



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

FIRST SECTION

**CASE OF YILDIRIM AND OTHERS v. TURKEY**

*(Application no. 37191/97)*

JUDGMENT  
(Friendly settlement)

STRASBOURG

25 September 2001

This judgment may be subject to editorial revision.



**In the case of Yıldırım And Others 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 R. TÜRMEŒ,  
Mr B. ZUPANČIČ,  
Mr T. PANŒIRU,  
Mr R. MARUSTE, *judges*,

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

Having deliberated in private on 26 September 2000 and on 4 September 2001,

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

## PROCEDURE

1. The case originated in an application (no. 37191/97) 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 fifteen Turkish nationals, Orhan Yıldırım, ReŒit Dayan, Nasrullah Toraman, Osman Aksoy, Suphi Tutmaz, Binali Gençel, Memduh Demir, Süleyman Aksoy, Melik Demir, Abdullah Turan, Abbas Üste, Abdurrahim Çimen, Mirhan Arslan, Tahsin Özer and Selahattin Güven ("the applicants"), on 23 June 1997.

2. The applicants were represented before the Court by Mr Mustafa İŒeri, 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 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 5 to 15 days respectively 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 26 September 2000, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

5. On 15 May 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 26 May 2001 and on 18 June 2001 the applicants' representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

## THE FACTS

6. Between 17 January and 18 February 1997 police officers from the anti-terrorist branch of the İzmir Security Directorate arrested the applicants on suspicion of membership of the PKK.

7. On 31 January 1997 the İzmir State Security Court ordered 14 of the applicants' detention on remand with the exception of the applicant Selahattin Güven who was detained on remand on 18 February 1997.

8. On 20 March 1997 the Chief Public Prosecutor filed an indictment with the İzmir State Security Court charging the applicants with membership of the PKK and assisting and sheltering its members. The charges were brought under Articles 168 § 2 and 169 of the Turkish Criminal Code.

9. On an unspecified date the İzmir State Security Court convicted the applicants and sentenced them to different terms of imprisonment.

## THE LAW

10. On 20 June 2001 the Court received the following declaration from the Government:

“I declare that the Government of Turkey offer to pay the amount of 525,000 French francs on an *ex gratia* basis to Mr Orhan Yıldırım, Mr Reşit Dayan, Mr Nasrullah Toraman, Mr Osman Aksoy, Mr Suphi Tutmaz, Mr Binali Gençel, Mr Memduh Demir, Mr Süleyman Aksoy, Mr Melik Demir, Mr Abdullah Turan, Mr Abbas Üste, Mr Abdurrahim Çimen, Mr Mirhan Arslan, Mr Tahsin Özer and Mr Selahattin Güven with a view to securing a friendly settlement of the application registered under no. 37191/97. 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 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.”

11. On 5 June 2001 the Court received the following declaration from the applicants' representative:

"I note that the Government of Turkey are prepared to pay, free of any taxes that may be applicable, within three months after the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights, a sum totaling 525,000 French francs on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Mr Orhan Yıldırım, Mr Reşit Dayan, Mr Nasrullah Toraman, Mr Osman Aksoy, Mr Suphi Tutmaz, Mr Binali Gençel, Mr Memduh Demir, Mr Süleyman Aksoy, Mr Melik Demir, Mr Abdullah Turan, Mr Abbas Üste, Mr Abdurrahim Çimen, Mr Mirhan Arslan, Mr Tahsin Özer and Mr Selahattin Güven with a view to securing a friendly settlement of the application no. 37191/97 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."

12. 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).

13. 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 25 September 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Elisabeth PALM  
President