visited the area and, with the assistance of a forensic doctor, examined the bodies. It was established that the deceased persons had been shot at close range.

9. The prosecutor asked the gendarmes who were in the area to collect the spent bullet cases. When the soldiers refused to help him, the prosecutor himself collected and secured a total of sixty-six spent cartridges discharged from the village guards' rifles. The rifles had been given to the village guards by the gendarmerie. As the gendarmes also refused to take the injured persons to the hospital, the prosecutor's clerk had to do it himself.

10. The prosecutor expressed the opinion that the village guards had set an ambush to kill the villagers.

11. According to a report prepared by the gendarmerie, however, it had not been the village guards who opened fire on the villagers but a group of PKK³ members wearing military uniforms.

1 Village guards are villagers employed by the State to assist security forces in the fight against terrorism in south-east Turkey.

2 There are two persons with the name Süleyman Acar; Süleyman Acar (who was born in 1957, was the sixth applicant's husband and the first applicant's brother) who died in the incident, and Süleyman Acar (who was born in 1953, the fourth applicant) who was wounded in the incident.

12. On 8 July 1992 the Midyat prosecutor filed an indictment with the Midyat Assize Court, charging twenty-seven village guards with multiple offences of homicide and attempted homicide.

13. For security reasons the trial was moved from the Midyat Assize Court to the Denizli Assize Court, in the west of the country.

14. Some eight and a half years later the Denizli Assize Court rendered its judgment on 20 November 2000 and acquitted all the defendants.

15. On 7 February 2002 the Denizli Assize Court's judgment was upheld by the Court of Cassation in respect of seventeen of the twenty-seven village guards but was quashed in respect of the remaining ten.

16. A retrial began before the Denizli Assize Court, which, on 20 May 2003, found the ten village guards guilty of the murder of the eight villagers as well as the attempted murder of a number of others, including the third and fourth applicants. The village guards were sentenced to life imprisonment. In its judgment the Denizli Assize Court stated the following:

“In view of the autopsy reports, there is no question as to the cause of death of the villagers. Instead, the question to be resolved is whether those who fired on the villagers were the accused village guards.

It is not possible to rely solely on the witness statements as they are contradictory on several points. However the witness statements given during the preliminary investigation seem to be, in general, objective. Relying on these initial statements it is established that the persons who had fired had their faces covered in order not to be recognised.

Furthermore, in the court's opinion, what a military commander should normally do when he is notified of an incident is to go to the scene of the incident as soon as possible. However in the present case, the fact that the non-commissioned officer Ali Kılıç checked all twenty-seven weapons one by one, without taking any action, is incomprehensible. Moreover the court notes that the Midyat Public Prosecutor maintained that the soldiers were not collecting the empty cartridges to help him and that he had to personally collect the empty cartridges which were near the dead bodies. In view of the above, the court concludes that Ali Kılıç, Kazım Demirbaş and Arif Güner were trying to defend the accused who were working with them to fight against terrorism, and therefore it does not find their statements reliable.

Considering the Midyat Public Prosecutor's statements, in which he said that there was a smell of gunpowder, the court comes to the conclusion that the allegation concerning the placing of empty cartridges at the scene of the incident in order to implicate the village guards in the crime is not corroborated in any persuasive manner by eyewitnesses or other evidence.

Moreover, the fact that three of the sixty-six cartridges were not fired from the village guards' weapons cannot be taken as a proof of their innocence. It is possible that one of the village guards had a weapon that had not been seized by the authorities after the incident.

³ PKK – the Kurdistan Workers' Party, an illegal organisation.

In conclusion, relying on the findings of the ballistic report and the statements of the Midyat Public Prosecutor, who had an impartial position in the present case, the court decides that ten of the accused village guards are responsible for the wounding and killing of the villagers whom they considered to be PKK supporters.”

17. On 9 December 2004 the Court of Cassation quashed the Denizli Assize Court's judgment in respect of two of the village guards and upheld it in respect of the remaining eight.

