



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

FIRST SECTION

CASE OF ŞANLI AND EROL v. TURKEY

(Applications nos. 36760/97)

JUDGMENT
(Friendly Settlement)

STRASBOURG

22 May 2001

In the case of Şanlı and Erol v. Turkey,

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

Mrs E. PALM, *President*,

Mr L. FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr B. ZUPANČIČ,

Mr T. PANȚIRU,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 17 October 2000 and on 3 May 2001,

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

PROCEDURE

1. The case originated in an application (no. 36760/97) 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 two Turkish nationals, Mr Hasan Şanlı and Ms Fatma Erol ("the applicants"), on 26 May 1997.

2. The applicants were represented by Mr Özcan Kılıç, a lawyer practising in Istanbul (Turkey). The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants complained that they had been victims of a violation of Article 5 § 3 of the Convention on account of excessive length of their detention in police custody for 13 days without being brought before a judge or other officer authorised by law to exercise judicial power. They also alleged that they were discriminated against on account of different custody periods between common law offences and terrorist offences, contrary to Article 14 of the Convention.

4. Following communication of the complaints under Articles 5 § 3 and 14 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 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 in his place (Article 27 § 2 of the Convention).

6. On 17 October 2000, after obtaining the parties' observations, the Court declared the applicants' complaints under Article 14 of the Convention inadmissible and retained his complaint under Article 5 § 3 for examination on the merits.

7. On 16 February 2001, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 14 March 2001 and on 2 March 2001 the applicants' representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. On 14 November 1996 police officers from the anti-terrorist branch of the Istanbul Security Directorate arrested the applicants on suspicion of membership of an illegal organisation, the Komünist Parti/İnşa Örgütü (the Communist Party/Establishment organisation).

9. On the same day, the head of the anti-terrorist branch of the Istanbul Security Directorate wrote a letter to the Chief Public Prosecutor's office at the Istanbul State Security Court requesting permission to keep the applicants in police custody for 10 days. The Chief Public Prosecutor granted the permission requested.

10. On 27 November 1996 the applicants were brought before the Istanbul State Security Court which ordered their detention on remand.

11. On 12 December 1996 the Chief Public Prosecutor issued a decision to discontinue the criminal proceedings against the applicants on the ground that there was insufficient evidence to commit them for trial.

THE LAW

12. On 2 March 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 70,000 French francs on an *ex gratia* basis to Mr Hasan Şanlı and Ms Fatma Erol, with a view to securing a friendly settlement of the application registered under no. 36760/97. 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.”

13. On 14 March 2001 the Court received the following declaration signed by the applicants’ representative:

“I note that the Government of Turkey are prepared to pay a sum totalling 70,000 French francs on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Hasan Şanlı and Ms Fatma Erol, with a view to securing a friendly settlement of the application no. 36760/97 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 applicants 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.”

14. 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).

15. 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 22 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’BOYLE
Registrar

Elisabeth PALM
President