



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

FIRST SECTION

CASE OF ERDEMLİ v. TURKEY

(Application no. 29495/95)

JUDGMENT
(Friendly Settlement)

STRASBOURG

30 October 2001

This judgment may be subject to editorial revision.

In the case of Erdemli v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr GAUKUR JÖRUNDSSON,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 5 September 2000 and on 9 October 2001,

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

PROCEDURE

1. The case originated in an application (no. 29495/95) 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, Hasan Erdemli ("the applicant"), on 13 October 1995.

2. The applicant was represented before the Court by Mr Hüsnü Öndül, 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 applicant complained under Article 6 § 1 of the Convention that he was deprived of his right to a fair trial in that he had not been assisted by a lawyer during his questioning by the police, the public prosecutor and the magistrate.

4. Following communication of the complaint 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 and Rule 29 § 1).

6. On 5 September 2000, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government. The applicant's further complaints were declared inadmissible.

7. On 21 August 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 17 September 2001 and on 13 September 2001 the applicant's representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. On 21 April 1992 police officers from the Samsun Security Directorate arrested the applicant and placed him in custody in the course of an investigation conducted by the same directorate.

9. On 21 April 1992 the Samsun Police requested the Samsun public prosecutor to authorise the extension of the applicant's and the nine detainees' detention period. On the same date the Samsun public prosecutor authorised the Samsun Police Headquarters to extend the detention period for fifteen days.

10. According to a document dated 22 April 1992, the police officers conducted a search in a house in Samsun subsequent to the applicant's confessions. During the search the police officers found maps and city plans of Fatsa and Samsun, banners, paints and brushes for painting banners, several magazines and Marxist and Leninist publications. The following slogans were written on the banners: "The independence night with folk songs and dances -*Türkülerle Halaylarla Özgürlük Gecesi*"; "The fraternity and struggle of people will defeat fascism - *Halkların Kardeşliği ve Mücadelesi Faşizimi Yenecektir*"; "The revolutionary left powers - *Devrimci Sol Güçler*".

11. On 27 April 1992 the applicant was interrogated by the police officers. During his interrogation he confessed in detail his involvement in the activities of the illegal organisation, namely the THKP/C-DEV-SOL. He stated that he had been an active member of several leftist organisations before the *coup d'état* in 1980. After the *coup d'état* he was arrested and tried at the Erzincan Martial Law Court which sentenced him to death penalty. In August 1991 he was acquitted. Following his acquittal he was involved in the activities of the DEV-SOL and was a member of the organisation until 25 days prior to his arrest. The Black Sea region leader of

the organisation appointed him as the leader of the Samsun province. He worked in the distribution of the official publication of the organisation, the *Mücadele* (Struggle) Magazine, with P.T and H.T. He rented a house in Samsun for H.T where other members of the organisation had stayed. The applicant finally stated that he had not made his statement under duress.

12. On 30 April 1992 the applicant was seen by a doctor at the Samsun Forensic Medical Institute.

13. On 30 April 1992 the applicant was questioned by the Samsun public prosecutor. During his questioning the applicant reiterated his statements he had made before the police and said that he had not given his statement under duress. He had been a member of the THKP/C-DEV-SOL until 7 April 1992. He had no connections with the organisation after that date. He had been a member of the organisation for three months or three months and a half after his acquittal in 1991. During this period he was not involved in any illegal activities of the organisation.

14. On 30 April 1992 the applicant was brought before the Samsun Magistrates' Court (*Sulh Ceza Mahkemesi*). Before the court he stated that he had not participated in illegal activities of the organisation and that the statements he had made to the police and the public prosecutor were true. The court ordered the applicant's detention on remand.

15. On 27 May 1992 the public prosecutor at the Ankara State Security Court filed an indictment with the Ankara State Security Court charging the applicant with membership of the THKP/C-DEV-SOL. The charges were brought under Articles 168 § 1, 31, 33, 36, 40 of the Turkish Criminal Code (*Türk Ceza Kanunu*) and Article 5 of Law 3713.

16. On 3 July 1992 the applicant was brought before the Ankara State Security Court where he denied the allegations against him and rejected his statements he had made before the public prosecutor and the magistrate.

17. On the same day the Ankara State Security Court ordered the applicant's release.

18. On 16 March 1993 the Ankara State Security Court acquitted the applicant on account of insufficient evidence on which to convict him of membership of the THKP/C-DEV-SOL.

19. Following an appeal by the public prosecutor, the Court of Cassation on 30 September 1993 quashed the judgment delivered by the Ankara State Security Court on the ground that the applicant should have been convicted pursuant to Article 168 § 1 of the Criminal Code as he had participated in the illegal activities of the THKP/C-DEV-SOL and had carried out particular duties in the organisation.

20. In the first hearing before the Ankara State Security Court on 2 February 1994 the applicant reiterated his previous submissions and requested that the court should maintain its first decision. The applicant and his lawyer did not attend the following hearings held before the Ankara State Security Court.

21. On 30 November 1994 the Ankara State Security Court adhered to the Court of Cassation's decision and sentenced the applicant to 18 years and 9 months' imprisonment under Article 168 § 1 of the Turkish Criminal Code. The court held that although the applicant had denied the allegations against him, the statements he had made to the police and the testimonies of other accused had corroborated his actions. The court relied in particular on the following evidence in its judgment: the applicant's statements made at the police station, before the public prosecutor and the magistrate; the testimony of the witness, N.K and the statements of the other accused, Ş.Ü and A.T. The court also noted that banners, city maps, Marxist-Leninist publications had been found during the search conducted in the house used by the members of the organisation. The court held that the evidence collected sufficed to prove that the applicant was a member of the illegal organisation

22. On 4 January 1995 the applicant lodged an appeal against the Ankara State Security Court's judgment on the ground that there existed no evidence to substantiate that he had committed the alleged crimes. He alleged that in their statements the other accused Ş.Ü. and A.T. stated that they had not been involved in the activities of the organisation with the applicant. He further alleged that the witness N.T. had not given a statement to substantiate the allegations against him. He concluded that the court should not admit these statements as evidence.

23. On 15 June 1995 the Court of Cassation upheld the judgment of 30 November 1994.

THE LAW

24. On 13 September 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 35,000 (thirty-five thousand) French francs on an *ex gratia* basis to Mr Hasan Erdemli with a view to securing a friendly settlement of the application registered under no. 29495/96. 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."

25. On 17 September 2001 the Court received from the following declaration signed by the applicant's 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 35,000 (thirty-five 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. 29495/96 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."

26. 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).

27. 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 30 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President