



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

FOURTH SECTION

CASE OF KEÇECİ v. TURKEY

(Application no. 38588/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

26 November 2002

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

In the case of Keçeci v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mr R. TÜRMEŒ,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr M. FISCHBACH, *judges*,

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

Having deliberated in private on 17 October 2000 and on 5 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 38588/97) 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, Bekir Sıtkı Keçeci ("the applicant"), on 20 September 1997.

2. The applicant was represented by Mrs Çağlar, 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 3 of the Convention that he was severely tortured while in police custody. The applicant further complained under Article 5 §§ 1 and 3 of the Convention that he was held in police custody for ten days without being brought before a judge. Lastly, the applicant complained under Article 6 of the Convention that he was not tried by an independent and impartial tribunal.

4. Following communication of the application to the Government and rejection of the applicant's complaints under Articles 5 and 6 of the Convention 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. On 17 October 2000, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

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

6. On 28 January 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 17 June and on 19 August 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. On 26 January 1993 the applicant was arrested by police officers from the Ankara Police Headquarters on suspicion of being a member of an illegal organisation, the THKP-C (Turkish People's Revolutionary Frontier Organisation).

8. The applicant was placed in custody at the Ankara Security Directorate. His wife was also taken into police custody on the same date.

9. According to the applicant, the police officers, who are known as the C-2 squad of the Anti-Terror branch, beat and hit him on the head with a nailed stick, squeezed his testicles, kept him in a cold room and did not allow him to go to the toilet. The police officers sexually harassed the applicant's wife and attempted to rape her in his presence.

10. On 27 January 1993 the applicant was seen by a doctor at the Ankara Forensic Medicine Institute who noted in his report the presence of scars of a brain operation on the forehead, an abrasion of 3 cm long on the right temporal part of the head, a laceration of 1 cm long over the right ear, a haematoma of 2 cm below the right eye, an ecchymosis of 1 cm and conjunctival hyperaemia on the right eyelid. It was suggested that a brain surgeon examine the applicant. The forensic doctor decided to draft his final report in the light of the findings of the brain examination.

11. On the same date the applicant was transferred to the Numune Hospital following a letter of the Anti-Terror Branch Director addressed to the hospital.

12. When the applicant was brought to the Numune Hospital, a doctor decided to transfer the applicant to another hospital because she was unable to carry out a brain tomogram. The applicant was brought to the İbni Sina Hospital where he was examined by a brain surgeon. The findings of the brain examination were transmitted to the forensic doctor who drafted his final report. As no pathological findings were indicated by the surgeon, it was concluded that the applicant's injuries were not life threatening but would prevent him working for four days.

13. A forensic doctor carried out a further medical examination on the applicant on 30 January 1993. It was concluded, with reference to the findings of the brain examination, that the applicant was in need of serious medical treatment.

14. On 8 February 1993 the Ankara State Security Court ordered the applicant's detention on remand.

15. On 20 July 1993 the applicant filed a petition with the Ankara State Security Court in which he alleged that he was severely tortured while in custody by the C-2 squad of the Anti-Terror Branch. He was hit on the head with a nailed stick and that his wife was subjected to sexual harassment in his presence. He was examined by doctors at the Numune and İbni Sina Hospitals and at the Forensic Medicine Institute. The applicant alleged that he identified the C-2 squad members who were present at the hearing before the State Security Court on 11 June 1993.

16. On 16 August 1993 the applicant gave a statement to the Ankara Public Prosecutor. He stated that his shirt had been smeared with blood as a result of torture while in custody. He had showed to the public prosecutor and to the judge when he appeared before them on 8 February 1993 his shirt and his wife's trousers that had been torn by the police officers when they attempted to rape her.

17. On 7 September 1993 the applicant filed a petition with the office of the Ankara Public Prosecutor. He reiterated his allegations and gave a detailed description of the police officers that tortured him in custody.

18. On 30 December 1994 the Ankara public prosecutor decided that no prosecution should be brought against the police officers (*takipsizlik kararı*). The prosecutor stated that the medical reports consisted of nothing but the applicant's subjective complaints, which might relate to his former brain operation. The prosecutor concluded that there existed no evidence to substantiate that the police officers tortured the applicant.

19. The applicant filed an objection with the Kırıkkale Assize Court which set aside the public prosecutor's decision of 30 December 1994.

20. On 28 February 1995 the Ankara Public Prosecutor filed a bill of indictment with the Ankara Assize Court. The prosecutor charged ten police officers under Article 243 of the Turkish Criminal Code with torturing the applicant.

21. On 13 March 1997 the Ankara Assize Court acquitted the police officers. In its decision the court referred to the statements of the accused police officers in which they stated that the applicant had been injured because he resisted the police when he was arrested. In the medical reports it was clearly indicated that the applicant had been sustaining injuries. The medical report drafted by a doctor at the Forensic Medicine Institute was issued on 27 January 1993, which was one day after the applicant had been arrested on 26 January 1993, at 17.30 hours. Having regard to the fact that the applicant had resisted when he was arrested, the findings of the medical

reports were reflecting the injuries occurred at the time of arrest. Furthermore, the witnesses heard by the court stated that they had not seen applicant being tortured because they had been interrogated separately. The court concluded that there existed no evidence to substantiate that the applicant had been tortured by the accused police officers.

22. On 21 March 1997 the Ankara Assize Court's decision became final, as the public prosecutor did not lodge an appeal. The court's decision was not served on the applicant.

THE LAW

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

"In my capacity as the representative of the applicant, Mr Bekir Sıtkı Keçeci, I have taken cognisance of the declaration of the Government of the Republic of Turkey that they are prepared to make to the applicant an *ex gratia* all-inclusive payment of EUR 15,000 (fifteen thousand euros), with a view to concluding a friendly settlement of the case that originated in application no. 38588/97. 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 euros, to be converted into Turkish liras at the rate applicable at the date of payment, to a bank account named by the applicant. This sum shall be payable, free of any taxes which may be applicable, within three months after notification of the Court's judgment delivered pursuant to Article 39 of the European Convention on Human Rights.

Having duly consulted the applicant, I accept that offer and he, in consequence, waives all other claims against Turkey in respect of the matters that were at the origin of the application. We declare that the case has been settled finally and we 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.

This declaration is made within the scope of the friendly settlement which the Government and I, in agreement with the applicant, have reached."

24. On 19 August 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 an all-inclusive amount of EUR 15,000 (fifteen thousand euros) with a view to securing a friendly settlement of his application registered under no. 38588/97. 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 euros, to be converted into Turkish liras at the rate applicable at the date of payment, to a bank account named by the applicant and/or his duly authorised representative. This sum shall be payable, free of any taxes which may be applicable, within three months from the date of 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 settlement of the case.

2. The Government regret the occurrence of individual cases of ill-treatment by the authorities of persons detained in custody, as in the case of the applicant, Mr Bekir Sıtkı Keçeci, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.

3. It is accepted that the recourse to ill-treatment, as in the circumstances of the present case, and the failure to conduct effective investigations constituted a violation of Article 3 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such actions – including the obligation to carry out effective investigations as required by Articles 3 and 13 is respected. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in, among other things, more effective investigations into cases of ill-treatment in circumstances similar to those of the instant application.

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 reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

25. 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).

26. 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 26 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President