



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

THIRD SECTION

CASE OF ÖZLER v. TURKEY

(Application no. 25753/94)

JUDGMENT
(friendly settlement)

STRASBOURG

11 July 2002

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

In the case of Özler 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 R. TÜRMEŒ,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 25753/94) 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, Ali Özler (“the applicant”), on 2 November 1994.

2. The applicant was represented by Ms Aysel Tuğluk, a lawyer practising in İstanbul. The Turkish Government (“the Government”) were represented by their Agent, Mr Numan Hazar, Permanent Representative of Turkey to the Council of Europe.

3. The applicant complained under Article 6 § 1 of the Convention that he had been denied a fair hearing on account of the presence of a military judge on the bench of the Kayseri State Security Court which tried and convicted him.

He maintained that the authorities unjustifiably interfered with his freedom of thought and expression guaranteed by Articles 9 and 10 of the Convention, insofar as he was convicted for his speech.

The applicant also submitted under Article 14 of the Convention that he was convicted for his political opinions which were critical of the State's ideology.

4. Following communication of the application 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. On 30 January 2001, having obtained the parties' observations, the Court (Third Section) declared the application admissible. The applicant's

further complaint under Article 7 of the Convention was declared inadmissible.

6. 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.

7. On 5 April 2002, 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 29 May 2002 and on 16 May 2002 respectively, the applicant and the Government submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicant was born in 1952 and lives in Tunceli.

9. On 5 and 6 June 1992 the applicant participated in a meeting organised by the Tunceli Human Rights Association. At this meeting he made a speech concerning the problems of the Kurdish people and expressed his opinions on possible solutions.

10. On 3 May 1993 the Public Prosecutor attached to the Kayseri State Security Court (“the State Security Court”) instituted criminal proceedings against the applicant together with three other persons who had participated in the meeting. In his indictment, the public prosecutor accused the applicant, under Article 8 § 1 of the Prevention of Terrorism Act 1991, of disseminating propaganda against the indivisibility of the State.

11. On 26 August 1993 the State Security Court found the applicant guilty of an offence under Article 8 § 1 of the Prevention of Terrorism Act and sentenced him to two years' imprisonment and a fine of 50,000,000 Turkish Liras (TRL). In its decision the court held that the applicant, along with three other persons, had put forward the idea of a separate people contrary to the concept of nation adopted in the Constitution. The court considered that the applicant and the three other accused, in their speeches and poems, had claimed that the Kurdish people were fighting against the Republic of Turkey for their independence and that their struggle should be supported. Referring to all the speeches made by the accused, the court held that sentences such as “the Kurdish people are exercising the right of rebellion in their fight for emancipation from captivity”, “the Kurds should be given the right to determine their future”; “the Kurdish people are engaged in a great struggle, fighting for socialism and national independence” amounted to propaganda against the indivisibility of the State. The court further referred to the slogans shouted by the audience during the speeches, such as “Let Kurdistan walk” and “*Deho Apo*”

(the PKK leader) and to the presence of the symbolic colours of the Kurdish people, i.e. red, green and yellow in the meeting hall's decorations. Finally, the court found that the accused had carried out the proscribed propaganda at a time and place at which the threat to the unity of the State and the Nation was particularly acute.

12. The applicant appealed against this judgment.

13. On 6 May 1994 the Court of Cassation upheld the State Security Court's judgment.

14. Following the amendments made by Law no. 4126 of 27 October 1995 to the Prevention of Terrorism Act, the State Security Court *ex officio* re-examined the applicant's case.

15. On 28 November 1998 the State Security Court confirmed the applicant's conviction, and ultimately reduced the sentence to one year's imprisonment and a fine of 50,000,000 TRL.

THE LAW

16. On 16 May 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 7,000 (seven thousand) euros with a view to securing a friendly settlement of his application registered under no. 25753/94. This sum, which is to cover any non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in 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 Criminal Code and under Article 8 § 1 of the Prevention of Terrorism Act 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 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.”

17. On 29 May 2002 the Court received the following declaration signed by the applicant's representative:

“1. I note that the Government of Turkey are prepared to pay me *ex gratia* the sum of 7,000 (seven thousand) euros with a view to securing a friendly settlement of his application registered under no. 25753/94. This sum, which is to cover any non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in 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 the applicant 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.”

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.

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 11 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President