



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

FIRST SECTION

CASE OF DENMARK v. TURKEY

(Application no. 34382/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

5 April 2000

In the case of Denmark v. Turkey,

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

Mrs E. PALM, *President*,

Mr J. CASADEVALL,

Mr GAUKUR JÖRUNDSSON,

Mr C. BİRSAN,

Mr P. LORENZEN,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 April 2000,

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

PROCEDURE

1. The case originated in an application (no. 34382/97) against the Republic of Turkey lodged with the European Commission of Human Rights (“the Commission”) under former Article 24 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the Kingdom of Denmark on 7 January 1997. The Danish Government (“the applicant Government”) were represented in the proceedings before the Court by their Agents, Mr H. Klingenberg and Mr T. Trier. The Turkish Government (“the respondent Government”) were represented by their Co-Agents, Mr M. Özmen and Mrs D. Akçay.

2. In their application of 7 January 1997 the applicant Government submitted the following:

“The Government of Denmark requests the Commission to examine the treatment by Turkish authorities of a Danish citizen, Mr Kemal Koç, during the period of 8 July 1996 to 16 August 1996, when he was detained in Turkey, and in particular the treatment Mr Koç was subjected to on 8 and 9 July 1996.

Furthermore, the Government of Denmark requests the Commission to examine whether the interrogation techniques applied to Mr Kemal Koç are applied in Turkey as a widespread practice designed to extract under severe pain and suffering confessions and other statements, whether incriminating or not, whether true or false.”

3. On 9 January 1997 the President of the Commission decided that notice should be given to the respondent Government and they were invited to submit observations on the admissibility of the application. The respondent Government submitted their observations, with annexes, on 20 March 1997.

4. On 25 March 1997 the applicant Government were invited to submit their observations in reply. Following an extension of the time-limit fixed

for this purpose, the applicant Government submitted their observations, with annexes, on 12 June 1997.

5. The respondent Government submitted further observations on 27 June 1997.

6. The Commission considered the state of proceedings on 10 July 1997 and decided to invite the respondent Government to submit additional observations on the admissibility. The respondent Government submitted the additional observations, with annexes, on 29 September 1997. Further observations were submitted on 16 April 1998.

7. On 28 April 1998 the applicant Government were invited to submit their observations or comments in reply. The applicant Government submitted such observations, with annexes, on 29 June 1998.

8. On 10 September 1998 the respondent Government submitted further comments and observations.

9. The Commission considered the state of proceedings on 17 September 1998 and decided to take no further procedural steps in the case.

10. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1988, and in accordance with Article 5 § 2 thereof, the application was examined by the Court.

11. The Court (First Section) considered the state of proceedings on 19 January 1999 and decided to obtain the parties' oral submissions on the admissibility of the application. The hearing was subsequently fixed for 27 April 1999.

12. Following the hearing held on the date fixed, the Court declared the application admissible on 8 June 1999¹.

13. On 30 and 31 March 2000 respectively the Agents of the Danish Government and the Co-Agents of the Turkish Government submitted formal declarations by which they had reached a friendly settlement in the case.

THE FACTS

14. As regards the facts relating to Mr Kemal Koç's stay in Turkey in July and August 1996 the Court recalls that Mr Koç arrived in Ankara on Friday 5 July 1996 in order to attend his brother's funeral. Upon arrival at the airport he was detained for some hours as it appeared that he was wanted by the Turkish authorities. Following certain enquiries at the airport and at the Cubuk police station Mr Koç was released, *inter alia*, on the condition that he report to the police the following Monday. On Monday 8 July he contacted the Cubuk police station where he was fetched by police officers

1. *Note by the Registry.* The text of the Court's decision is obtainable from the Registry.

and brought to the police headquarters in Ankara. The applicant Government allege that Mr Koç was then subjected to interrogation techniques involving torture and other forms of ill-treatment. The respondent Government deny this.

15. Following the interrogations at the police headquarters Mr Koç was remanded in custody as from 9 July 1996. By indictment of 11 July 1996 he was charged before the Ankara National Security Court with giving assistance to members of the PKK (Workers' Party of Kurdistan) contrary to Article 169 of the Turkish Criminal Code.

16. On 15 August 1996 the National Security Court released Mr Koç and he returned to Denmark on 16 August 1996.

17. By judgment of 12 June 1997 the Ankara National Security Court found Mr Koç guilty of the charges brought against him and sentenced him to four and a half years' imprisonment. On 25 March 1998 the judgment was upheld by the Court of Cassation.

