

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

SECOND SECTION

DECISION

Application no. 55768/11
Mahmut DURAN and Şahide DURAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 29 January 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 23 May 2011,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicants, Mr Mahmut Duran and Ms Şahide Duran, are Turkish nationals, who were born in 1967 and 1973 respectively and live in Diyarbakır. They were represented before the Court by Ms R. Bataray Saman and Mr S. Çelebi, 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 24 March 2006 fourteen PKK members were killed in armed clashes in south-east Turkey. A funeral was organised in Diyarbakır on 28 March 2006 for four of the deceased. During the funeral and in the following days large-scale clashes took place between police officers and civilians in Diyarbakır.

At around 5.30 p.m. on 29 March 2006, the applicants' nine and a half year-old son Abdullah was on the balcony of their flat when, according to the applicants, a police officer fired in his direction. Abdullah was hit by a bullet and died on his way to hospital.

In the course of the clashes a total of ten civilians, five of whom were under the age of 18, were killed and a further 200 civilians were injured. Fifty-six of those 200 were injured by firearms. Eighteen police officers were also injured by stones thrown by civilians.

On 30 March 2006 a post-mortem examination was carried out on the body of the applicants' son. The cause of death was established by the doctor as internal bleeding and shock, caused by the firearm injury.

On 19 April 2006 lawyers representing the first applicant, Mr Duran, made an official complaint to the Diyarbakır prosecutor, and asked for the police officers responsible for the killing of Mr Duran's son to be prosecuted and punished. In the petition the lawyers informed the prosecutor that the neighbours had witnessed the incident and could confirm that Abdullah had been shot by a police officer.

In an apparent response to a request from the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, the Diyarbakır prosecutor prepared a report on 1 May 2006. In his report the prosecutor stated that the investigation into the death of the applicants' son was ongoing. The prosecutor added that the investigations into the deaths of six other persons were also still in progress. It appears from the report that three of those six persons had been killed when they were hit by cartridges containing CS gas, one had been killed with a blunt object and the remaining two had been killed with bullets.

On 20 October 2008 the Diyarbakır prosecutor issued a standing order to the local police forces to search for the perpetrator of the killing.

COMPLAINTS

Relying on Article 2 of the Convention the applicants complain that their son Abdullah was intentionally killed by police officers.

Under Articles 2 and 13 of the Convention the applicants complain that no effective investigation was carried out by the national authorities and that the standing search order issued by the prosecutor means that no meaningful steps will now ever be taken.

The applicants also complain that they were subjected to ill-treatment within the meaning of Article 3 of the Convention on account of their suffering stemming from the arbitrary killing of their son, as well as on account of the indifference displayed by the judicial authorities to the killing.

Relying on Article 14 of the Convention the applicants allege that their rights under the Convention were violated because of their Kurdish origin.

Finally, under Article 17 of the Convention the applicants complain that the police officers abused the second paragraph of Article 2 of the Convention.

THE LAW

On 23 October 2012 the Court received the following declaration from the Government:

> "The Government regret the occurrence of individual cases of death resulting from the use of excessive force, as in the circumstances of the present case which concerns the death of the applicants' son, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.
>
> It is accepted that the use of excessive or disproportionate force resulting in death or fatal injury constitutes a violation of Article 2 of the Convention and 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 effective investigations – is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths and injuries in circumstances similar to those of the present application as well as more effective investigations.
>
> I declare that the Government of Turkey offer to pay jointly to Mr Mahmut Duran and Mrs Şahide Duran, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, the following *ex gratia* sums:
>
> - 65,000 (sixty-five thousand) euros to cover any non-pecuniary damage, plus any tax that may be chargeable; and
>
> - 3,000 (three 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 the national currency of the respondent State 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. 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."

On 10 December 2012 the Court received the following declaration signed by the applicants:

"We, Rehşan Bataray Saman and Serdar Çelebi, note that the Government of Turkey are prepared to pay jointly to Mr Mahmut Duran and Mrs Şahide Duran, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, the following *ex gratia* sums:

- 65,000 (sixty-five thousand) euros to cover any non-pecuniary damage, plus any tax that may be chargeable; and

- 3,000 (three 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 the national currency of the respondent State 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 amounts 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 this application. 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 reasons to justify a continued examination of the application.

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 in accordance with Article 39 of the Convention.

Stanley Naismith
Registrar

Guido Raimondi
President