



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

FIRST SECTION

CASE OF ORAL AND OTHERS v. TURKEY

(Application no. 27735/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

28 March 2002

In the case of Oral and Others v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS, *judges*,

Mr F. GÖLCÜKLÜ *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 7 March 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in application no. 27735/95 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 four Turkish nationals, Hadiye Oral, Veysel Oral, Vildan Oral and Barbaros Oral (“the applicants”), on 19 June 1995.

2. The applicants were represented before the Court by Mrs Emel Ataktürk Karasu, a lawyer practising in Istanbul. 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 2 of the Convention about the alleged extra-judicial killing of their relative İsmail Oral, during a police operation carried out in the Kadıköy district of Istanbul on 19 May 1991.

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. 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).

5. On 30 March 2000, having obtained the parties’ observations, the Court declared the application admissible.

6. On 24 September 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 12 October 2001 and on 14 January 2002 the applicants’

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

AS TO THE FACTS

7. Prior to the incidents giving rise to the present application, militants of an illegal armed organisation, the TKP/ML-TİKKO (Turkish Communist Party/Marxist and Leninist-Turkish Workers and Peasants' Liberation Army) carried out several terrorist attacks in Istanbul. They killed a retired police officer, Ş.K., in the Beşiktaş district and attacked a police squad in the Bakırköy district of Istanbul which resulted in the killing of two police officers and wounding of a third officer.

8. On 19 May 1991 police officers from the Anti-Terrorism Department of the Istanbul Security Directorate carried out operations in several districts with a view to apprehending militants of the TKP/ML-TİKKO. The first operation was carried out in the Beylerbeyi neighbourhood of the Üsküdar district. The police officers conducted a search in a house used by the TKP/ML-TİKKO militants. On the basis of the documents seized in the house the police officers identified a flat in the Kadıköy district used by İsmail Oral and his friend Hatice Dilek Arslan, who were suspected of being TKP/ML-TİKKO militants. Against this background, on the same day, at about 11 p.m., a police team of eight police officers carried out an operation in order to apprehend İsmail Oral and Hatice Dilek Arslan.

9. According to the Government the police team arrived at the flat and knocked on the door. The police officers requested İsmail Oral and Hatice Dilek Arslan to open the door. İsmail Oral and Hatice Dilek Arslan opened fire on the police officers. The first shot hit a police officer wearing a bullet-proof vest. Through the broken window of the entrance door to the flat the police officers saw Hatice Dilek Arslan holding a gun and a hand grenade. The police officers fired back, wounding Hatice Dilek Arslan.

10. In the meantime, İsmail Oral, who was armed, was trying to escape via the balcony. The police officers called on him to stop and surrender. He opened fire on them. Then the police officers shot and wounded him. İsmail Oral and Hatice Dilek Arslan were taken to hospital, where they died. Following the confrontation, the police officers conducted a search of the flat. They found Hatice Dilek Arslan's eight-year old son, Özgür Arslan, hiding under the bed. They also found guns, ammunition and illegal documents.

11. According to the applicants, İsmail Oral and Hatice Dilek Arslan did not die during a confrontation with the police officers since Özgür Arslan had seen her mother alive subsequent to the operation. There was no

confrontation between the deceased and the police officers. The latter entered the flat and arbitrarily killed İsmail Oral and Hatice Dilek Arslan.

12. On 27 May 1991 the applicants lodged an application with the Chief Public Prosecutor's office in the Kadıköy district of Istanbul. They requested the Public Prosecutor to investigate the killings of the two persons and bring the police officers to justice.

13. On 16 June 1994 the Kadıköy Assize Court acquitted the police officers. The court held that the police officers were acting in self-defence and that there was no intentional homicide. It further stated, *inter alia*, that

“... having regard to the defendants' statements, the autopsy reports, the expertise reports concerning the revolver and the Kalashnikov rifle seized at the scene of the incident, the reports drawn up by the Forensic Medical Institute as regards the wounds which caused the death and the evidence contained in the file, [the court] considers that the defendants should not be [convicted] since there is no sufficient and convincing evidence that they killed Hatice Dilek Arslan and İsmail Oral in excess of their duties... [The court] therefore holds that the defendants should not be punished since they were acting in immediate necessity to repel an assault directed against them within the meaning of Article 49 of the Turkish Criminal Code...”

14. On 19 June 1994 the applicants lodged an appeal with the Court of Cassation against the Kadıköy Assize Court's judgment to acquit the police officers.

15. On 21 December 1994 the Court of Cassation dismissed the appeal upholding the reasoning and cogency of the Kadıköy Assize Court's judgment.

AS TO THE LAW

16. On 15 January 2002 the Court received the following declaration from the Government:

“1. The Government regret the occurrence of individual cases of death resulting from the use of excessive force as in the circumstances of İsmail Oral's death notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.

2. It is accepted that the use of excessive or disproportionate force resulting in death constitutes a violation of Article 2 of the Convention and the Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the right to life – including the obligation to carry out effective investigations – is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths in circumstances similar to those of the instant application as well as more effective investigations.

3. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicants the amount of 500,000 French francs¹. This sum, which also covers legal expenses connected with the case, shall be converted into Turkish Liras on the date of payment and paid to a bank account named by the applicants. The sum shall be payable, free of any taxes that may be applicable, within three months from the date of striking out decision of the Court pursuant to Article 37 of the European Convention on Human Rights. This payment will constitute the final settlement of the case.

4. The Government consider that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary co-operation in this process will continue to take place.

5. Finally, the Government undertake not to request the referral of the case to the Grand Chamber under Article 41 § 1 of the Convention after the delivery of the Court's judgment."

17. On 16 October 2001 the Court received from the applicants' representative the following declaration signed by the applicants:

"1. The applicants have taken note of the declaration made by the Government of Turkey and accept the payment by the Government, within three months from the date of the judgment delivered by the Court pursuant to Article 39 of the European Convention of Human Rights, of an amount of 500,000 French francs, with a view to securing a friendly settlement of their applications to the European Court of Human Rights, registered under nos. 27735/95. The applicants declare that this constitutes a full and final settlement of their claims.

2. The applicants further undertake not to request the referral of the cases to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

18. 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).

19. Accordingly, the case should be struck out of the list.

¹ 76,224.51 Euros

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 28 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

C.L ROZAKIS
President