



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

Information Note on the Court's case-law 63

April 2004

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***Ahmet Özkan and Others v. Turkey - 21689/93***

Judgment 6.4.2004 [Section II]

**Article 2**

**Article 2-1**

**Life**

Inhuman and degrading treatment of villagers by security forces, and deaths related thereto: *violation*

*Facts:* The applicants claimed that in February 1993 security forces had attacked their village, as a result of which two children had died. They maintained that on the same day the security forces had set fire to their houses and had taken most of the male villagers into detention. After assembling the villagers in the village square, the security forces had obliged adult male villagers to lie face down on the ground, in a mixture of mud and slush, in view of their families. These boys and men had occasionally been beaten, kicked and trampled on by the soldiers guarding them. A number of the men had then been made to walk for two to three hours barefoot through the snow and slush from the village to the gendarme station, and had been subjected to ill-treatment during detention, resulting in serious injuries of some villagers and the death of one. The applicants further alleged that the security forces had returned to their village later that year, when they had burned other houses and destroyed harvested crops, and that they had returned once again in the spring of 1994 when they had killed four villagers and forced the villagers to leave. The Government disputed this version of events and claimed that when the security forces had approached the village to carry out a search in the valley they had come under fire and had responded in self-defence. In the course of the ensuing clash, the roofs of some houses in the village had caught fire, and nobody, besides a gendarme, had been injured or killed during the events. The facts being disputed by the parties, a delegation of the former European Commission of Human Rights took evidence.

*Law:* Article 2 (use of force by security forces) – Bearing in mind that at the time of the events there were serious disturbances in south-east Turkey involving armed conflict between the security forces and members of the PKK, the security forces' tactical reaction to the initial shots fired at them from the village had not represented a disproportionate degree of force, and had been "absolutely necessary" for the purpose of protecting life.

*Conclusion:* no violation (unanimously).

Article 2 (deaths of villagers) – In relation to the daughter of one of the applicants, it remained unsubstantiated that she had died as a consequence of the failure of the security forces to secure appropriate medical treatment. However, the callous disregard displayed by the security forces as to the possible presence of civilian casualties after the exchange of fire amounted to a breach of the authorities' obligation to protect life under

Article 2. As regards the villager who had died of pneumonia whilst in custody, it had been established beyond reasonable doubt that in all likelihood he had contracted this illness as a result of having been made to walk barefoot through the snow, as well as by the conditions of his subsequent detention. The authorities were therefore regarded as liable for the cause of his death. In both cases, the Court found that the public prosecutors involved had failed to conduct effective investigations into the circumstances surrounding these deaths, amounting to violations of Article 2 under its procedural limb.

*Conclusion:* violation (unanimously)

Article 3 (treatment of villagers in the village square) – In the absence of any resistance from the villagers, the treatment of the men in the square was unjustified and surpassed the usual degree of intimidation and humiliation inherent in every arrest or detention. In consequence, there had been a breach of Article 3 of the Convention.

*Conclusion:* violation (unanimously).

Article 3 (taking into detention and conditions of detention) – Several of the male villagers had developed frostbite on their feet as a result of the conditions in which they had been made to walk from the village to the gendarme station. The conditions in which they had been held in detention in two unfurnished rooms in the basement of the gendarme station, for periods of between six and thirteen days, had had detrimental effects on their health and well-being. In consequence, the Court found that they had been subjected to inhuman and degrading treatment in violation of Article 3. There had also been a procedural violation of this Article in view of the total inactivity of the judicial authorities to investigate the manner in which the detained villagers had sustained their foot injuries.

*Conclusion:* violation (unanimously).

Article 5 – The villagers had not been held in unacknowledged detention, but the complete lack of custody records at one of the gendarme stations and the unreliability of such records at another implied there had been an infringement of the prohibition of arbitrariness inherent in Article 5.

*Conclusion:* violation (unanimously).

Article 5 § 1 (procedure prescribed by law) – It had not been sufficiently shown that the villagers' detention had been duly authorised by a public prosecutor, as required under domestic law. Moreover, there were no facts or circumstances showing that the villagers' detention without adequate authorisation had been strictly required by the exigencies of the situation envisaged by Article 15 § 1.

*Conclusion:* violation (unanimously).

Article 5 § 3 (promptly before a judge) – The failure to bring twenty eight of the villagers before a "judge or other officer authorised by law to exercise judicial power" and the holding of sixteen other villagers for seventeen days before they were brought before the Magistrates' Court were not strictly required by the situation in south-east Turkey, as relied on by the Government.

*Conclusion:* violation (unanimously)

Article 5 § 3 (length of pre-trial detention) – One villager had been indicted by the State Security Court to stand trial for PKK-related offences in April 1993. Although the nature of the charges and the strength of the evidence against him may initially have justified his detention, that of itself was not a sufficient ground for prolonging his detention

pending first-instance trial proceedings until September 1998 (five years, six months and fifteen days).

*Conclusion:* violation (unanimously).

Article 8 – It was established that two houses had been deliberately set on fire by the security forces during the events, and that the houses of eleven other villagers had also caught fire as a result of the security forces' intensive firing on the village. These acts represented grave and unjustified interferences with the right to respect for their private and family lives of the applicants concerned.

*Conclusion:* violation (unanimously).

Article 41 – The Court made individual awards to the applicants under all heads of damage. It also made an award in respect of costs and expenses.

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