



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

SECOND SECTION

CASE OF SAMY v. THE NETHERLANDS

(Application no. 36499/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

18 June 2002

This judgment is final but it may be subject to editorial revision.

In the case of Samy v. the Netherlands,

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

Mr J.-P. COSTA, *President*,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 May 2002,

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

PROCEDURE

1. The case originated in an application (no. 36499/97) against the Kingdom of the Netherlands 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 purported Algerian national, Ali Samy (“the applicant”), on 11 March 1997.

2. The applicant was represented by Mr S.J. van Der Woude, a lawyer practising in Amsterdam. The Dutch Government (“the Government”) were represented by their Agent, Mrs J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant complained, *inter alia*, that one of his four requests for release from aliens' detention for expulsion purposes was not determined “speedily” as required by Article 5 § 4 of the Convention.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention, and was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court).

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

6. On 4 December 2001, having obtained the parties' observations, the Court declared admissible the complaint under Article 5 § 4 of the Convention in respect of one of the applicant's four requests for release. The applicant's other complaints were declared inadmissible.

7. On 22 April 2002 and 2 May 2002 the Government and the applicant respectively submitted to the Court their agreed declarations on the terms of a friendly settlement of the case.

THE FACTS

8. The applicant states that he is Ali Samy and that he is an Algerian national, born in 1968 in Algiers. He is currently living in the Netherlands.

9. On 26 August 1996, the applicant was arrested and taken into detention on suspicion of theft. He was released on the same day. However, as it had appeared during the criminal investigation that he was likely to be an illegal alien, he was handed over to and, in accordance with Article 19 § 2 of the Aliens Act (*Vreemdelingenwet*), apprehended by the Aliens Department (*Vreemdelingendienst*) in order to verify his identity, nationality and residence status.

10. On 27 August 1996, in accordance with Article 26 § 1 of the Aliens Act, the State Secretary of Justice (*Staatssecretaris van Justitie*) ordered the applicant's placement in aliens' detention with a view to his expulsion (*vreemdelingenbewaring*) and, on the same day, issued an expulsion order.

11. The applicant's lawyer filed several unsuccessful requests for the applicant's release from aliens' detention with the Hague Regional Court (*arrondissementsrechtbank*). In particular, a second request lodged on 29 November 1996 was rejected on 22 January 1997.

12. On 7 March 1997, the applicant was released from detention because there was no real prospect of expelling him at that time as his origins could not be established.

13. In a decision of 11 March 1997, the Hague Regional Court sitting in Amsterdam noted that the applicant had been released on 7 March 1997. The Regional Court found that the applicant's detention as of 27 February 1997 had not been lawful and awarded the applicant 1,200 Netherlands Guilders (544,54 euros) in compensation. The Regional Court also issued a costs order against the State Secretary of Justice.

THE LAW

14. On 22 April 2002 the Court received the following declaration from the Government of the Netherlands:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of the Netherlands offer to pay 3,000 euros to Ali Samy. This sum is to cover any non-pecuniary damage as well as costs and it will be payable within three months from the date of delivery of the judgment 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 declare that the above settlement can in no way be interpreted as a recognition on its behalf that a violation of the provision of the Convention, invoked by the applicant, has occurred.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

15. On 2 May 2002 the Court received the following declaration signed by the applicant's representative:

“I note that the Government of the Netherlands are prepared to pay the sum of 3,000 euros covering non-pecuniary damage and costs to Ali Samy with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

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

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 that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment.”

16. 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).

17. 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 18 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President