



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

FORMER FIRST SECTION

CASE OF ALTAN v. TURKEY

(Application no. 32985/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

14 May 2002

In the case of Altan 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 R. TÜRMEŒ,
Mr C. BİRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,

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

Having deliberated in private on 30 January 2001 and 23 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 32985/96) 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 a Turkish national, Mr Ahmet Hüsrev Altan ("the applicant"), on 15 August 1996.

2. The applicant was represented before the Court by Ms G. Çaylıgil, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by Mr H.K. Gür, Minister Plenipotentiary and Deputy Director General for the Council of Europe and Human Rights.

3. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, pursuant to Article 5 § 2 of Protocol No. 11 to the Convention. It was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 30 January 2001, after receiving the parties' observations, the Court declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within the former First Section.

7. On 6 December 2001 and 3 January 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicant is a Turkish national who was born in 1950 and lives in Istanbul. He is a writer and journalist.

I. THE CIRCUMSTANCES OF THE CASE

9. On 17 April 1995 an article by the applicant, entitled “Atakürt”, was published in the national daily *Milliyet*.

10. In an indictment preferred on 3 May 1995 the Istanbul public prosecutor instituted criminal proceedings against the applicant in the Istanbul National Security Court (“the National Security Court”) under Article 312 of the Criminal Code. Referring to the newspaper article, he accused the applicant of seeking to incite the people to hatred and hostility on the basis of a distinction between races and between regions.

11. In his pleadings of 12 October 1995 the applicant submitted, in particular, that in the impugned article he had described events experienced by the Kurds as though they had been experienced by the Turks, his purpose being to convey the idea of a peaceful solution to the Kurdish problem.

12. On 18 October 1995 the National Security Court found the applicant guilty as charged and sentenced him to one year and eight months' imprisonment and a fine of 500,000 Turkish liras, which was suspended. It noted that the article in issue had asserted, on the basis of suppositions, that the population of Kurdish origin in the east and south-east of the country had been subjected to ill-treatment on account of their identity. It held that the article, taken as a whole, had pursued the aims of publicly inciting the population of Kurdish origin to hatred and hostility and creating discrimination between races and between regions. It also drew particular attention to the applicant's character and celebrity.

13. In support of its conclusion, the National Security Court cited the following passage from the impugned article:

“... If Mustafa Kemal had been an Ottoman pasha [general] born in Mosul and not in Salonika, if he had chosen 'Republic of Kurdistan' [*Kürdiye Cumhuriyet*] as the name of the republic proclaimed after the war of independence by a decision of the Assembly, if he had adopted the name 'Atakürt', then we, the Turks, would subsequently have been thrown into prison arbitrarily; if we had said that we were Turks and had our own history and language, we would have been constantly pursued by the police in Istanbul, Ankara, İzmir, Bursa, Edirne ...”

14. On 27 November 1995 the applicant appealed to the Court of Cassation against the judgment of 18 October 1995. In his notice of appeal he submitted that he had expressed his opinions in the context of an open debate on matters of public concern. He further stated that the expression of peaceful ideas was safeguarded by the freedom of expression guaranteed in the Constitution.

15. On 1 March 1996 the Court of Cassation upheld the judgment given at first instance.

II. RELEVANT DOMESTIC LAW

16. At the material time Article 312 of the Turkish Criminal Code provided:

“Non-public incitement to commit an offence

A person who expressly praises or condones an act punishable by law as an offence or incites the population to break the law shall be liable to between six months' and two years' imprisonment and a heavy fine of between six thousand and thirty thousand Turkish liras.

A person who incites the people to hatred or hostility on the basis of a distinction between social classes, races, religions, denominations or regions, shall be liable to between one and three years' imprisonment and a fine of between nine thousand and thirty-six thousand liras. If this incitement endangers public safety, the sentence shall be increased by one-third to one-half.

The penalties to be imposed on those who have committed the offences defined in the previous paragraph shall be doubled when they have been committed by the means listed in Article 311 § 2.”

