

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF ORHAN v. TURKEY

The European Court of Human Rights has today notified in writing a Chamber judgment¹ in the case of *Orhan v. Turkey* (application no. 25656/94). The Court held:

- by six votes to one, that there had been a **violation of Article 2** (right to life) of the European Convention on Human Rights concerning the presumed deaths of the applicant's son and two brothers;
- by six votes to one, that there had been a **violation of Article 2** concerning the inadequate investigations into their detention and disappearance;
- by six votes to one, that there had been a **violation of Article 3** (prohibition of torture and degrading treatment or punishment) concerning the applicant;
- unanimously, that there had been a **violation of Article 5** (right to liberty and security), concerning the applicant's son and brothers;
- unanimously, that there had been a **violation of Article 8** (right to respect for private and family life), **and of Article 1 of Protocol No. 1** (protection of property) concerning the applicant and his brothers;
- unanimously, that there had been a **violation of Article 8** concerning the applicant's son;
- by six votes to one, that there had been a **violation of Article 13** (right to an effective remedy) in conjunction with Articles 2, 3, 5 and 8 together with **Article 1 of Protocol No. 1** concerning the applicant, his brothers and son;
- unanimously, that it is not necessary to consider the complaints under Articles 14 (prohibition of discrimination) and 18 (limitation on use of restrictions on rights);
- by six votes to one, that there had been a **failure to comply with Article 34** (individual applications).

Under Article 41 (just satisfaction) of the Convention, the Court, by six votes to one, awarded:

- the applicant - 7,000 pounds sterling (GBP) for pecuniary damage and 12,400 euros (EUR) for non-pecuniary damage;
- his brothers (to be held in trust for each of their estates by the applicant) GBP 7,500 each for pecuniary damage and EUR 16,800 each for non-pecuniary damage;
- his son (to be held in trust for his estate by the applicant) - GBP 8,000 for pecuniary damage and EUR 14,900 for non-pecuniary damage;
- for costs and expenses - GBP 29,000 less EUR 2,455.29, the amount received in legal aid from the Council of Europe. (The judgment is available only in English.)

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

1. Principal facts

Salih Orhan is a Turkish national of Kurdish origin born in 1955.

The case concerns the destruction of his village, the detention and disappearance of his two brothers, Selim and Hasan Orhan, and his son, Cezayir Orhan, and the ensuing investigations.

The applicant claimed that, on 6 May 1994, a large military convoy gathered the villagers in Deveboyu (also known as Adrok), Çağlayan, in south-east Turkey, giving them one hour to clear their houses. He alleged that the soldiers began burning the houses in the village including his home and those of Hasan and Selim Orhan.

He further alleged that, on 7 May 1994, Selim Orhan and other villagers went to Kulp and complained about the incident to the Kulp District Gendarme Commander, who gave the villagers permission to stay in their village in order to harvest crops. According to the applicant, on 24 May 1994 the soldiers came back to the village. Selim, Hasan and Cezayir Orhan were still in Deveboyu and were allegedly forced by the soldiers to accompany them as guides. The three men were, the applicant claimed, last seen alive in Gümüşsuyu hamlet in the custody of the soldiers.

2. Procedure and composition of the Court

The application was lodged with the former European Commission of Human Rights on 24 November 1994. It was declared admissible on 7 April 1997 and the Commission took evidence in the case in Ankara in October 1999. The case was transferred to the European Court of Human Rights on 31 October 1999. A hearing was held on 15 May 2001.

Judgment was given by a Chamber of seven judges, composed as follows:

Elisabeth **Palm** (Swedish), *President*,
Wilhelmina **Thomassen** (Dutch),
Luigi **Ferrari Bravo** (San Marinese),
Josep **Casadevall** (Andorran),
Boštjan **Zupančič** (Slovenian),
Rait **Maruste** (Estonian), *judges*,
Feyyaz **Gölcüklü**, *ad hoc judge*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant relied on Article 2 3, 5, 8, 13, 14, 18 and 34 of the European Convention on Human Rights and Article 1 of Protocol No.1.

1. This summary by the Registry does not bind the Court.

Decision of the Court

Article 2

The Court noted that the Orhans were last seen being taken away to an unidentified place of detention by authorities for whom Turkey was responsible. There was also some direct evidence that the Orhans were wanted by the authorities and, in the general context of the situation in south-east Turkey in 1994, it could by no means be excluded that an unacknowledged detention of such people would be life-threatening. The Court also recalled that defects undermining the effectiveness of criminal law protection in the south-east during the relevant time allowed or fostered a lack of accountability of members of the security forces for their actions. This lack of accountability was particularly marked in the case in question, the evidence being that the gendarmes had little knowledge of or control over the military and their operational activities.

As no information had come to light concerning the whereabouts of the Orhans for almost eight years, the Court was satisfied that they must be presumed dead following an unacknowledged detention by the security forces. It followed that liability for their death was attributable to the Turkish Government. Accordingly, there had been a violation of Article 2 in respect of their deaths.

