



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

SECOND SECTION

CASE OF YILDIZ v. TURKEY

(Application no. 28308/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

22 April 2003

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

In the case of Yıldız v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BİRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 2 July 2002 and on 1 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 28308/95) 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 four Turkish nationals, Mr Zeki Yıldız, Mr Medeni Yanat, Mr Mehmet Bidav and Ms Gülşen Akbulut (“the applicants”), on 27 July 1995.

2. The applicants were represented by Ms Hülya Üçpınar, a lawyer practising in İzmir. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants complained, *inter alia*, that they were subjected to treatment prohibited under Article 3 of the Convention.

4. Following communication of the application to the Government 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 2 July 2002, having obtained the parties’ observations, the Court declared Mr Zeki Yıldız’s application admissible in so far as it had been communicated to the Government. The Court decided to strike the application out of the list of cases with respect to the other applicants.

5. On 29 October 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 27 November 2002 and 5 February 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1956 and lives in Germany.

7. At the time of the events in question the applicant was detained in the Buca Prison in İzmir. He was accused of being a member of the PKK.

8. On 26 April 1994 the prison warders, instructed by their directors, assaulted the prisoners while the applicant was waiting for his relatives along with other prisoners in the visiting room of the prison.

9. In a report drafted and signed by 14 prison warders and directors on 26 April 1994, it is stated that 11 prisoners who were convicted of being members of the PKK requested that they be moved from their wing because they were afraid of being attacked by other prisoners. As soon as they were moved to another wing some of the prisoners protested against the administration's decision and demanded that the prisoners be returned to their former wing. When their demand was rejected by the administration the prisoners started to chant slogans in the visiting room and declared that they would not leave the room until the prisoners were returned to their former wing. The warders brought the prisoners to their wing when they failed to persuade them to return. The prisoners resisted and injured themselves by hitting the iron beds in the wing.

10. On 27 April 1994 the applicant's representative visited the applicant in the prison. She observed that the applicant was suffering from wounds and bruises to his arms, face and eyes caused by blows.

11. On 29 April 1994 the applicant signed a petition along with other prisoners complaining that they had been attacked by prison warders. They alleged that the chief warden of the prison, Ahmet Ayhan, had instructed the warders to attack them.

12. On an unspecified date the applicant petitioned the İzmir Public Prosecutor, complaining of the mistreatment which he suffered at the hands of the warders in the prison. He alleged that he had been severely beaten by the warders and sustained injuries and bruises as a result. The applicant requested the public prosecutor to initiate an investigation and to order a medical examination to be carried out by the Forensic Medicine Institute.

13. On 11 May 1994 the applicant was examined at the İzmir Forensic Medicine Institute. In a medical report drafted by a doctor at the Institute, it is stated that the applicant had a 2 cm scar on the right temporal part of his eyebrow, two 1 cm scars on the crurista and a haematoma on the third finger of his right hand. The report concluded that the applicant would be unfit to work for two days.

14. On 29 September 1994 the İzmir Public Prosecutor decided that no prosecution should be brought (*takipsizlik kararı*) against the prison administration and warders. According to the prosecutor, the prison administration was authorised to use necessary force in order to maintain peace and order in the prison pursuant to the Directive on the Execution of

Punishments (*Ceza İnfaz Yönetmeliği*). The use of force applied in the incident was in accordance with the provisions of the Directive.

15. On 14 December 1994 the applicant filed a petition with the office of the İzmir Public Prosecutor. He requested a copy of investigation file no. 1994/24153.

16. On the same day the İzmir Public Prosecutor rejected the applicant's request.

17. On 21 December 1994 the applicant filed an objection with the İzmir Assize Court against the decision of the İzmir Public Prosecutor of 29 September 1994. He complained that the prosecutor accepted the account of the accused warders without giving any weight to finding in the medical report. He also stated that he was denied access to the investigation file.

18. On 13 January 1995 the İzmir Karşıyaka Assize Court rejected the applicant's objection. On 31 January 1995 the applicant was notified of the decision of the assize court.

THE LAW

19. On 5 February 2003 the Court received the following declaration from the Government:

"1. The Government regret the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions. It is accepted that the recourse to ill-treatment of detainees constitutes 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 acts and the obligation to carry out effective investigations are respected in the future. The Government refer in this connection to the commitments which they undertook in the Declaration agreed on in Application no. 34382/97 and reiterate their resolve to give effect to those commitments. They note that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of ill-treatment in circumstances similar to those of the instant case as well as more effective investigations.

2. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant, Mr Zeki Yıldız, an all-inclusive amount of 30,500 EUR (thirty thousand five hundred euros), with a view to securing a friendly settlement of his application registered under no. 28308/95. 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 free of any tax that may be applicable and be paid in euros to a bank account named by the applicant and/or his duly authorised representative. This sum shall be payable 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. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until

settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

3. The Government consider that the supervision by the Committee of Ministers of the Council of Europe 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.

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."

20. On 27 November 2002 the Court received the following declaration signed by the applicants' representative:

"1. In my capacity as the representative of the applicant, Mr Zeki Yıldız, I have taken cognisance of the terms of the declaration made by the Government of the Republic of Turkey as well as the undertakings contained in that declaration, including to pay the applicant an all-inclusive amount of 30,500 EUR (thirty thousand five hundred euros) with a view to concluding a friendly settlement of his case that originated in application no. 28308/95.

2. Having been duly consulted, the applicant accepts the terms of the above-mentioned declaration and, in consequence, waives all other claims against the Republic of 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."

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 22 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President