



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

SECOND SECTION

CASE OF KORTAK v. TURKEY

(Application no. 34499/97)

JUDGMENT
(Friendly Settlement)

STRASBOURG

31 May 2001

In the case of Kortak v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr E. LEVITS, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 23 November 2000 and on 10 May 2001,

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

PROCEDURE

1. The case originated in an application (no. 34499/97) 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 a Turkish national, Mehmet Ali Kortak (“the applicant”), on 9 November 1996.

2. The applicant was represented before the Court by Mr İsmail Kavak, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained under Article 5 § 3 of the Convention that he was held in police custody for 10 days without being brought before a judge or other officer authorised by law to exercise judicial power.

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.

5. The application was allocated to the Second 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 23 November 2000, after obtaining the parties' observations, the Court declared the application admissible.

7. On 7 March 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 19 March 2001 and on 29 March 2001 the applicant's representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. On 17 June 1996 police officers from the anti-terror branch of the İzmir Security Directorate arrested the applicant on suspicion of membership of the PKK.

9. On 27 June 1996 the İzmir State Security Court ordered the applicant's detention on remand.

10. On 15 July 1996 the Chief Public Prosecutor filed an indictment with the İzmir State Security Court charging the applicant with aiding and sheltering members of an illegal organisation, the PKK. The charges were brought under Article 169 of the Turkish Criminal Code and Article 5 of Law no. 3713.

11. On 15 July 1996 the İzmir State Security Court convicted the applicant as charged and sentenced him to 3 years and 6 months' imprisonment. The applicant did not submit any information concerning the outcome of his appeal to the Court of Cassation.

THE LAW

12. On 3 April 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 30,000 French francs on an *ex gratia* basis to Mr Mehmet Ali Kortak with a view to securing a friendly settlement of the application registered under no. 34499/97. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months 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."

13. On 6 April 2001 the Court received the following declaration from the applicant's representative:

“I note that the Government of Turkey are prepared to pay, within three months after the notification of the judgment delivered by the Court pursuant to the Article 39 of the European Convention on Human Rights, a sum totaling 30,000 French francs on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Mehmet Ali Kortak with a view to securing a friendly settlement of the application no. 34499/97 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 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.”

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

Erik FRIBERGH
Registrar

Christos ROZAKIS
President