



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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 76575/01
by Lütfi Celul KARABARDAK and Others
against Cyprus

The European Court of Human Rights (Second Section), sitting on
22 October 2002 as a Chamber composed of

M. J.-P. COSTA, *président*,

M. A.B. BAKA,

M. Gaukur JÖRUNDSSON,

M. L. LOUCAIDES,

M. C. BÎRSAN,

M. M. UGREKHELIDZE,

M^{me} A. MULARONI, *juges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced on 30 October 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants are Mr Lütfi Celul Karabardak, Mrs Bahire Lütfoğlu, Mr Alper Lütfoğlu, Mr Cahit Lütfoğlu, Mr Lütfi Lütfoğlu and Mrs Aysel Altioğlu. They were born in 1933, 1933, 1958, 1956, 1961 and 1954 respectively and live in the “Turkish Republic of Northern Cyprus” (“TRNC”). They are represented before the Court by Mr Z. Necatigil and Ms S. Karabacak, lawyers practising in Turkey.

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

The first applicant was living in Erenköy (Kokkina), Cyprus, when he was abducted on 1 January 1964 by forces under the control and/or the responsibility of the respondent Government. The second applicant is the wife of the first applicant. The other applicants are the children of the first applicant.

The applicants submit that in 1964 their village had run out of food supplies because hostilities between the two communities had prevented any form of safe transportation of food. On 1 January 1964 the first applicant, who was a driver by profession, together with his friend, Saydam Hüsni (Baybora), took his bus and headed towards the Turkish-Cypriot town of Lefke. On the way, whilst passing through the Greek-Cypriot village of Pyrgos, he and his friend were abducted by a group of armed Greek-Cypriots, including a police officer, and taken to an unknown destination. They were never heard of again.

The persistent efforts of the relatives to ascertain the fate of the missing persons were in vain. Subsequently, on 4 April 1989, the first applicant’s case was submitted to the appropriate authority on missing persons, the United Nations Committee on Missing Persons in Cyprus (“CMP”) (case number 145).

According to the personal diary of a certain Georghiou Luca, a teacher from the Greek-Cypriot village of Mosphileri, which was found in the possession of a Turkish-Cypriot journalist, the missing persons were “executed” summarily in the Greek-Cypriot cemetery of Pyrgos village by armed Greek Cypriots named Mouzouri and Pari “on the instructions of the Headquarters” (the code-name of the then Minister of Interior, Polycarpus Georghadjis). Through the intermediary of the Turkish-Cypriot member of the CMP, the relatives submitted this additional information to the CMP in the hope of finding out what really happened to the missing persons.

According to the applicants, a number of requests were made to the CMP to conduct an effective investigation into the fate of the first applicant and his friend. However, there was no response to their requests and no hint of any effective investigation having been undertaken. The third applicant wrote to Amnesty International in London. He stated in his letter that all of their enquiries had so far borne no results and that the Greek-Cypriot Administration had persistently refused to investigate the matter. Amnesty

International answered by saying that it appeared that while the CMP may have investigated quite a number of cases submitted to it, it has not been able to bring any of these investigations to a conclusion because the Committee members have been unable to come to an agreement about the Committee's working methods.

The accidental discovery of human remains in 1996 in the Kato Pyrgos region raised a hope for the applicants. However, a scientific report drafted by an American company, following the study of a bone sample, concluded that the individuals whose remains had been found had lived between 1030 and 1240 AD.

On 2 March 2001 the Office of the Greek-Cypriot Member of the CMP sent the following letter to the CMP:

"I am referring to the human remains which were accidentally discovered four years ago in Kato Pyrgos. My letter dated 10.12.1999, as well as your letter dated 14.4.2000 on this issue, are hereby appended for any reference.

Further to a conversation you had with Mr Georgiades concerning recent developments on the matter, I wish to inform you that on two separate occasions, members of the team of the Physicians for Human Rights, assisted by our investigating officer and myself, searched the area for additional skeletal remains. All remains were subsequently taken to the laboratory of the Physicians for Human Rights in Cyprus for anthropological analysis, and for decent keeping.