18. Criminal proceedings against the two village guards recommenced before the Denizli Assize Court and are still continuing, according to the information in the case file, as submitted by the parties.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2, 6 AND 13 OF THE CONVENTION

19. Four of the applicants complained that their relatives had been deprived of their right to life in violation of Article 2 of the Convention. Under the same provision, the remaining two applicants who were injured in the incident, that is Yusuf Acar and Süleyman Acar, complained that their right to life had also been infringed.

20. The applicants further complained that the trial conducted by the Denizli Assize Court could not be regarded as an effective remedy within the meaning of Article 13 of the Convention. Relying on Article 6 § 1 of the Convention, they argued that the Denizli Assize Court was not an independent or impartial tribunal and that the proceedings against the village guards had not been concluded within a reasonable time.

21. The Court considers it appropriate to examine these complaints solely from the standpoint of Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

22. The Government contested the applicants' arguments.

A. Admissibility

23. The Government referred to the ongoing trial before the Denizli Assize Court and argued that the complaint was inadmissible on account of the applicants' failure to exhaust domestic remedies.

24. In view of the substantial delays involved and the serious nature of the alleged crimes, the Court is not satisfied that the criminal proceedings, which have now been pending for over seventeen years, can be considered as furnishing an effective remedy which the applicants were required to use under Article 35 § 1 of the Convention (see *Acar and Others v. Turkey* (dec.), nos. 36088/97 and 38417/97, 27 November 2001). It follows that the Government's objection to the admissibility of the complaint must be rejected.

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The applicants submitted that their relatives had been deliberately killed by the village guards because they had refused to become village guards.

27. They further alleged that the investigation into the shooting had been ineffective and not independent. The gendarmes had attempted to cover up the killings by hindering the prosecutor's investigation. After the incident, members of the security forces and village guards had threatened the applicants and their relatives in relation to their complaints.

28. The applicants also drew the Court's attention to the Ministry of the Interior's information, according to which a total of 4,938 village guards had committed offences in the past eighteen years and that 1,215 of these offences had been against the person. In the opinion of the applicants, the respondent Government had failed to prevent village guards from committing similar offences in the present case and had thus been in breach of their obligation to protect the right to life of their two deceased relatives, as well as the life-threatening injuries caused to the two surviving applicants, Yusuf Acar and Süleyman Acar.

29. The Government considered that, although all necessary measures had been taken to prevent village guards from committing offences, it was impossible to expect a State to control the activities of all persons acting on

its behalf. There was no guarantee that the suspects in the present case, who had been employed to combat terrorism and who had had no comprehensive professional training, would not commit crimes. What could justifiably be expected from a State was to supervise such persons and to punish them if they became involved in criminal activities.

30. The Government were of the opinion that there had been hostility between the applicants' relatives and the village guards and, as such, the village guards had not acted on behalf of the State. The subsequent investigation and trial had been effective.

31. The Court observes that it has already examined the circumstances surrounding the same shooting incident and the effectiveness of the same investigation in its judgment in the case of *Acar and Others v. Turkey* (nos. 36088/97 and 38417/97, 24 May 2005), which had been lodged by two injured persons as well as by relatives of six of the eight persons killed in the same incident.

32. In its above-mentioned judgment of 24 May 2005, the Court concluded that the killing of the six persons and the injuries caused to the two applicants had been in breach of Article 2 of the Convention in its substantive aspect (*ibid.*, §§ 80-86). It also reached the conclusion that the investigation and the trial had been ineffective and that the applicants had thus been deprived of an effective remedy, in breach of Articles 2 (in its procedural aspect) and 13 of the Convention (*ibid.*, §§ 87-103).

33. The Court has examined the present application and the parties' submissions. It considers that the Government have not advanced any arguments requiring the Court to depart from its findings in the above-mentioned judgment.

