



MEMORIAL - EHRAC BULLETIN:

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE
EHRAC

International Human Rights Advocacy

Right of Return

Doğan and Others v Turkey-

Anke Stock, PhD

The conflict in the Kurdish regions of Turkey during the eighties and nineties led to an enormous number of internally displaced persons (IDPs). In a post-conflict situation the issue of IDPs raises the question of a right of return. Under present international law there is no general rule that affirms the right of IDPs to return to their original place of residence. However, the United Nations Guiding Principles on Internal Displacement¹ and now the European Court of Human Rights (ECtHR) have established principles as to how to address the needs of IDPs.

Turkish authorities claim that 350,000 people have been 'evacuated' from about 3,500 villages between 1984 and 1999.² Other sources estimate that over 3 million people were forcibly displaced from their homes in the rural areas of the Kurdish south-east.³ Since the PKK (Kurdistan Workers' Party)⁴ declared a ceasefire in 1999 and the state of emergency in the last provinces of the south-east was lifted in 2002, return has been possible on a limited scale, for example, under the 'Return to Village and Rehabilitation Project', a scheme to resettle villagers evicted in the context of clashes between the security forces and the PKK. However, so far no right of return has been established.

Doğan and Others v Turkey (nos. 8803-8811/02, 8813/02 and 8815-8819/02, 29.6.2004) is a case in which IDPs were denied their right of return to their villages by Turkish authorities, and which has been taken by the victims to the ECtHR. There are about 1,500 similar cases from south-east Turkey currently registered before the ECtHR.

Doğan and Others v Turkey

The 15 applicants in this case were all Turkish nationals who until October 1994 lived in Boydaş, a village in south-east Turkey, where they or their fathers owned land and, in some

cases, housing.

The applicants alleged that in October 1994 state security forces destroyed their homes with a view to forcing them to leave their village. The applicants and their families subsequently moved to safer areas in Elazığ and İstanbul. The applicants petitioned various authorities complaining about the forced evacuation of their village by security forces; they also filed petitions requesting permission to return to their village and to use their property. Five applicants received a responses which stated that their petition would be considered under the 'Return to Village and Rehabilitation Project'. Other applicants received letters from the authorities stating that return to Boydaş village was forbidden for security reasons; however, that they could return and reside in other villages. The applicants complained about their forced displacement and the Government's refusal to allow them to return. They invoked Articles 1, 6, 7, 8, 13, 14, 18 and 1 of Protocol No.1 of the European Convention on Human Rights (ECHR).

The ECtHR held that there had been a violation of Article 1 of Protocol No.1 and of Articles 8 and 13 of the ECHR. In relation to Article 1 of Protocol No.1, the Court held that, although the applicants did not have registered property, "... these economic resources and the revenue that the applicants derived from them may qualify as 'possessions' for the purpose of Article 1" of Protocol No.1.

However, the Court was unable to determine the cause of displacement of the applicants due to a lack of evidence. The Court observed that in similar cases sufficient evidence had proven that security forces deliberately destroyed the homes and properties of applicants.⁷ For the purpose of the instant case the Court decided to restrict its consideration to the examination of the applicants' complaints concerning the denial of access to their possessions since 1994 and ultimately the denial of their right of return.

The interference with the applicants' right to the peaceful enjoyment of their possessions had not been proportionate. The respondent Government had been compelled to take extraordinary measures to maintain security within the state of emergency. However, in the circumstances of the case the applicants "...had to bear an individual and excessive burden which has upset the fair balance which should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of one's possessions".⁸

Conclusion

Dogan and Others is the first case against Turkey looking at the right of return of Kurdish people who were displaced during the conflict in the eighties and nineties. The principle that the denial of

access of a landowner to his/her property amounted to a violation of the first rule of Article 1 of Protocol No.1 to the ECHR was first established in *Loizidou v Turkey* (no. 15318/89, 18.12.1996, para. 63). In *Dogan and Others* this principle has been widened to include the denial of access of applicants who did not formally own land but derived other rights from the land. Furthermore, the Court asserts that the measures taken by the Turkish Government to tackle the problems of IDPs in south-east Turkey are generally not sufficient, which led in this case to the conclusion that the interference had not been proportionate. Thus by finding a violation of Article 1 of Protocol No.1 to the ECHR the Court establishes a right of return, which is also codified in the UN Guiding Principles, and most recently, in the *Principles on housing and property restitution for refugees and displaced persons*.⁹

