



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

COURT (CHAMBER)

CASE OF ÖZTÜRK v. GERMANY (ARTICLE 50)

(Application no. 8544/79)

JUDGMENT

STRASBOURG

23 October 1984

In the Öztürk case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court**, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. R. RYSSDAL,
Mr. Thór VILHJÁLMSÖN,
Mr. W. GANSHOF VAN DER MEERSCH,
Mr. F. MATSCHER,
Mr. B. WALSH,
Mr. R. BERNHARDT,

and also Mr. M.-A. Eissen, *Registrar*, and Mr. H. Petzold, *Deputy Registrar*,

Having deliberated in private on 24 September 1984,
Delivers the following judgment, which was adopted on that date, on the application in the present case of Article 50 (art. 50) of the Convention:

PROCEDURE AND FACTS

1. The present case was referred to the Court by the Government of the Federal Republic of Germany ("the Government") in September 1982 and then by the European Commission of Human Rights ("the Commission") in October 1982. The case originated in an application (no. 8544/79) against that State lodged with the Commission on 14 February 1979 by a Turkish national, Mr. Abdulkaki Öztürk.

2. The Chamber constituted to hear the case relinquished jurisdiction in favour of the plenary Court on 27 May 1983 (Rule 48 of the Rules of Court). By a judgment delivered on 21 February 1984, the Court held that there had been a breach of Article 6 para. 3 (e) (art. 6-3-e) of the Convention in that the applicant had not received the free assistance of an interpreter during proceedings before the Heilbronn District Court (Series A no. 73, paragraphs 57-58 of the reasoning and point 2 of the operative provisions, pp. 22-23).

* The case is numbered 9/1982/55/84. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

** In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts, the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 9 to 41 of the above-mentioned judgment (pp. 8-16).

3. At the hearings held on 25 May 1983, Mr. Wingerter, counsel for the applicant, had sought, by way of just satisfaction for his client, reimbursement of interpretation fees of DM 63.90 and payment of lawyer's costs incurred before the Convention institutions; as to the amount of the latter costs, he had stated that he left the decision to the discretion of the Court (*ibid.*, p. 22, paragraph 59 of the reasoning). The Government had not taken a stand on the matter (*ibid.*).

In its judgment of 21 February 1984, the Court reserved the whole of the question (*ibid.*, paragraph 60 of the reasoning and point 3 of the operative provisions, pp. 22-23); the same day, it referred the question back to the Chamber under Rule 50 para. 4 of the Rules of Court.

4. The President of the Chamber, to whom the Chamber had delegated the power to fix the further procedure, obtained, through the Deputy Registrar, the views of the Agent of the Government and of the Delegates of the Commission. On 2 March 1984, he directed that the Agent should have until 16 March 1984 to file her comments and that the Delegates should then have one month within which to reply in writing.

The Registrar received the Government's memorial on 15 March. The Delegates' memorial was lodged on 18 May, following an extension of the time-limit granted by the President of the Chamber on 9 May.

On 16 August, the Secretary to the Commission informed the Registrar that the applicant's lawyer had notified him of his claims and comments by telephone and not in writing, as he had been requested to do.

5. Mr. B. Walsh, substitute judge, replaced Mr. J. Pinheiro Farinha, who was prevented from taking further part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

6. After consulting the Agent of the Government and the Delegates of the Commission through the Deputy Registrar, the Chamber decided on 24 September that there was no need to hold a hearing.

AS TO THE LAW

7. Article 50 (art. 50) of the Convention reads as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or

measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

8. The applicant's lawyer sought, by way of just satisfaction for his client, reimbursement of the interpretation fees of DM 63.90. These fees were, however, borne by Mr. Öztürk's insurance company and not by Mr. Öztürk personally (see the above-mentioned judgment of 21 February 1984, p. 10, para. 16, and the respective memorials of the Government and the Delegates of the Commission), so that there is no prejudice capable of being the subject of a claim for restitution.

9. Mr. Wingerter further requested, on behalf of his client, payment of lawyer's costs incurred before the Convention institutions. According to the oral indications he gave to the Secretariat of the Commission, these costs amounted to DM 3,000.

In order for such costs to be included in an award under Article 50 (art. 50), it must be established that they were actually incurred, necessarily incurred and reasonable as to quantum (see, as the most recent authority, the Campbell and Fell judgment of 28 June 1984, Series A no. 80, pp. 55-56, para. 143). The Government considered that these requirements were not met and therefore submitted that the claim should be rejected. The Delegates of the Commission shared the Government's view.

In point of fact, there is nothing to show that Mr. Öztürk paid or is bound to pay the sums in question. Mr. Wingerter did no more than give an indication over the telephone of his claims, without furnishing any particulars or documentary corroboration despite the fact that he had been asked to do so by the Secretary to the Commission (see paragraph 4 above). Accordingly, this part of the claim is also unfounded.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Rejects the claim for just satisfaction.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg on 23 October 1984.

Gérard WIARDA
President

Marc-André EISSEN
Registrar