34. In this connection, the Court reiterates, in particular, its misgivings as regards the use of civilian volunteers such as village guards in a quasi-police function. As pointed out in the judgment in the case of *Avşar v. Turkey* (no. 25657/94, §§ 413-414, ECHR 2001-VII (extracts)), the village guards operated outside the normal structure of discipline and training applicable to gendarmes and police officers, it was thus not apparent what safeguards there were against wilful or unintentional abuses of position carried out by the village guards either on their own initiative or under the instructions of security officers (see also *Acar and Others*, cited above, § 84). In this connection the Court considers it noteworthy that the Government themselves considered that the village guards had not been given comprehensive professional training (see paragraph 29 above). The Court's misgivings in this respect are further compounded by the Ministry of the Interior's information, which was submitted to the Court by the applicants (see paragraph 28 above), the accuracy of which is not disputed by the Government.

35. Moreover, the Court is not prepared to accept the Government's suggestion that the shootings were carried out by village guards acting in

their private capacity. It notes in this connection that village guards are employed and armed by the State. As established by the Denizli Assize Court, they were assisted by a number of soldiers in trying to cover their tracks and in hindering the prosecutor's investigation (see paragraphs 9 and 16 above). Indeed, as it held in the above-mentioned *Acar and Others* judgment, the Court considers that the failure of the gendarmes to react to the unlawful activities of the village guards supports a strong inference of acquiescence in those activities.

36. In the light of the foregoing, the Court finds that the State must bear responsibility for the killing of the applicants' relatives Süleyman Acar and Sabri Acar, and the attempt to kill the applicants Yusuf Acar and Süleyman Acar. No justifications for the killings or attempted killings having been provided, the Court concludes accordingly that there has been a breach of Article 2.

37. The Court has also examined the investigation. It considers, once more, that the Government have not advanced any arguments requiring the Court to reach a different conclusion from that found in the above-mentioned *Acar and Others* judgment (§§ 87-94).

38. It follows that there has been a violation of Article 2 of the Convention in its procedural aspects regarding the ineffectiveness of the investigation.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. Under Article 8 of the Convention, the applicants complained that they had been forced by security forces to become village guards and, when they had refused, they had been forced to leave their village.

40. The Government contested that argument.

41. The Court has examined the applicants' allegation in the light of the evidence submitted to it. It considers that there is an insufficient basis in fact to ground this allegation. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

43. The fifth applicant, Mrs Narinci Acar, claimed damages on her own behalf and on behalf of her nine children, who were aged between four months and seventeen years at the time of the killing of her husband Sabri Acar. She claimed that her husband had been supporting his family by working as a farmer. Having regard to the legal minimum wage and the applicable interest rate, Narinci Acar claimed the sum of 50,000 euros (EUR) in respect of pecuniary damage and EUR 150,000 in respect of non-pecuniary damage.

44. The sixth applicant, Mrs Hasbiye Acar, claimed damages on her behalf and on behalf of her seven children, who had been aged between five months and twelve years at the time of the killing of her husband Süleyman Acar. She maintained that they had been dependent on Süleyman Acar as a husband and father. He had been supporting his family by working as a farmer. Having regard to the legal minimum wage and the applicable interest rate, Hasbiye Acar claimed the sum of EUR 50,000 in respect of pecuniary damage and EUR 150,000 in respect of non-pecuniary damage.

45. The first applicant, Seyfettin Acar, claimed EUR 50,000 in respect of pecuniary damage and EUR 130,000 in respect of non-pecuniary damage on his own behalf and on behalf of the wife and seven children of his deceased brother Süleyman Acar.

46. The second applicant, Talat Acar, claimed EUR 50,000 in respect of pecuniary damage and EUR 150,000 in respect of non-pecuniary damage on his behalf and on behalf of the wife and nine children of his deceased brother Sabri Acar.

47. The third applicant, Yusuf Acar, claimed EUR 50,000 in respect of pecuniary damage. He submitted that, as a result of his injuries, he had become disabled and had thus been unable to work since the incident and provide for his wife and four children. He also claimed EUR 75,000 in respect of non-pecuniary damage.

48. The fourth applicant, Süleyman Acar, claimed EUR 50,000 in respect of pecuniary damage. He submitted that, as a result of his injuries, he had become disabled and had thus been unable to work since the incident

and provide for his wife and fourteen children. He also claimed EUR 75,000 in respect of non-pecuniary damage.