Moreover, skeletal samples were sent to a laboratory in U.S. for specialised tests in order to ascertain the period that the remains were buried. The report of the laboratory concerning the remains is appended, as well as a letter by Dr W. Hagkund Director PHR Cyprus Project.

We would be most grateful if you could inform accordingly the Office of the Turkish Cypriot Member of the CMP of this development. We strongly suggest that the Turkish Cypriot family, which claimed in the press that the remains might belong to their missing father, should also be informed of the results of the scientific analysis by you too. We are at your entire disposal for any further information ...".

COMPLAINTS

1. The applicants maintain that the conditions of detention and the disappearance of the first applicant engage the responsibility of the respondent State and constitute a continuing violation of Article 5 of the Convention.

2. The applicants also assert that the forced detention of the first applicant and the conditions of his detention constitute a continuing violation of Article 3 of the Convention.

3. Furthermore, the prolonged uncertainty, doubt and apprehension have caused the second, third, fourth, fifth and sixth applicants severe mental distress and anguish, contrary to Article 3 of the Convention.

4. In addition, the applicants state that if the first applicant is not alive, it must be concluded that he is a victim of a violation of Article 2 of the Convention as, firstly, the Greek-Cypriot military elements under the control of the respondent Government failed to protect his life, and, secondly, the respondent Government failed to carry out a credible investigation into his disappearance and to communicate information to his relatives.

5. The applicants submit that the above-mentioned violations are due to the fact that the applicants are Turkish Cypriots and Muslims. They are thus victims of discrimination contrary to Article 14 of the Convention.

THE LAW

The applicants complain that the first applicant's abduction and killing and the subsequent failure of the authorities to investigate the killing violated their rights under Articles 2, 3, 5 and 14 of the Convention.

The Court considers that, having regard to the very substantial period of time which has elapsed since the date of the alleged disappearance of the first applicant, it should first examine whether the applicants have complied with the six-month rule contained in Article 35 § 1 of the Convention.

The Court recalls that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it also serves to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see application no. 10626/83, Commission decision of 7 May 1985, DR 42, p. 205).

The Court further recalls that if no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and others v. Turkey*, (dec.) no. 62566/00, ECHR 2002; see also application no. 23413/94, Commission decision of 28 November 1995, Decisions and Reports DR 83, p. 31).

Special considerations could apply in exceptional cases where an applicant first 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. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Bulut and Yavuz v. Turkey*, (dec.) no. 73065/01).

The applicants submit that, in view of the political situation prevailing in the island and the sensitive nature of the issue, no effective judicial and administrative remedies existed in the part of Cyprus controlled by the respondent. They contend that, without the co-operation of the respondent, any theoretical "remedy" that may be asserted to be available in southern

Cyprus would be hypothetical and totally futile. Had the respondent intended to bring to light the fate of missing Turkish Cypriots, including the fate of the first applicant, it would have submitted its own file and relevant documents on the disappearance of the first applicant to the CMP. Moreover, in the applicants' view, since relatives, living in southern Cyprus, of Greek-Cypriot missing persons are able to make individual applications to the Court against Turkey without having to exhaust domestic remedies in the "TRNC" or in Turkey (Varnava and Others v. Turkey n° 16064-16066/90 and 16068-16073/90, decision on admissibility of 14 April 1998) applicants, like them, living in the "TRNC" should be able to apply to the Court without having to exhaust domestic remedies in southern Cyprus.

The Court notes that nothing was done by the applicants to bring the alleged disappearance of the first applicant to the attention of the authorities of the respondent State in the first twenty five years following the alleged disappearance. In 1989 they lodged an application with the CMP. The applicants state that the CMP is not an effective remedy since it has failed to carry out any credible investigation into the alleged disappearance. However, they waited another twelve years before lodging their application with the Court.

The applicants have not explained why they waited such a long time before invoking the assistance of the CMP and, subsequently, before lodging an application with the Court.

The Court does not have to consider whether the applicants are correct in their belief that they had no effective remedies in the respondent State or whether the CMP can be considered an effective remedy to the extent that the applicant's application to it served to put the respondent on notice of the alleged disappearance. For the Court, even assuming that the applicants had no effective remedies as alleged, they must be considered to have been aware of this long before 30 October 2001, the date on which they introduced their application.

It follows that the application has been 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