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

FIRST SECTION

CASE OF ÖZÇETİN v. TURKEY

(*Application no. 34591/96*)

JUDGMENT
(Friendly Settlement)

STRASBOURG

5 December 2000

In the case of Özçetin v. Turkey,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Having deliberated in private on 31 August 1999 and 14 November 2000,

Delivers the following judgment, which was adopted on that last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 34591/96) against the Republic of Turkey lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Şükrü Özçetin ("the applicant"), on 27 June 1996.

2. Before the Court the applicant was represented by Mr Aydın Erdoğan, a lawyer practising in Ankara (Turkey). The Government of Turkey ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against him.

4. Following communication of the complaints to the Government and rejection of the remainder of the application by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an ad hoc judge, the judge elected in respect of Turkey, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. The President of the Chamber decided that in the interests of the proper administration of justice, the present application should be joined to other applications against the same respondent State raising the same complaints (applications nos. 26480/98, 28291/95, 29280/95, 26699/96, 29700/96, 29701/96, 29702/96, 29703/96, 29911/96, 29912/96, 29913/96, 31831/96, 31834/96, 31853/96, 31880/96, 31891/96, 31960/96, 32964/96, 32987/96, 32900/96, 33362/96, 33369/96, 33645/96, 34591/96, 34687/96, 39428/96 and 43362/96) (Rule 43 § 2).

7. On 31 August 1999, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

8. On 3 February 2000 and 21 August 2000 the Government and on 23 March and 13 July 2000 the applicant's representative, respectively, submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. On 2 February 1981 police officers from the Ankara Security Department arrested the applicant on suspicion of membership of an illegal organisation, the Dev-Yol (Revolutionary Way).

10. On 17 March 1981 the Ankara Martial Law Court (*sıkıyönetim mahkemesi*) ordered the applicant's detention on remand.

11. On 26 February 1982 the military public prosecutor filed a bill of indictment with the Ankara Martial Law Court setting out charges against 723 defendants, including the applicant. The public prosecutor accused the applicant of membership of an organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime, contrary to Article 146 § 1 of the Turkish Criminal Code.

12. On 24 April 1985 the applicant was released pending trial.

13. Subsequent to the lifting of martial law, the Ankara Martial Law Court took the name of the Martial Law Court attached to the 4th Army Corps.

14. On 19 July 1989 the Martial Law Court found the applicant guilty as charged and sentenced him to 8 years' imprisonment. The applicant lodged an appeal with the Military Court of Cassation (*askeri yargıtay*).

15. Following promulgation of the Law of 27 December 1993, which abolished the jurisdiction of the martial law courts, the Court of Cassation (*yargıtay*) acquired jurisdiction over the case and the file was transmitted to it.

16. On 27 December 1995 the Court of Cassation held that the criminal proceedings against the applicant should be discontinued on the ground that the prosecution was time-barred (*zamanaşımı*).

THE LAW

17. On 3 February 2000 the Government sent a letter to the Court stating that they were prepared to pay 50,000 French francs on an *ex gratia* basis to the applicant with a view to securing a friendly settlement of the case.

On 21 August 2000 the Court received the following declaration from the Government:

> "I declare that the Government of Turkey offer to pay the amount of 50,000 French francs on an *ex gratia* basis to Mr Şükrü Özçetin with a view to securing a friendly settlement of the application registered under no. 34591/97. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable immediately after the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.
>
> The Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

18. On 23 March 2000 the applicant's representative sent a letter to the Court stating that he accepted the Government's proposal.

On 13 July 2000 the Court received the following declaration signed by the applicant's representative:

> "I note that the Government of Turkey are prepared to pay a sum totalling 50,000 French francs on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Şükrü Özçetin with a view to securing a friendly settlement of the application no. 34591/97 pending before the Court.
>
> I accept the proposal and waive any further claims in respect of Turkey relating to the facts of this application. I declare that the case is definitely settled.
>
> This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.
>
> I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

19. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 in fine of the Convention and Rule 62 § 3 of the Rules of Court).

20. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides to disjoin the application from other applications joined pursuant to Rule 43 § 1 of the Rules of Court;

2. Decides to strike the case out of the list;

3. Takes note of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 5 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President