



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

THIRD SECTION

CASE OF ÜLGER v. TURKEY

(Application no. 28505/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

28 March 2002

In the case of Ülger v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
Mr F. GÖLCÜKLÜ, *ad hoc judge*

and Mr V. BERGER, *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 an application (nos. 28505/95) 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, Mr Hüseyin Ülger (“the applicant”), on 14 July 1995.

2. The applicant was represented before the Court by Mr Aydın Erdoğan, 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 5 §§ 1, 2, 3, 4 and 5 of the Convention that

- there was no reasonable suspicion for his arrest;
- he was not informed of the reasons for his arrest;
- he was kept in police custody for ten days without being brought before a judge or other officer;
- Turkish law does not provide any remedy by which he can challenge the lawfulness of his arrest;
- he was deprived of his right to compensation for unlawfulness of his arrest and detention.

4. Following communication of the complaints 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.

5. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chambers that would consider the cases (Article 27 § 1 of the Convention) were

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 27 June 2000, having obtained the parties' observations, the Court declared the applicant's complaints under Article 5 §§ 3, 4 and 5 of the Convention admissible. The applicants' further complaints were declared inadmissible.

7. On 29 June 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 December 2001 and on 28 December 2001 the Government and the applicant's representative respectively submitted formal declarations accepting a friendly settlement of the case.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

9. On 19 March 1995 the applicant was taken into custody by police officers from the Ankara Security Directorate on suspicion of membership of an illegal organisation, namely the T.D.P. (*Türkiye Devrim Partisi* - Revolution Party of Turkey).

10. On 27 March 1995 the applicant was interrogated by the police officers. During the interrogation the applicant admitted that he was a leading member of the TDP. He further signed a declaration containing the details of his illegal activities.

11. On 29 March 1995 the applicant was questioned by the Chief Public Prosecutor attached to the Ankara State Security Court. During the questioning the applicant denied the allegations against him

12. On the same day the Ankara State Security Court ordered the applicant's detention on remand.

13. In an indictment dated 28 April 1995 the public prosecutor at the Ankara State Security Court charged the applicant with membership of an illegal organisation, the T.D.P. The prosecutor requested that the applicant be convicted and sentenced under Article 168 § 1 and 17 of the Turkish Criminal Code and Article 5 of Law no. 3713.

14. On 23 January 1996 the Ankara State Security Court convicted the applicant as charged and sentenced him to twelve years and six months' imprisonment and debarred him from employment in public service.

15. On 23 January 1996 the applicant lodged an appeal with the Court of Cassation.

16. On 11 June 1997 the Court of Cassation upheld the above judgment.

17. On 31 July 1997 the Chief Public Prosecutor refused to grant a leave to the applicant to appeal for rectification of the Court of Cassation's decision.

THE LAW

18. On 19 December 2001 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay the amount of 30,000 French francs (FRF) to Mr Hüseyin Ülger in respect of application no. 28505/95 on an *ex gratia* basis with a view to securing a friendly settlement of the application. This sum (FRF 30,000) 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 this case.

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

19. On 28 December 2001 the Court received the following declaration signed by the applicant's 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 Article 39 of the European Convention on Human Rights, a total sum of 30,000 French francs in respect of application no. 28505/95 on an *ex gratia* basis. This sum covers both pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of the application.

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 applicant have reached.

I further undertake not to request the reference of the application to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

20. 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).

21. 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 28 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President