



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37411/97
by Yurdanur SERHAT and Firdevs KARAALIOĞLU
against Turkey

The European Court of Human Rights (Third Section), sitting on 7 November 2000 as a Chamber composed of

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

Mr W. FUHRMANN,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mr R. TÜRMEŒ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 11 May 1995 and registered on 20 August 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicants are Turkish nationals, born in 28 May 1937 and 29 November 1952 respectively and living in Istanbul. They are represented before the Court by Mr Mustafa Ayzit, a lawyer practising in Istanbul. The applicants have introduced their application on behalf of their deceased husbands and on their own and their children's behalf.

The facts of the case, as submitted by the applicants, may be summarised as follows.

Around midnight on 11 November 1994 the first applicant and her husband, Medet Serhat, left a wedding party in Istanbul to return home to their house in the Erenköy district of Istanbul, about an hour to an hour and a half drive away. They were travelling in a car driven by the second applicant's husband, İsmail Karaalioğlu.

Medet Serhat was a well-known Kurdish lawyer and was active in the defence of Kurdish rights. One of his clients, a Kurdish businessman, was murdered by persons unknown on 14 January 1994. Medet Serhat was arrested in 1994 and detained for sixty days. It is alleged that he was tortured during that time. İsmail Karaalioğlu had been working as his chauffeur for four years.

When they were close to home, a white Renault car containing several passengers forced them to stop. A man emerged from the car and fired shots at the second applicant. He then started firing at Medet Serhat, saying: 'I've got you.' The first applicant tried to shield her husband and was herself shot several times. Medet Serhat and İsmail Karaalioğlu died either immediately or almost immediately in the attack.

The gunman got back into the car and the car drove off at speed. The police arrived at the scene within a few minutes, having been called on the emergency number. The first applicant was taken to hospital where she underwent an operation to have the bullets removed from her body.

Following her operation, the first applicant gave a statement at the hospital to police officers. She claims that the interview was cursory and that she overheard one officer saying that the killers could have been caught if the police at the scene had immediately contacted a nearby police station.

The second applicant was informed on the telephone by someone at the Serhat's home around 7.00 a.m. on 12 November 1994 that her husband had been involved in a car accident and had to be taken to hospital. When the second applicant arrived at the hospital she was told that her husband had been shot dead and that his body was in the hospital morgue. According to the second applicant, the security forces never asked her for a statement although they put questions to her neighbours about her deceased husband.

She has not been informed of any investigation having been carried out into his death.

The applicants state that as of October 1996 there have been no developments in the case file. They report that, according to the competent public prosecutor, the case file has still not been sent back by the police homicide department. The first applicant draws attention to her claim that the autopsy report on her husband went missing from the file at one stage. The second applicant states that her husband's address book was not returned to her along with his belongings.

COMPLAINTS

The applicants complain that their spouses were killed by agents of the State and were victims of the administrative practice of 'unknown perpetrators' killings. The first applicant states that the facts disclose violations of Articles 2, 3, 6, 8, 9, 10, 13, 14 and 18 of the Convention. The second applicant relies on the same articles with the exception of Articles 9, 10 and 14 of the Convention. More specifically:

1. The applicants maintain that the authorities have failed to carry out an effective investigation into the deaths of their husbands.

2. The applicants state that they are victims of a breach of Article 3 of the Convention since they have been unable to discover who killed their husbands, for what reason and at whose instigation.

The first applicant also asserts that the fact that she was seriously injured in the shooting and witnessed the murder of her husband by State agents discloses an additional breach of Article 3 in her respect.

3. The applicants maintain that the lack of any effective official investigation into the murders and that the absence of any effective domestic remedy to secure redress for their complaints gives rise to a violation of Article 6 and Article 13 of the Convention.

4. The first applicant alleges that her deceased husband was targeted on account of his Kurdish identity, pro-Kurdish views and his defence of Kurdish defendants. The first applicant claims that his death violated his right to hold opinion and to express his views as a lawyer, in breach of Articles 9 and 10 of the Convention.

5. The first applicant further states that her husband was killed on account of his Kurdish identity and the Convention violations of which she complains stem from that fact. She invokes Article 14 in conjunction with the above-named Articles of the Convention.

6. Both applicants assert that the official involvement of State agents in "unknown perpetrator killings" amount to an abuse of power and a violation of Article 18 of the Convention.

THE LAW

The Court has examined the application lodged on 18 June 1997 and registered on 20 August 1997. It notes that the applicants first notified their complaints to the Secretariat of the Commission on 11 May 1995 and that their legal representatives at the time indicated that “the completed application is being prepared”. There was no further contact with the Secretariat of the Commission until 18 June 1997.

The Court recalls that the date of introduction of an application shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application (Rule 47 § 2 of the Rules of Court). However, the Court notes that in the instant case there has been an interval of more than two years between the date of the applicants’ first communication and the submission of their application. In accordance with Convention case-law, where a substantial interval follows before an applicant submits further information as to his proposed application, the Court must examine the particular circumstances of the case in order to determine the date to be regarded as the date of introduction and from which to calculate the running of the six-month period set out in Article 35 § 1 of the Convention (see No. 47337/99, *Gaillard v. France*, decision 11.07.00 [Section 3]).

In this connection, the Court observes that the applicants state that the last check on the progress being made in the investigation into the deaths of their husbands was carried out in October 1996. In their application, the applicants make no reference to any further contacts with the investigating authorities. The Court also notes that the applicants gave a power of attorney to several lawyers and they have not claimed that they were in any way hindered by the authorities in the exercise of their right of individual petition under the Convention. In its opinion, the applicants have not provided any explanation for the lack of timely follow-up to their initial letter. In these circumstances the Court considers that the date of introduction of the application should be taken to be 18 June 1997.

The Court notes that the applicants allege, *inter alia*, that their husbands were unlawfully killed, that State agents may have been involved and that no effective investigation has been carried out by the authorities. The applicants claim that domestic remedies are illusory, inadequate and ineffective and that they have done everything that could be expected of them under Article 35 § 1 of the Convention to secure redress. The Court recalls in this latter connection that in the absence of domestic remedies the six-months period runs from the act complained of in the application (application no. 25654/94, Dec. 15. 5. 95, D.R. 81, p. 80). In the applicants’ case, this date would be taken to be 10 November 1994, the date on which their husbands were killed. Having regard to the date fixed for the date of introduction the application would have to be considered time-barred.

However, the Court further recalls that special considerations could apply in exceptional cases where an applicant avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective (*ibidem*). In the Court's opinion, and assuming that there were no effective remedies, the applicants in the instant case should have become aware at the latest by October 1996 that no effective investigation had been or would be conducted into the deaths of their husbands. On that account, the application should have been introduced not later than April 1997. In the event it was introduced on 18 June 1997.

It follows that the application is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S. DOLLÉ
Registrar

J.-P. COSTA
President