This case is of utmost importance for Kurdish IDPs since it reinforces the need for financial and material assistance to returnees from the Turkish Government. This has been called for by many international organisations, e.g. the Parliamentary Assembly of the Council of Europe¹⁰, and by the United Nations, in particular by the UN Guiding Principles (Principles 28, 29 and 30).¹¹

The UN Guiding Principles of 1998 approach displacement from the perspective of the needs of IDPs. They are structured around the phases of internal displacement: protection against displacement, protection during displacement, framework for humanitarian assistance, and protection during return, resettlement and reintegration.¹² The UN Guiding Principles do not constitute a binding instrument of international law, however, they identify those rights that have to be guaranteed in all situations. The right of return, including facilitating the return, of Principle 28 derives from the obligation of States not only to avoid, but to redress violations of international human rights and humanitarian law.¹³

The schemes put in place by the Turkish Government fall far short of Principles 28, 29 and 30. The 'Return to Village and Rehabilitation Project', announced in March 1999, facilitated the return of IDPs to twelve villages¹⁴, an insignificant number compared to 3,500 destroyed villages. The impact of the Law on

Compensation for Losses Arising from Terrorism and Anti-Terrorism, a law that was approved by the Grand National Assembly on 17 July 2004, has yet to be assessed. Turkey also fails to co-operate with international organisations, such as UNHCR and UNDP, as recommended in Principle 30.

Another impediment for returnees is the presence of some 60,000 mostly armed village guards. Cases of murders, beatings and disappearances of returning IDPs have been reported.¹⁵ Furthermore, the concentration of minefields in south-east Turkey and the absence of basic infrastructure hamper the return of villagers.

Turkey has to face the problematic situation of Kurdish IDPs if it wants to proceed with its desire to accede to the European Union. As the 2004 Regular Report on Turkey's Progress towards Accession states: "On the ground, the situation of internally displaced persons remains critical."¹⁶ This has now also been confirmed by the ECtHR.

1. United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Ass.2, 11.2.1998. See also the *Final report of the Special Rapporteur, Paulo Sergio Pinheiro – Principles on housing and property restitution for refugees and displaced persons*, E/CN.4/Sub.2/2005/17, 28 June 2005.

2. Human Rights Foundation of Turkey, August 2001.

3. <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wCountries/Turkey>, Global IDP Project, consulted on 11.1.2005; Kurdish Human Rights Project, *Internally Displaced Persons, The Kurds in Turkey*, September 2003, p.24.

4. The PKK is proscribed as a terrorist organisation under Turkish law. Political violence partly resumed after Kongra-Gel (the successor of PKK) called off its ceasefire in June 2004.

5. No response was given to the other applicants within the 60-day period prescribed by Law No. 2577, the Law on Administrative Procedures.

6. See *Dogan and Others v Turkey*, op. cit., para. 139.

7. E.g. *Yöyler v Turkey*, no. 26973/95, 24.7.2003, paras. 77 et seqq. and *İpek v Turkey*, no. 25760/94, 17.2.2004, paras. 192 et seqq.

8. *Dogan and Others v Turkey*, op. cit., para. 155.

9. E/CN.4/Sub.2/2005/17, 28 June 2005.

10. See PACE Recommendation 1563 (2002) of 29.5.2002, paras. 6, 8, 11, 12.

11. United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Ass.2, 11.2.1998).

12. Walter Kalin, *Annotations to Guiding Principles on Internal Displacement*, in: *Studies in Transnational Legal Policy*, No 32 (The American Society of International Law and The Brookings Institution Project on Internal Displacement, 2000) p 2.

13. Op. cit., n. 11, p. 70.

14. Jonathan Sugden, Human Rights Watch, *Hearing: Internally Displaced Persons in the Caucasus Region and Southeastern Anatolia*, Commission on Security and Cooperation in Europe, 10.6.2003.

15. See US Department of State, *Country Report 2002, March 2003*, p.2/3, Annex B; *Application in Ünal and Others v Turkey*, no. 7556/03.

¹⁶2004 Regular Report on Turkey's Progress towards
Accession, COM(2004)656 final, 6.10.2004,
p.19.

Continued on page 9