The Court also highlighted a series of deficiencies in the three investigations into the disappearance of the three men, including the following:

- The first investigation was cursory and not pursued with the necessary rapidity; no attempt was made to interview a key witness who was then easily traceable;
- The second investigation was conducted by Kulp District Administrative Council, which was not an independent body, being made up of civil servants hierarchically dependent on an executive officer linked to the very security forces under investigation;
- no statements were taken from the villagers who directly witnessed the events alleged by the applicant;
- there was no evidence of any request to the security forces for information concerning their operations at the time in the region or about their activities at Lice Boarding School (where the detention was alleged to have taken place) - an omission which was itself sufficient to warrant describing this investigation as seriously deficient;
- In the third investigation - initiated five years after the events in question, after certain custody records had been archived and a key witness was no longer traceable - gendarmes and villagers were not interviewed; although additional eye witnesses were identified by the applicant, no attempt was made to take their statements; and, military operations' records were not requested;
- the applicant was never informed of the progress of, or decisions taken in, the investigations;
- certain investigations which had been started were left unfinished.

The Court therefore found a further violation of Article 2 in respect of the deficiencies in the investigations into the Orhans' disappearance.

Article 3

Concerning the Orhans' detention

The Court recalled that, where an apparent forced disappearance was characterised by a total lack of information, the question of the impact of this on the detainee could only be a matter of speculation. In addition, when the applicants were last seen in the hands of the security forces they appeared in good health and it could not be found to the requisite degree of certainty that they were subsequently subjected to ill-treatment. The Court concluded therefore that there had not been a violation of Article 3 in respect of the Orhans' detention.

Concerning the applicant

Finding that the uncertainty and apprehension suffered by the applicant over a prolonged and continuing period, and to which he attested in his oral testimony, had clearly caused him severe mental distress and anguish constituting inhuman treatment, the Court concluded that there had been a violation of Article 3 in respect of the applicant.

Article 5

The Court noted that the Orhans' detention was not logged in the relevant custody records. Indeed there existed no official trace of their subsequent whereabouts or fate. This fact in itself had to be considered a most serious failing since it enabled those responsible to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of the detainees. The absence of data recording such matters as the date, time and location of detention, the name of the detainee as well as the reasons for the detention and the name of the person effecting it, had to be seen as incompatible with the very purpose of Article 5.

Further, given the deficiencies in the investigations into the applicant's early, consistent and serious assertions about the apprehension and detention of the Orhans by the security forces and their subsequent disappearance, the Court concluded that the Orhans had been held in unacknowledged detention in the complete absence of the most fundamental of safeguards required by Article 5. There had therefore been a violation of Article 5.

Article 8 and Article 1 of Protocol No. 1

The Court found that the homes and certain possessions of the applicant and of the Orhans were deliberately destroyed by the security forces and that the village had to be evacuated after the harvest. There was no doubt that these acts constituted particularly grave and unjustified interferences with the applicant's and the Orhans' right to respect for their private and family lives and homes. Such acts also amounted to serious and unjustified interferences with the peaceful enjoyment by the applicant and his brothers of their property and possessions. No evidence had been offered as regards the property or possessions of Cezayir Orhan in Deveboyu.

The Court did not find it necessary to consider whether the forced evacuation of the village was sufficient, of itself, to constitute a violation of these Articles.

Accordingly, the Court found a violation of Article 8 and of Article 1 of Protocol No. 1 in respect of the applicant, his brothers and of Article 8 only in respect of the applicant's son.

Article 13

The Court found that it had not been demonstrated with sufficient certainty that effective and accessible domestic remedies existed for the applicant's complaints concerning the destruction of Deveboyu. Having regard to the circumstances in which his, the Orhans' and

other villagers' homes were destroyed in Deveboyu, the Court considered it understandable that the applicant could have considered it pointless to attempt to secure satisfaction through national legal channels. The insecurity and vulnerability of villagers following the destruction of their home and village was also of some relevance in this context.

Accordingly, the Court found that there was no available effective remedy in respect of the presumed death of the Orhans in detention and the destruction of Deveboyu. The Court concluded therefore that there had been a breach of Article 13 in conjunction with Articles 2, 3, 5 and 8 of the Convention and with Article 1 of Protocol No. 1 in respect of the applicant and the Orhans.

Article 34

The Court noted that the applicant was summoned before Diyarbakır Chief Public Prosecutor in relation to his application to the former European Commission of Human Rights, which could have been an intimidating experience. The Court emphasised that it was inappropriate for State authorities to enter into direct contact with an applicant in this way.

In addition, an attempt was made by the authorities to cast doubt on the validity of the application and thereby on the credibility of the applicant, actions which could not but be interpreted as a bid to try to frustrate the applicant's successful pursuance of his claims. Accordingly, the Court found that Turkey had failed to comply with its obligations under Article 34.

Judge Gölcüklü expressed a dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.