

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

SECOND SECTION

DECISION

Application no. 35880/05
by Fatma ARSLAN and Others
against Turkey

The European Court of Human Rights (Second Section), sitting on 24 May 2011 as a Committee composed of:

David Thór Björgvinsson, *President,*
Giorgio Malinverni,
Guido Raimondi, *judges,*
and Françoise Elens Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 September 2005,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

PROCEDURE

The applicants, Mr Mustafa Arslan, Mrs Fatma Arslan, Mr Murat Arslan, Ms Deniz Arslan, Ms Derya Bicolar and Ms Dilek Demir are Turkish nationals who were born in 1940, 1941, 1965, 1977, 1969 and 1974 respectively and live in Diyarbakır. The first two applicants are the parents and the remaining four applicants are the siblings of Mr Servet Arslan, who was born in 1971 and killed in 1994. The applicants were represented before the Court by Mr Tahir Elçi, Mr Burhan Deyar and Ms Habibe Danışman Deyar, lawyers practising in Diyarbakır. The Turkish Government ("the Government") were represented by their Agent.

The circumstances of the case

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

On 5 September 1994 the first applicant submitted a request to the Diyarbakır public prosecutor and informed the prosecutor that his son Servet had been missing since 4 September 1994. He asked the prosecutor to search for his son. The same day he gave a police officer the description of his son and information about his son's last known movements on 4 September 1994.

The following day the second applicant also gave information to a police officer about her son Servet's movements on 4 September.

On 7 September 1994 the bodies of Servet Arslan and a certain Şahabettin Latifeci were found by villagers at the side of a road near a village located within the administrative jurisdiction of Diyarbakır. Both deceased had been gagged and their hands tied. There were extensive injuries and burns on the bodies. Both deceased had their identity cards in their trouser pockets. It was concluded that they had been killed somewhere else.

The same day an examination of the bodies was carried out by a doctor and a prosecutor, who concluded that the two men had been ill-treated and strangled.

On 20 September 1994 the first applicant made a statement in Diyarbakır Gendarmerie Headquarters. He asked for those responsible for the killing of his son to be arrested and prosecuted.

In 1996 information regarding the killings and their perpetrators were published in a report prepared by an investigatory commission of the Grand National Assembly. On 29 March 2005 the Diyarbakır prosecutor filed an indictment with the Diyarbakır Assize Court and accused Abdulkadir Aygan, Mahmut Yıldırım, Abdulkerim Kırca, Muhsin Gül, Fethi Çetin, Kemal Emlük, Saniye Emlük and Yüksel Uğur of ill-treating and killing eight persons, including Servet Arslan.

Criminal proceedings against the defendants are still pending before the military and civilian criminal courts.

COMPLAINTS

The applicants complained under Articles 2 and 5 of the Convention that Servet Arslan had been unlawfully deprived of his liberty and killed by agents of the respondent State. Under the same Article the applicants also complained that no effective investigation had been carried out by the national authorities.

Under Article 3 of the Convention the applicants alleged that Servet Arslan had been ill-treated by agents of the State. They further complained that the indifference displayed by the national authorities to their calls for help and those authorities' failure to carry out an investigation had amounted to inhuman treatment within the meaning of the same Article.

Relying on Article 13 of the Convention the applicants argued that they had been deprived of an effective remedy because of the failure to investigate the killing.

THE LAW

On 24 February 2011 the Court received the following declaration from the Government:

> "I declare that the Government of Turkey offer to pay ex gratia the sum of 30,000 (thirty thousand) euros jointly to Mr Mustafa Arslan, Mrs Fatma Arslan, Mr Murat Arslan, Ms Deniz Arslan, Ms Derya Bicolar and Ms Dilek Demir with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Turkish liras at the rate applicable on the date of payment, and will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

On 8 March 2011 the Court received the following declaration signed by the applicants' legal representative:

> "We, Ms Habibe Danışman Deyar, Mr Burhan Deyar and Mr Tahir Elçi, the applicants' legal representatives, note that the Government of Turkey are prepared to pay ex gratia the sum of 30,000 (thirty thousand) euros jointly to Mr Mustafa Arslan, Mrs Fatma Arslan, Mr Murat Arslan, Ms Deniz Arslan, Ms Derya Bicolar and Ms Dilek Demir with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be converted into Turkish liras at the rate applicable on the date of payment, and will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

> Having consulted our clients, we would inform you that they accept the proposal and waive any further claims against Turkey in respect of the facts giving rise to these applications. They declare that this constitutes a final resolution of the case."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Françoise Elens Passos
Deputy Registrar

David Thór Björgvinsson
President