49. The Government considered the sums to be excessive and unsupported, and submitted that awarding such amounts would lead to unjust enrichment.

50. The Government also contested the claims made by the first and the second applicants on behalf of the wives of their two deceased brothers. The former were themselves applicants in the case and were making their own separate claims in respect of pecuniary as well as non-pecuniary damage.

51. The Court reiterates that there must be a causal connection between the damage alleged by the applicants and the violations of the Convention found. This may, if appropriate, include compensation in respect of loss of earnings (see, *inter alia*, *Barberà, Messegue and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C).

52. The Court has held (paragraph 36 above) that the authorities were responsible under Article 2 of the Convention for the death of the applicants' relatives and for the injuries to two of the applicants. It considers that there is a direct causal link between the violation of Article 2 and the loss of potential financial support which the victims had been providing to their dependants. The Court recognises that, if they were still alive or able-bodied, they would have been able to contribute to their family's livelihood (see *Acar and Others*, cited above, §120).

53. In view of the documents submitted by the applicants in support of their claims and having regard to equitable considerations, the Court awards the applicants the following amounts in respect of pecuniary damage:

- (a) EUR 25,000 to the fifth applicant Narinci Acar and her nine children;
- (b) EUR 24,000 to the sixth applicant Mrs Hasbiye Acar and her seven children;
- (c) EUR 10,000 to the third applicant Yusuf Acar; and
- (d) EUR 10,000 to the fourth applicant Süleyman Acar.

54. In light of the foregoing the Court does not deem it necessary to make awards to Mr Seyfettin Acar or Talat Acar in respect of pecuniary damage for the killings of their brothers.

55. The Court reiterates that it has found that the authorities were responsible for the incident which resulted in the wounding of some of the applicants and the killing of their relatives. In addition to violations of Article 2 in that respect, it has also found that the authorities failed to provide an effective investigation of these matters, in breach of the procedural obligation under Article 2 of the Convention (see paragraph 38 above). In these circumstances and having regard to the awards made in comparable cases (*ibid.*, § 126), the Court awards, on an equitable basis, the sum of EUR 30,000 for non-pecuniary damage to each of the two applicants Mrs Hasbiye Acar and Mrs Narinci Acar; EUR 20,000 for non-pecuniary damage to each of the two applicants Mr Yusuf Acar and Mr Süleyman

Acar, and EUR 5,000 for non-pecuniary damage to each of the two remaining applicants Seyfettin Acar and Talat Acar.

B. Costs and expenses

56. The applicants also claimed EUR 4,150 for costs and expenses incurred before the Court. This sum included EUR 3,500 for the fees of their legal representative, in respect of which the applicants submitted a document showing that the legal representative had spent a total of 102 hours on the case. The remaining EUR 650 was claimed in respect of postal and telephone expenses.

57. The Government were of the opinion that the amount claimed was excessive and unsupported.

58. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that the applicants' claims may be regarded as having been necessarily incurred and reasonable in their amounts. It thus awards the applicants, jointly, EUR 4,150 to cover the costs of the proceedings before the Court.

C. Default interest

59. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 2 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in both its substantive and procedural aspects;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts plus any tax that may be chargeable, to be converted into the

national currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 5,000 (five thousand euros) to the first applicant Mr Seyfettin Acar in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros) to the second applicant Mr Talat Acar in respect of non-pecuniary damage;
 - (iii) EUR 10,000 (ten thousand euros) to the third applicant Mr Yusuf Acar in respect of pecuniary and EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;
 - (iv) EUR 10,000 (ten thousand euros) to the fourth applicant Mr Süleyman Acar in respect of pecuniary and EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;
 - (v) EUR 25,000 (twenty-five thousand euros) to the fifth applicant Mrs Narinci Acar in respect of pecuniary and EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage;
 - (vi) EUR 24,000 (twenty-four thousand euros) to the sixth applicant Mrs Hasbiye Acar in respect of pecuniary and EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage; and
- (b) that the respondent State is to pay the applicants, within the same three month period EUR 4,150 (four thousand one hundred and fifty euros) to the six applicants jointly in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
- (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President