

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

SECOND SECTION

DECISION

Application no. 24957/04
Abdullah AVUL and Zümeyran AVUL
against Turkey

The European Court of Human Rights (Second Section), sitting on 4 September 2012 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 June 2004,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicants, Mr Abdullah Avul and Ms Zümeyran Avul, are Turkish nationals, who were both born in 1964 and live in the Yukarı Tulgalı village of the Özalp district in Van. They were represented before the Court by Mr M. Timur, a lawyer practising in Van.

2. The Turkish Government ("the Government") were represented by their Agent.

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

4. On the night of 29 June 2003 the applicants' son, Adem Avul, who was fifteen years old at the time, was shot by soldiers from the Islamic Republic of Iran on the Turkish side of the Turkish/Iranian border.

5. On the same day a post-mortem examination was carried out on the deceased at the Özalp State Hospital. The public prosecutor and the doctor observed a bullet entry wound on the deceased's back and a bullet exit wound on his neck. The doctor considered that no autopsy was needed since the cause of death was clearly established as circulation insufficiency due to internal bleeding as a result of disintegration of the internal organs and the lungs. Adem Avul's clothes were sent for a chemical examination to establish the exact range from which the shot had been fired.

6. The same night, A.A., the mayor of Yukarı Tulgalı village, made statements to the Özalp public prosecutor. He submitted that he had heard from the villagers that Adem Avul had been shot. He had then gone to the gendarmerie station and taken the body to the hospital, since the gendarmerie commander had told him to do so. The mayor further noted that he had no information as to whether Adem Avul had been with his uncle, F.A., at the time of his death.

7. On 30 June 2003 an examination was conducted of the site where the applicants' son had died. The Özalp public prosecutor heard F.A., who said that he had been with the deceased at the time of his death. F.A. stated that at around 9 p.m. on 29 June 2003 they had left their village and gone towards the border on their horses to meet an Iranian national who was going to provide him with fuel to be transported to Turkey illegally. F.A. further maintained that Adem Avul had been 20 metres ahead of him when he heard six or seven gunshots coming from the Iranian side. He then heard Adem Avul asking for help and found him lying down on the ground. F.A. called his fellow villagers and told them their location. He then put his nephew on his own horse and moved towards the village. On the way back, he met the villagers and they put Adem Avul in a minibus. When they arrived in the village, soldiers were there. Adem Avul was subsequently taken to the gendarmerie station and then to a hospital. F.A. noted that he had not heard gunshots coming from Turkish soldiers and that he had heard people speaking in Farsi after the gunshots.

8. During the on-site examination, C.C., a military commander, also made statements. He contended that on the night of the killing he had been close to the border. He had heard a total of eight or nine gunshots and seen two riders entering Turkish territory. When they arrived in the village, they took Adem Avul to the gendarmerie station and he ordered his immediate transfer to the hospital. C.C. stated that he did not know whether or not Adem Avul had been alive when he was taken to the hospital. He maintained that he and his team had not opened fire.

9. On 16 July 2004 the Gendarme District Criminal Laboratory issued a report regarding the gunpowder residues on Adem Avul's clothes. It was indicated that he had been shot from long range.

10. On 3 and 14 July 2003 respectively, the incident was discussed in two meetings of the First Degree Border Commission, composed of the Turkish District Governor and Iranian officials, pursuant to the terms of the Tehran agreement, signed between Turkey and Iran in 1937 on the security of their borders, and the resolution of conflicts at their borders. As the parties could not come to a mutual understanding, on 26 January 2005 the file was put in the agenda of the Second Degree Border Commission, in the presence of the Van Governor and an Iranian Colonel. At this meeting, both parties agreed that the case should be examined by the Supreme Border Commission, composed of both Turkish and Iranian authorities. According to the information in the file, to this date, Adem Avul's case has not yet been included in one of the agendas of this Commission and the investigation into his killing is still pending.

COMPLAINTS

11. The applicants maintained that their son had been killed unlawfully and complained about the ineffectiveness of the investigation. In this connection, they relied on Articles 2, 6 and 13 of the Convention.

12. Relying on Articles 2 and 3 of the Convention, the applicants alleged that when their son was shot, he was seriously wounded but not dead. They argued that by taking him first to the gendarmerie station instead of the hospital, the security forces hindered his right to prompt and adequate medical care.

13. Under Article 1 of Protocol No. 1 to the Convention, the applicants maintained that following the death of their son, they were deprived of his financial support.

THE LAW

14. On 10 August 2012 the Court received the following declaration from the Government:

> "The Government regret the failure of the Turkish authorities to carry out an effective investigation into the circumstances of the death of the applicants' son that occurred at the Turkish/Iranian Border as a result of the use of force by soldiers from the Islamic Republic of Iran, notwithstanding the resolve of the Government to remedy such failures.

The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the right to life – including the obligation to carry out an effective investigation – is respected. In particular, regarding the killings that occur at the Turkish/Iranian border, they will take the requisite steps to have such incidents examined by the Border Commission, established in accordance with the terms of the Tehran agreement, signed between Turkey and Iran on 14 March 1937, on the security of their borders, and the resolution of conflicts at their borders.

I further declare that the Government of Turkey offer to pay *ex gratia* to Mr Abdullah Avul, and to Mrs Zümeyran Avul, jointly, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights,

- 55,000 (fifty five thousand) euros to cover any pecuniary and non-pecuniary damage, plus any tax that may be chargeable; and

- 5,000 (five thousand) euros to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants.

This sum will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision by the Court to strike the case out of its list of cases. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them, 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."

15. On 25 July 2012 the Court received the following declaration signed by the applicants:

"I, Murat Timur, note that the Government of Turkey are prepared to pay *ex gratia* to Mr Abdullah Avul and to Mrs Zümeyran Avul, jointly, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights,

- 55,000 (fifty five thousand) euros to cover any pecuniary and non-pecuniary damage, plus any tax that may be chargeable; and

- 5,000 (five thousand) euros to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants.

These sums will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. 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 my clients, I would inform you that they accept the proposal and waive any further claims against Turkey in respect of the facts giving rise to this application. They declare that this constitutes a final resolution of the case."

16. The Court takes note of the friendly settlement reached between the Parties. It has to examine if the settlement is based on respect for human rights as defined in the Convention and its Protocols (Article 39 of the Convention). In this connection, it reiterates that having regard to its fundamental character, Article 2 of the Convention contains a procedural obligation to carry out an effective investigation. The obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Ergi v. Turkey*, 28 July 1998, § 82, Reports of Judgments and Decisions 1998-IV). The State must therefore ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 298, 24 March 2011).

17. Having regard to the terms of the Government's declaration and the modalities for ensuring compliance with the undertakings referred to therein, the Court is satisfied that the friendly settlement reached between the parties is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application.

18. 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

Françoise Tulkens
President