



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

FIRST SECTION

CASE OF FİDAN AND OTHERS v. TURKEY

(Applications nos. 29883/96, 29884/96 and 29885/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

10 July 2001

In the case of Fidan and Others v. Turkey,

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

Mrs E. PALM, *President*,

Mr FERRARI BRAVO,

Mr GAUKUR JÖRUNDSSON,

Mr B. ZUPANČIČ,

Mr T. PANȚÎRU,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 18 May 1999 and on 19 June 2001,

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

PROCEDURE

1. The case originated in three applications (nos. 29883/96, 29884/96 and 29885/96) 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 three Turkish nationals, Hikmet Fidan, Şeyhmus Çağrı and Şahabettin Özarslaner ("the applicants"), on 1 November 1995.

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

3. The applicants complained under Article 5 § 3 of the Convention that they were held in police custody for 8 to 9 days without being brought before a judge or other officer authorised by law to exercise judicial power.

4. Following the Commission's decision to join and communicate the applications to the Government, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 18 May 1999, having obtained the parties' observations, the Court declared the applications admissible in so far as they had been communicated to the Government. The applicants' further complaints were declared inadmissible.

5. 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 27 March 2001 and on 19 April 2001 the applicants' representative and the

Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. On 26 April 1995 the applicants Mr Hikmet Fidan, Mr Şehmus Çağro and Mr Şahabettin Özarslaner and on 27 April 1995 Mr Ferhan Türk were taken into police custody on suspicion of membership of the PKK.

7. On 28 April 1995 the public prosecutor ordered the extension of the applicants' detention in police custody until 4 May 1995 on the ground that further investigation should be carried out.

8. On 4 May 1995 the Ankara State Security Court ordered the applicants' detention on remand.

9. On 29 May 1995 the Chief Public Prosecutor filed a bill of indictment with the Ankara State Security Court charging the applicants with membership of the PKK.

10. On 1 August 1995 the State Security Court ordered the applicants' release pending trial.

11. On 19 September 1995 the State Security Court acquitted the applicants on the ground that there was insufficient evidence against them.

THE LAW

12. On 19 April 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 100,000 French francs on an *ex gratia* basis to Mr Hikmet Fidan, Mr Ferhan Türk, Mr Şehmus Çağro and Mr Şahabettin Özarslaner, with a view to securing a friendly settlement of the applications registered under nos. 29883/96, 29884/96 and 29885/96. 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 cases.

The Government further undertake not to request the reference of the cases to the Grand Chamber under Article 43 § 1 of the Convention."

13. By letters of 7 February and 6 June 2001, the Government indicated that the sums mentioned in friendly settlements were not subject to any taxes or other charges.

14. On 27 March 2001 the Court received the following declaration from the applicants' 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 100,000 French francs on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Hikmet Fidan, Mr Ferhan Türk, Mr Şehmus Çağro and Mr Şahabettin Özarslaner, with a view to securing a friendly settlement of the applications nos. 29883/96, 29884/96 and 29885/96 pending before the Court.

I accept the proposal and waive any further claims in respect of Turkey relating to the facts of these applications. I declare that the cases are 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 cases to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court’s judgment.”

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention) as well as of the above-mentioned Government’s letters of 7 February and 6 June 2001. 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).

16. 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 10 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’BOYLE
Registrar

Elisabeth PALM
President