18. While the criminal proceedings against him were pending Mr Koç filed, on 23 December 1996, a complaint of ill-treatment by the police during his detention and interrogation at the police headquarters on 8 to 9 July 1996. He relied on Article 243 of the Criminal Code. Following an investigation by the Ankara public prosecutor an indictment of 19 March 1997 was served on two police officers charging them with violations of Article 245 of the Criminal Code. By judgment of 30 December 1998 the High Criminal Court acquitted the police officers.

19. On 4 January 1999 Mr Koç's lawyer lodged an appeal against the above judgment with the Court of Cassation. It appears that the case is still pending.

20. In respect of the applicant Government's request for an examination as to whether "the interrogation techniques applied to Mr Kemal Koç are applied in Turkey as a widespread practice..." the applicant Government referred to a number of international reports by several institutions, in particular the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the United Nations Committee against Torture, the United Nations Human Rights Committee, Amnesty International and Human Rights Watch.

THE LAW

21. On 31 March 2000 the Court received the following declarations from the parties:

“FRIENDLY SETTLEMENT OF APPLICATION No. 34382/97
DENMARK VERSUS TURKEY

On 8 June 1999 the First Section of the European Court of Human Rights declared admissible application 34382/97 Denmark v. Turkey. The application is related to an examination of the allegation by a Danish citizen concerning ill-treatment in violation of Article 3 of the Convention by Turkish authorities during the period of 8 July to 16 August 1996, when he was detained in Turkey, and an examination of an allegation whether the interrogation techniques allegedly applied to this Danish citizen, are applied in Turkey as a widespread practice.

On 8 June 1999 the Court also put itself at the parties' disposal for the purpose of securing a friendly settlement in accordance with Article 38 1 (b) of the Convention. Furthermore, the Court stated that it would welcome any proposals either party might wish to make with a view to reaching such a settlement.

After consultations which the parties held between themselves, the Agents of the applicant Government and the respondent Government in the case presented to the Court a proposed joint outline for a friendly settlement of the Application 34382/97 Denmark v. Turkey. It reads as follows:

- '1. In order to settle the first part of the application, the respondent Government has agreed to pay to the applicant Government an amount *ex gratia* of DKK 450,000 [Danish kroner] which includes legal expenses connected with the case.
2. The applicant Government notes with satisfaction the enclosed declaration of the respondent Government, which constitutes an integral part of the friendly settlement.
3. In the light of the first part of the case, the applicant Government appreciates the acknowledgement and regret expressed by the respondent Government concerning occasional and individual cases of torture and ill-treatment in Turkey.
4. The applicant Government welcomes the steps taken by Turkey in order to combat ill-treatment and torture since the filing of the application on 7 January 1997.
5. The applicant Government and the respondent Government agree that the use of inappropriate police interrogation techniques constitutes a violation of Article 3 of the Convention and that such techniques shall be prevented in the future. The two Governments recognise that this aim can best be attained through training.

To this end the applicant Government and the respondent Government recall that the Council of Europe has launched a comprehensive project the objective of which is a re-organisation of the content of the basic, in-service and management training of the police in the member countries. The applicant Government notes with satisfaction the voluntary participation of the respondent Government in this open-ended project. One element of the project is training in police investigation. The project is dependent on funding from Turkey and other members of the Council of Europe. The applicant Government will make a significant financial contribution to this Council of Europe project.

Furthermore, the applicant Government will finance a bilateral project. This project – subject to agreement between the two parties – will be aimed at the training of Turkish police officers, in order to achieve further knowledge and practical skills in the field of human rights.

6. On the basis of the Action Plan for the Development of the Bilateral Relations Between Turkey and Denmark which was agreed by the Minister for Foreign Affairs of Denmark and the Minister of Foreign Affairs of Turkey in Copenhagen on 26 November 1999, the Government of Denmark and the Government of Turkey have decided to establish a continuous bilateral Danish-Turkish political dialogue.

This dialogue will also focus on human rights issues with a view to improving the human rights situation in concrete fields. The parties have agreed that individual cases, including cases concerning allegations of torture or ill-treatment, as well as general issues – such as the issues mentioned in the declaration by the Government of Turkey – may be raised by either party within the framework of this dialogue.' ”

“DECLARATION BY THE GOVERNMENT OF TURKEY

The Turkish Government regrets the occurrence of occasional and individual cases of torture and ill-treatment despite the resolute action of the Government and existing legislation as well as administrative regulations. New legal and administrative control and punishment regulations have been adopted as a consequence of which such individual acts substantially decreased.

