



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

FIRST SECTION

CASE OF KÖKSAL v. THE NETHERLANDS

(Application no. 31725/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

20 March 2001

In the case of Köksal v. the Netherlands,

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

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEŒ,
Mr C. BİRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,

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

Having deliberated in private on 13 March 2001,

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

PROCEDURE

1. The case originated in an application (no. 31725/96) against the Kingdom of the Netherlands lodged on 25 October 1995 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 two Turkish nationals, Mr Salih Köksal and Mr Ercan Köksal ("the applicants") on behalf of the late Mr Hüseyin Köksal, their son and father respectively.

2. The applicants were represented by Mr A. Vallières, a lawyer at the Bar of Quebec (Canada), and Mr Y. Korkmaz, a lawyer practising in Samsun (Turkey). The President of the Chamber granted approval to Mr Vallières to represent the applicants (Rule 36 § 4 of the Rules of Court). The Netherlands Government ("the Government") were represented by their Agent, Mr R. Böcker, of the Netherlands Ministry of Foreign Affairs.

3. The applicants complained that Mr Hüseyin Köksal died as a result of torture allegedly committed on him by police officers, that a gross lack of vigilance was displayed by police officers leading to a fatal delay in the administration of medical treatment, and that no effective investigation was conducted into the death. They relied, *inter alia*, on Articles 2 and 3 of the Convention.

4. Following communication of the application to the Government 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. The Court obtained the parties' written observations and, at a hearing held in Strasbourg on 19 September 2000, their oral submissions. In addition, third-party comments were received from the Government of the Republic of Turkey, which had exercised its right to intervene and also participated in

the hearing (Article 36 § 1 of the Convention and Rule 61 § 2). On 19 September 2000, the Court declared the complaints under Articles 2 and 3 of the Convention admissible. The applicants' further complaints were declared inadmissible.

5. On 18 January 2001, after an exchange of correspondence, the Registrar proposed a meeting with the parties in order to discuss the possibilities of reaching a friendly settlement pursuant to Article 38 § 1 (b) of the Convention. A meeting, attended by the Registrar, assisted by Ms A. van Steijn of the Registry, and the parties took place in The Hague on 9 February 2001. During this meeting agreement was reached on the terms of a friendly settlement and formal declarations were signed by the Agent of the Government and Mr Vallières for the applicants.

THE FACTS

6. At 2.42 a.m. on 7 January 1993 police in Venlo, the Netherlands, were informed that a motor car had swerved into a post and that it appeared that the driver was drunk. It was ascertained that the car was registered in the name of one Ali Köksal, a Turkish national resident in Venlo who was well-known to the local police. Two police officers went to the scene of the accident, where they found the driver of the car being supported by three men, one of whom confirmed that the man being supported was "Köksal". "Köksal" was arrested and forcibly brought to the police station. It is not in dispute that in the course of the arrest procedure he was roughly treated by the police and that, at some stage, "Köksal"'s head came into contact with the ground.

7. The relevant entry in the Venlo police station daily record states that the apprehended person was unstable on his legs and did not respond to questioning, that he had been arrested on suspicion of drunk driving and that he smelt of beer. His name was recorded as Ali Köksal, it being assumed that he was the man in whose name the car was registered. "Ali Köksal" was placed in a cell. He was not examined by a physician, although standing orders – a copy of which is contained in the Court's file – required that this be done. He was not subjected to a breathalyser test, nor were any blood or urine samples taken, the police officers present being satisfied by the man's condition as observed by them that he was very drunk.

8. It appears that until 7 a.m. a police officer went into "Ali Köksal"'s cell every half hour to see whether he was in a fit state to be questioned, and that after that time such checks were carried out hourly. At 2.20 p.m., no improvement in "Ali Köksal"'s condition being apparent, a physician was called in. Suspecting that "Ali Köksal" might be suffering from concussion, the doctor had him transferred to Venlo hospital at 3.10 p.m.

