



## Mentes and Others v. Turkey

Application No. 23186/94

**Country:** Turkey

**Region:** Europe

**Year:** 1997

**Court:** European Court of Human Rights European Court of Human Rights

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to family life, Right to liberty and security of person

### Facts

Mentes (M), T1, T2 and U lived in a village in south-east Turkey, the first three in its lower neighbourhood and the fourth in a separate hamlet. Since 1985 serious disturbances had raged in this part of the country between the security forces and the members of a Kurdish separatist party. Turkey claimed that these had resulted in the deaths of over 4,000 civilians and nearly that number of members of the security forces. The applicants claimed that their houses had been burned in the course of an operation by the security forces in June 1993 after an attack by the separatist party on another village's gendarme station. They claimed that they had been told that the houses were being burned as a punishment for helping the separatist party.

The applicants also claimed that they had been forced to leave the village and that, after the remaining population left in the autumn of 1993, the remainder of the village had been burned down. The burning of their houses was said to be consistent with a policy pursued in respect of villages seen as giving support to the separatist party.

Turkey denied that there had been any such operations in the area and that the applicants had been absent from the village for 6-7 years. In addition it claimed that they had been subjected to pressure by their relatives since they were close relatives of suspected members of the separatist party and had other relatives detained on charges of aiding and abetting it.

The Commission found, inter alia: (1) that a large force of gendarmes had arrived in the vicinity of the village on 24 June 1993 and the following day had entered its upper and lower neighbourhoods to carry out searches; (2) that, at some point, the villagers - other than the young men out working - had been gathered in front of the school to be questioned about the separatist party in the area; (3) that in the lower neighbourhood the women, including the applicants, had been required to leave their houses which had been set on fire with all their belongings and property (including clothing and children's footwear) inside; (4) that a senior officer had then arrived by helicopter which was associated by the applicants and other villagers with an order to cease the burning; (5) that the gendarmes had left that day and shortly afterwards the applicants, with their children or other family members, had walked for up to ten hours to the road to a town from where they obtained a ride to it in vehicles. It established no facts in relation to the alleged burning of U's house; she had not appeared at the hearings before the delegates on account of ill-health.

Under the constitution, acts and decisions of the administration were subject to judicial review and the administration was liable to indemnify any damage caused by its acts and measures. The latter applied in emergencies and did not require proof of fault. It also extended to damage caused by unknown authors where there was a failure to maintain public order and safety or to protect life and property. It was a criminal offence to deprive anyone of their liberty, to issue threats or to use them to make someone commit an act, to make unlawful searches of a person's home, to commit arson and to damage another's property intentional

The public prosecutor and the police were under a duty to investigate crimes reported to them and a complainant could appeal against a decision not to institute proceedings. Military personnel could also be prosecuted for causing extensive damage, endangering lives and damaging property if they have not followed their orders. Permission was required from the local administrative councils (comprised of civil servants with no real legal knowledge) to prosecute agents of the State and a refusal is subject to appeal. Any illegal act by a civil servant could be the subject of a claim for compensation in the ordinary civil courts.

Under the constitution in an emergency there could be no allegation of unconstitutionality in respect of

measures taken under laws and decrees enacted between September 1980 and October 1983. One of these decrees transferred the decision to prosecute members of the security forces from the prosecutor to the local administrative councils. Another decree provided that no criminal, financial or legal responsibility could be claimed against the State or regional and provincial governors for the exercise of powers within a state of emergency region but this was without prejudice to any right to claim indemnity from the State for damage suffered without justification. The applicants claimed that the latter decree conferred impunity and reinforced the power to order the evacuation of villages. Furthermore damage caused in the context of the fight against terrorism would be "with justification" and thus immune from suit.

The applicants complained about the burning of their homes and the forcible and summary expulsion from their village. U also complained about the death of her twins. The Commission found, as regards the first three applicants, breaches of Arts 3 (26-2), 6 (26-2), 8 (27-1) and 13 (26-2) but no breaches of Arts 5, 14 and 18 and, as regards U, no breach of Arts 2,3,5,6, 8,13,14 and 18. Turkey objected that the applicants could not, in the absence of any attempts to raise their ECHR grievances before a domestic authority through criminal proceedings and claims for compensation, be regarded as having exhausted domestic remedies.