III. RELEVANT PROVISIONS OF INTERIM RESOLUTION ResDH(2001)106 OF THE COMMITTEE OF MINISTERS ON VIOLATIONS OF FREEDOM OF EXPRESSION IN TURKEY

17. In an Interim Resolution adopted on 23 July 2001, having regard to judgments delivered by the Court [See *Incal v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV; *Arslan v. Turkey* [GC], no. 23462/94, 8 July 1999; *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, ECHR 1999-IV; *Ceylan v. Turkey* [GC], no. 23556/94, ECHR 1999-IV; *Erdoğan and İnce v. Turkey* [GC], nos. 25067/94 and 25068/94, ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, 8 July 1999; *Karataş v. Turkey* [GC], no. 23168/94, ECHR 1999-IV; *Okçuoğlu v. Turkey* [GC], no. 24246/94, 8 July 1999; *Polat v. Turkey* [GC], no. 23500/94, 8 July 1999; *Sürek and Özdemir v. Turkey* [GC], nos. 23927/94 and 24277/94, 8 July 1999; *Sürek v. Turkey* (no. 2) [GC],

no. 24122/94, 8 July 1999; *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, 8 July 1999; *Öztürk v. Turkey* [GC], no. 22479/93, ECHR 1999-VI; *Özgür Gündem v. Turkey*, no. 23144/93, ECHR 2000-III; *Erdoğan v. Turkey*, no. 25723/94, ECHR 2000-VI; *Şener v. Turkey*, no. 26680/95, 18 July 2000; and *İbrahim Aksoy v. Turkey*, nos. 28635/95, 30171/96 and 34535/97, 10 October 2000] and to Interim Resolution ResDH(99)560 of 8 October 1999, adopted in connection with the report of the European Commission of Human Rights on application no. 25658/94, all of which concerned freedom of expression in Turkey, the Committee of Ministers of the Council of Europe noted:

“... in all these cases, the Court or the Committee of Ministers have notably found that the criminal convictions of the applicants, on account of statements contained in articles, books, leaflets or messages addressed to, or prepared for, a public audience, had violated their freedom of expression guaranteed by Article 10 of the Convention;

Having been informed that a comprehensive programme of reforms has been drawn up with a view to aligning, in the short term, Turkish law and practice with the Convention's requirements in the field of freedom of expression, in order to prevent new violations similar to those found in these cases;

...”

In its Resolution, observing that in most of the cases in question the applicants' convictions still appeared in their criminal records and that restrictions of their civil and political rights remained in place, the Committee of Ministers again requested the Turkish Government to abide by the Court's judgments – an obligation that included the adoption of individual measures putting an end to the violations found and removing as far as possible their effects, in accordance with Article 46 § 1 of the Convention – and encouraged the Turkish authorities to bring to a successful conclusion the comprehensive reforms planned to bring Turkish law into conformity with the requirements of Article 10 of the Convention.

THE LAW

18. On 7 January 2002 the Court received the following declaration from the Government:

“1. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant, the amount of 30,000 (thirty thousand) French francs [4,573.47 euros] with a view to securing a friendly settlement of his application registered under no. 32985/96. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in French francs [euros], to be converted into Turkish liras at the rate applicable at the date of payment, to a bank account named by the applicant. The sum shall be payable, free of any taxes which may be applicable, within three months from the date of the judgment

delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final settlement of the case.

2. The Court's rulings against Turkey in cases involving prosecutions under Article 312 of the Penal Code or under the provisions of the Prevention of Terrorism Act clearly show that Turkish law and practice urgently need to be brought into line with the Convention's requirements under Article 10 of the Convention. This is also reflected in the interference underlying the facts of the present case.

The Government undertake to this end to implement all necessary reform of domestic law and practice in this area, as already outlined in the National Programme of 24 March 2001.

3. The Government refer also to the individual measures set out in the Interim Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106), which they will apply to the circumstances of cases such as the instant one.

4. Finally, the Government undertake not to request the reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

19. On 13 December 2001 the Court had received the following declaration, signed by the representative of the applicant, who had taken cognisance of the Government's draft declaration:

"1. I note that the Government of Turkey are prepared to pay me *ex gratia* the sum of 30,000 (thirty thousand) French francs [4,573.47 euros] with a view to securing a friendly settlement of my application registered under no. 32985/96. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in French francs [euros], to be converted into Turkish liras at the rate applicable at the date of payment, to a bank account named by me. The sum shall be payable, free of any taxes which may be applicable, within three months from the date of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights.

2. I accept the proposal and waive any further claims against Turkey in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

3. This declaration is made in the context of a friendly settlement which the Government and I have reached.

4. I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

20. The Court takes note of the friendly settlement reached by the parties (Article 39 of the Convention). The Government have undertaken to pay a sum of money to the applicant, to make all the necessary changes to domestic law and practice in order to bring Turkish law into conformity with the Convention's requirements regarding freedom of expression, and, with a view to redressing promptly and fully the effects of the applicant's conviction, to adopt the individual measures set out in the Interim

Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106).

21. Having regard to the foregoing, the Court is satisfied that the friendly settlement reached is based on respect for human rights as defined in the Convention and the Protocols thereto (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

22. 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 that the case be referred to the Grand Chamber.

Done in French, and notified in writing on 14 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President