



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

FIRST SECTION

CASE OF MUTLU and YILDIZ v. TURKEY

(Application no. 30495/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

10 July 2001

In the case of Mutlu 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 19 June 2001,

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

PROCEDURE

1. The case originated in an application (no. 30495/96) 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 two Turkish nationals, Abdullah Mutlu and Necmettin Yıldız ("the applicants"), on 9 February 1996.

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

4. Following communication of the complaints 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. On 17 October 2000, after obtaining the parties' observations, the Court declared the application admissible in so far as this complaint is concerned. A further complaint of the applicants was declared inadmissible on the same date.

5. On 10 April 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 April 2001 and on 25 April 2001 the applicants' representative and the

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

THE FACTS

6. On 21 October 1995 police officers from the anti-terrorist branch of the Manisa Security Directorate arrested the applicants on suspicion of membership of the PKK.

7. On 30 October 1995 the Manisa Magistrates' Court ordered the applicant's detention on remand.

8. On 22 November 1995 the Chief Public Prosecutor filed an indictment with the İzmir State Security Court charging the applicants with membership of the PKK.

9. On 5 November 1996 the İzmir State Security Court convicted the applicants of membership of the PKK as well as aiding and sheltering members of the said organisation. It sentenced Mr Abdullah Mutlu to 3 years and 9 months' imprisonment and Mr Necmettin Yıldız to 12 years and 6 months' imprisonment.

10. On 12 October 1997 the Court of Cassation upheld the applicants' conviction.

THE LAW

11. On 25 April 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 40,000 (forty thousand) French francs on an *ex gratia* basis to Mr Abdullah Mutlu and Necmettin Yıldız with a view to securing a friendly settlement of the application registered under no. 30495/96. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable, free of any taxes that may be applicable, 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."

12. On 19 April 2001 the Court received the following declaration signed by the applicants' representative:

"I note that the Government of Turkey are prepared to pay me, free of any taxes that may be applicable, 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 totalling 40,000 (forty thousand) French francs on an *ex gratia* basis covering

both pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of application no. 30495/96 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 I 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."

13. 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).

14. 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