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## Decision and Reasoning

The Court held, inter alia:

(1) that there appeared, despite the extent of the problem of village destruction, to be no example of either compensation being awarded in respect of allegations that property had been purposely destroyed by security force members or of prosecutions having been brought against them in respect of such allegations;

(2) that the applicants had not, unlike in *Akdivar v Turkey*, (1997) 11 Interights Bulletin 156, approached any domestic authority but the competent public prosecutors had not carried out any meaningful investigation after becoming aware of their allegations and the insecurity and vulnerability of the applicants' position following the destruction of their homes should also be borne in mind;

(3) that the applicants had, in the absence of any convincing explanations from Turkey in rebuttal, demonstrated the existence of special circumstances which dispensed them at the time of the events complained of from the obligation to exhaust domestic remedies and, in the exceptional circumstances of this case, the remedies before the administrative and civil courts were not adequate and sufficient in respect of their complaint that their homes had been destroyed by the security forces;

(4) (15-6) that Turkey's preliminary objection should, therefore, be dismissed;

(5) that the establishment of the facts by the ECmHR was based on the appropriate evidentiary requirement, namely, proof beyond reasonable doubt and, in reaching its conclusions, the ECmHR had regard to the inconsistencies and contradictions in the evidence (notably differences between the written and oral statements) and attached more weight to the latter for reasons that appeared convincing;

(6) that the ECmHR also bore in mind the cultural and linguistic context, as well as Turkey's uncooperative conduct when failing to provide certain documentary material requested and to identify and serve a summons on a key witness whom the delegates sought to question;

(7) that, having itself carefully examined the evidence gathered by the ECmHR, it was satisfied that the facts established by the latter were proved beyond reasonable doubt as far as concerned the first three applicants' allegations but not those of U;

(8) that there was no reason to distinguish between M and the second and third applicants since, while it was in all probability M's father-in-law and not she who owned the house in question, she did live there for significant periods on an annual basis when she visited the village and, given her strong family connection and the nature of her residence, M's occupation of the house on 25 June 1993 fell within the scope of the protection guaranteed by Art 8;

(9) (16-5) that the particularly grave interference with the first three applicants' right to respect to private life, family life and home was devoid of justification and there was a violation of Art 8 with respect to them;

(10) (20-1) that, in view of the specific circumstances of the case and its finding of a violation of their rights under Art 8, the allegation under Art 3 would not be examined further;

(11) that the complaint about having been compelled to abandon their homes had not been pursued and, having regard to (a) the finding that none of the applicants had been arrested, detained or otherwise deprived of their liberty and (b) the insecurity of their personal circumstances arising from the loss of their homes not falling within the notion of "security of the person", it was not necessary to deal with this matter of its own motion;

(12) that, as the applicants (a) did not dispute that they could in theory have had their civil rights determined by the administrative and civil courts and (b) were complaining essentially of the lack of a proper investigation into their allegation that the security forces had purposely destroyed their houses and possessions, it was more appropriate to examine this complaint in relation to the general obligation to provide an effective remedy and it was not necessary to determine whether there had been a violation of Art 6(1);

(13) (16-5) that no thorough and effective investigation was conducted into the applicants' allegations which resulted in undermining the exercise of any remedies which they had at their disposal, including the pursuit of compensation before the courts, and there was, therefore, a violation of Art 13 in respect of the first three applicants;

(14) that, as the allegations that the applicants' treatment was because of their Kurdish origin and that there was a systematic, cruel and ruthless policy of population displacement had not been substantiated, there had been no violation of Arts 14 and 18;

(15) that the evidence established by the ECmHR was insufficient to allow any conclusion to be reached concerning the existence of an administrative practice of the violation of Arts 8 and 13; and

(16) that, as no facts had been established with respect to U's complaints, there had been no violation of the ECHR provisions relied on by her.

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## **Decision Excerpts**