Within the last year, Articles 243, 245 and 354 of the Turkish Penal Code ... were amended to redefine and prevent torture and ill-treatment in accordance with international conventions and the penalty for such criminal acts [was] increased. The amendment of Article 354 stipulates the prosecution of doctors and other medical personnel charged with drafting false reports regarding cases of torture or ill-treatment.

'The Regulation on Apprehension, Custody and Interrogation', which came into force on 1 October 1998, brought procedures in line with the standards of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture (CPT). A circular of the Prime Ministry concerning increased respect for human rights, issued on 25 June 1999, introduced measures to ensure the effective implementation of the above-mentioned regulation by all relevant public authorities and enhanced control of implementation. The circular stipulates that Governors, District Governors, Public Prosecutors, Public Inspectors, other officials entitled for inspection, Commanders of Gendarmerie and Police Directors are authorised to implement random controls and inspections. The circular also stipulates that necessary measures will be rapidly taken to remedy the deficiencies found during these inspections and necessary procedures will be initiated for faulty officials. In addition, the Ministries of Justice and the Interior will submit once in every three months from 1 January 2000 on, written information to the Prime Ministry's Human Rights Co-ordinating High Committee on the results of reports prepared with regard to these controls and inspections.

Finally, the Law on the Prosecution of Civil Servants and Other Officials, which was approved by Parliament on 2 December 1999 and entered into force, facilitates the initiation of investigations and prosecution of public officials.

In this context, the request for permission to initiate an investigation by public prosecutors of civil servants for crimes alleged to have been committed in connection to their duties has to be concluded within 4,5 months, the period for appeal included. The new law clarified many issues concerning the trial of public officials, determined the bodies authorised to allow an investigation and stipulated the authorities entitled to carry out preliminary examinations and preparatory investigations.

Allegations of torture and ill-treatment have been greatly reduced during the past two years as a result of the measures which have been taken by Turkish authorities. This progress has also been acknowledged since 1997 by the CPT, operating within the framework of the Convention for the Prevention of Torture, to which Turkey is a party.

In order to ensure the continuation of these reforms, our Government will undertake further improvements in the field of human rights, especially concerning the occurrence of incidents of torture and ill-treatment.

Turkey will continue co-operation with international organs and mechanisms as contained in international human rights instruments to which Turkey is a party – in particular the CPT. Turkey will also continue to inform such organs and mechanisms on developments with regard to the implementation of the legal and administrative measures in this field in accordance with their relevant rules and procedures.

Annexes:

1. Law amending Articles 243, 245 and 354 of the Turkish Penal Code, 26 August 1999.

2. Regulation on Apprehension, Police Custody and Interrogation of October 1998, as amended by Regulation Amending Certain Articles of the Regulation on Apprehension, Police Custody and Interrogation, which entered into force in August 1999.

3. Circular issued by the Prime Minister on 25 June 1999, regarding the effective implementation and stringent monitoring of the execution of the Regulation on Apprehension, Police Custody and Interrogation.

4. Law on the Prosecution of Civil Servants and Other Public Officers, adopted in December 1999.”

22. By letters of 30 and 31 March 2000 the parties further informed the Court that they undertook not to request a rehearing of the case before the Grand Chamber.

23. The Court takes note of the friendly settlement reached between the parties. It observes that the above agreement, *inter alia*, makes provision for the payment of a sum of money to the applicant Government, includes a statement of regret by the respondent Government concerning the occurrence of occasional and individual cases of torture and ill-treatment in Turkey, emphasises, with reference to Turkey's continued participation in the Council of Europe's police-training project, the importance of the

training of Turkish police officers and in addition provides for the establishment of a new bilateral project in this area. Furthermore it has been decided to establish a continuous Danish-Turkish political dialogue which will also focus on human rights issues and within which individual cases may be raised.

24. The Court also observes the changes to the legal and administrative framework which have been introduced in Turkey in response to instances of torture and ill-treatment as well as the respondent Government's undertaking to make further improvements in the field of human rights – especially concerning the occurrence of incidents of torture and ill-treatment – and to continue their co-operation with international human rights bodies, in particular the Committee for the Prevention of Torture.

25. Against the above background the Court is satisfied that the settlement (Article 39 of the Convention) 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *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 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President