9. Subsequently, it transpired that the person in question was in fact Mr Hüseyin Köksal. Mr Hüseyin Köksal died in hospital the next day, 8 January 1993, at 11.25 a.m.

10. In the course of the criminal investigation, ordered following the hospitalisation of Mr Hüseyin Köksal, a number of medical reports were obtained. Two neurologists and a radiologist at Venlo hospital concluded that Mr Hüseyin Köksal had probably suffered a primary cerebral haemorrhage, the location of which suggested that surgical intervention would have been impossible so that, even if Mr Hüseyin Köksal had been hospitalised earlier, the outcome would have been the same. Initial findings by a forensic pathologist stated the cause of death as massive subarachnoidal bleeding caused by the rupturing of an existing pathological widening (aneurysm) of the right central cerebral artery. The bleeding might have been spontaneous or it might have been caused by external violence. It could not be excluded, however, that external violence might have made the bleeding worse. Samples of blood taken from Hüseyin Köksal prior to his death were found to contain no alcohol.

11. The forensic pathologist's final report indicated that it was likely that the aneurysm had burst while Mr Hüseyin Köksal was driving the car. The question whether earlier medical intervention might have saved Mr Hüseyin Köksal's life could not be answered on the basis of the autopsy findings alone. Subsequently, a professor of neurosurgery and a professor of neurology concluded that it was unlikely that the cerebral haemorrhage had been caused or worsened by external violence against the head. However, they did consider it possible that such external violence might have increased the chance of such bleeding getting worse. They further considered it possible, though unlikely, that Mr Hüseyin Köksal might have survived had he been given medical treatment as early as 3 a.m. on 7 January rather than 3 p.m. on the same day. Enlarging on these findings, the aforementioned professor of neurology expressed the opinion that the aneurysm was probably congenital. The mortality rate of patients suffering such bleeding was as high as 70%.

12. In disciplinary proceedings against one of the police officers involved in the apprehension of Mr Hüseyin Köksal, the Central Appeals Tribunal (*Centrale Raad van Beroep*) held on 30 March 1995 that this officer was guilty of a serious dereliction of duty. However, given that this dereliction of duty had not been deliberate, the Central Appeals Tribunal annulled the sanction of conditional discharge which had been imposed on the officer by the Burgomaster (*Burgemeester*) of Venlo.

13. The criminal investigation (see § 10 above) and a subsequent preliminary judicial investigation resulted in charges of causing bodily harm being brought against the same police officer. In a final judgment of 5 April 1995, the 's-Hertogenbosch Court of Appeal (*Gerechtshof*) acquitted the police officer.

THE LAW

14. Following friendly settlement discussions between the parties in The Hague on 9 February 2001 the Agent of the Government made the following declaration on behalf of the Government:

“The Government express their deepest regret at the death of Mr Hüseyin Köksal and the events leading up to it. This statement does not constitute an acknowledgement from the side of the Government that the Netherlands have violated the European Convention on Human Rights.

The Government offers to pay, on an *ex gratia* basis, 140,000 Netherlands guilders to Messrs Ercan and Salih Köksal with a view to securing a friendly settlement of the application to the European Court of Human Rights, registered under no. 31725/96. 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 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 referral of the case to the Grand Chamber under Article 43 § 1 of the Convention.”

15. On the same day the applicants’ representative Mr Vallières made the following declaration on behalf of the applicants:

“The applicants note that the Government of the Netherlands are prepared to pay, on an *ex gratia* basis, 140,000 Netherlands guilders covering any pecuniary and non-pecuniary damage as well as costs, with a view to securing a friendly settlement of the application to the European Court of Human Rights, registered under no. 31725/96.

The applicants accept the proposal and have taken note of the regret expressed by the Government at the death of Mr Hüseyin Köksal and the events leading up to it. There will be no further claims in respect of the Netherlands relating to the facts of this application. The applicants declare that this constitutes a full and final settlement of their claims.

The applicants further undertake not to request the referral of the case to the Grand Chamber under Article 43 § 1 of the Convention.”

16. 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).

17. 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 20 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President