



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

THIRD SECTION

CASE OF ÇAVUŞOĞLU v. TURKEY

(Application no. 32983/96)

JUDGMENT
Strike-out

STRASBOURG

6 March 2001

In the case of Çavuşoğlu v. Turkey,

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

MR J.-P. COSTA, PRESIDENT,
MR W. FUHRMANN,
MR P. KÜRIS,
MRS F. TULKENS,
MR K. JUNGWIERT,
SIR NICOLAS BRATZA, JUDGES,
MR F. GÖLCÜKLÜ, AD HOC JUDGE,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 February 2001,

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

PROCEDURE

1. The case originated in an application (no. 32983/96) 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 Özgür Çavuşoğlu (“the applicant”), on 26 August 1996.

2. The applicant was represented by Ms İ. G. Kireçkaya, a lawyer practising in İzmir (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 that he had been a victim of a violation of Article 3 of the Convention in that he was ill-treated by police whilst in their custody.

4. Following communication of the complaint under Article 3 of the Convention 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 Third 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 in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. On 23 May 2000, having obtained the parties' observations, the Court declared the application admissible insofar as it had been communicated to the Government.

7. On 10 November 2000 and on 8 December 2000 the applicant's representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. On 17 November 1995 the applicant was taken into police custody in İzmir by policemen from the Anti-Terrorism Branch of the İzmir Security Directorate. He was accused of being a member of an illegal leftist organisation. The same day the applicant was examined by the İzmir Forensic Medicine Institute's medical expert who did not find any signs of injury on his body.

9. On 23 November 1995 the applicant's lawyer filed a petition with the public prosecutor alleging that the applicant had been ill-treated in custody. She further requested that the applicant be examined by a doctor.

10. On 27 November 1995 the applicant was examined again by a medical expert from the İzmir Forensic Medicine Institute. In the ensuing report it was stated that there were no signs of beating, force or violence on the applicant's body. The same day, the applicant was brought before the public prosecutor and the investigating judge, who ordered the applicant's detention on remand. Subsequently, the applicant was transferred to Buca Prison.

11. On 28 November 1995 the applicant underwent a third medical examination in prison by a medical expert, who noted the presence of some bruises on his body.

12. On 15 December 1995 the İzmir public prosecutor initiated criminal proceedings against the applicant in the İzmir State Security Court.

13. The applicant filed a second complaint with the İzmir public prosecutor against the police officers from the Anti-Terrorism Branch of the İzmir Security Directorate and alleged that he had been ill-treated in custody. However on 11 March 1996 the Karşıyaka Assize Court dismissed the case.

14. The applicant filed yet another criminal complaint with the public prosecutor along with other detainees alleging that they had been ill-treated during their transfer to the Buca Prison. In this respect, they relied on the medical reports dated 28 November 1995. This complaint was also rejected by the Karşıyaka Assize Court on 4 March 1996.

15. On 31 January 1996 the applicant's lawyer filed another petition with the public prosecutor and requested that the applicant undergo a

proctrological and urogenital examination in order to be able to detect signs of the torture inflicted on him.

THE LAW

16. By letter dated 14 September 2000, the Government informed the Court that they were prepared to pay 75,000 French Francs on an *ex gratia* basis to the applicant with a view to securing a friendly settlement of the case.

On 12 December 2000 the Court received the following declaration from the Government:

“I declare that the Government of Turkey offer to pay 75,000 FF, *ex gratia*, to Mr Çavuşoğlu with a view to securing a friendly settlement of the application registered under no. 32983/96. 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 the 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.”

17. By letter of 17 October 2000 the applicant’s representative informed the Court of the applicant’s acceptance of the Government’s proposal.

On 17 November 2000 the Court received the following declaration from the applicant’s representative:

“I note that the Government of Turkey are prepared to pay, *ex gratia*, a sum totalling 75.000 FF covering both pecuniary and non-pecuniary damage and costs to Mr Çavuşoğlu with a view to securing a friendly settlement of application no. 32983/96 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.”

18. 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).

19. 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 6 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President