



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

FIRST SECTION

CASE OF TAMER v. TURKEY

(Application no. 28002/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

9 January 2003

In the case of Tamer v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr R. TÜRMEN,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 12 December 2002

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

PROCEDURE

1. The case originated in an application (no. 28002/95) 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 an Turkish national, Tuna Tamer (“the applicant”), on 30 March 1995.

2. The applicant did not appoint a lawyer for his representation before the Court and 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 6 § 1 of the Convention that the criminal proceedings brought against him contravened the reasonable time requirement and that his right to a fair trial has not been respected. Furthermore he complained under Article 4 of Protocol No. 7 to the Convention that he was tried twice for the same offence.

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.

5. On 22 June 1999 the Court communicated the complaint regarding the length of the criminal proceedings to the Government and rejected the remainder of the application.

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

7. On 13 June 2002, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

8. On 1 July 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 5 July 2002 and on 8 October 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. The applicant was born in 1945 and lives in Istanbul.

10. In an indictment dated 22 December 1980, the Kırklareli Public Prosecutor charged the applicant, under Article 240 of the Criminal Code, with abuse of office by assisting and protecting smugglers.

11. On 23 February 1982 the Tekirdağ Assize Court convicted the applicant for abuse of office and sentenced him to one year and eight months' imprisonment and to a heavy fine. The applicant appealed. On 30 June 1982 the Court of Cassation quashed the judgment.

12. The Tekirdağ Assize Court subsequently joined the applicant's case with another case of collective smuggling initiated against 13 co-accused.

13. On 12 December 1990 the Tekirdağ Assize Court convicted the applicant and the other co-accused for collective smuggling and sentenced the applicant to one year and eight months' imprisonment. On 15 April 1992 the Court of Cassation upheld the judgment of the Tekirdağ Assize Court.

14. On 23 September 1992 the Head Office of the Public Prosecutor at the Court of Cassation rejected the applicant's petition for rectification of the Court of Cassation's judgment dated 15 April 1992.

15. On 5 November 1992 the Tekirdağ Assize Court admitted the applicant's request that his case be re-opened and initiated new proceedings. On 16 September 1993 the Tekirdağ Assize Court convicted the applicant confirming its former judgment of 12 December 1990.

16. The applicant appealed. On 5 October 1994 the Court of Cassation upheld the Tekirdağ Assize Court's judgment of 16 September 1993.

17. On 7 December 1994 the Head Office of the Public Prosecutor at the Court of Cassation rejected the applicant's petition for rectification of its decision.

18. On 15 February 1995 the Tekirdağ Assize Court rejected the applicant's second petition that his case be re-opened.

THE LAW

19. On 8 October 2002 the Court received the following declaration from the Government:

“I declare that the Government of Turkey offer to pay 10,000 (ten thousand) euros to Mr Tuna Tamer with a view to securing a friendly settlement of the application registered under no. 28002/95. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the decision by the Court pursuant to the Article 39 of the European Convention on Human Rights.

This sum shall be paid in euros to a bank account named by the applicant, free of any taxes and charges that may be applicable. The payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the Court's decision has been delivered.”

20. The Court received the following declaration signed by the applicant:

“I note that the Government of Turkey are prepared to pay the sum of 10,000 (ten thousand) euros covering pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of application no. 28002/95 pending before the Court.

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.

This declaration is made in the context of a friendly settlement which the Government and the applicants 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 the Court's decision has been delivered.”

21. 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).

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 a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 9 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President