



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

FOURTH SECTION

CASE OF ZARAKOLU v. TURKEY

(Application no. 32455/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

27 May 2003

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

In the case of Zarakolu v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr A. PASTOR RIDRUEJO,

Mr R. TÜRMEŒEN,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 5 November 2002 and on 6 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 32455/96) 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, Mrs Ayşenur Zarakolu, on 8 July 1996.

2. The applicant was represented by Mr Özcan Kılıç, a lawyer practising in Istanbul. 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 she had been denied a fair hearing on account of the presence of a military judge on the bench of the Istanbul State Security Court which tried and convicted her for publishing a book. She also complained under Article 10 of the Convention that her conviction constituted an unjustified interference with her right to freedom of expression. The applicant finally complained that the application of special rules under the Prevention of Terrorism Act and her trial before a state security court constituted discriminatory treatment contrary to Article 14 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 5 November 2002, having obtained the parties' observations, the Court declared the application admissible. The applicant's complaint under Article 14 of the Convention was declared inadmissible.

5. On 20 January 2003, 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 20 February 2003 and on 7 March 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant, Mrs Ayşenur Zarakolu was a Turkish national and lived in Istanbul. She was represented before the Court by Mr Özcan Kılıç, a lawyer practising in Istanbul.

7. On 25 April 2002 the Court was informed of Mrs Zarakolu's death on 28 January 2002 and that Mr Ragıp Zarakolu, her widower, wanted the proceedings to continue and wished to participate in them, retaining the applicant's lawyer as his representative.

8. For practical reasons, Mrs Zarakolu will continue to be called "the applicant", although Mr Zarakolu is now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI and see also *Ahmet Sadık v. Greece*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1641, § 3).

9. The applicant was the owner of a publishing company called "Belge International Publishing Co."

10. In June 1994 Belge International Publishing Co. published a book entitled *Birakuji-Kürtlerin İç Savaşı*, written by F.D.

11. In an indictment dated 5 July 1994 the public prosecutor at the Istanbul State Security Court charged the applicant with disseminating PKK propaganda through publishing this book. The Public Prosecutor requested that the applicant be convicted in accordance with Article 7 § 5 of the Prevention of Terrorism Act (Law No. 3713).

12. In the proceedings before the Istanbul State Security Court the applicant denied the charges. She stated that the book was based on true facts. She also referred to her rights under Article 10 of the Convention.

13. In a judgment dated 28 September 1995, the Istanbul State Security Court found the applicant guilty of the offence under Article 7 of the Prevention of Terrorism Act. The applicant was sentenced to five months' imprisonment and the payment of a fine of TRL 41,666,666.

14. In concluding that the applicant had disseminated propaganda in support of a terrorist organisation, the court referred to the interview with Cemil Bayık, a commander of the PKK, published in pp. 243-250 of the book. The court quoted the following views of Cemil Bayık in its judgment:

"[T]he war in the south has shown that the power of the PKK was not as straightforward as had been estimated. It has also shown that it is not easy to eliminate the PKK. Everybody has been able to see for themselves that it is not possible to reach a solution in Kurdistan without the PKK. The PKK did not lose the war. In fact the

reality is that it has emerged from this war with significant gains. The Turkish Republic, in an attempt to hide its defeat, has been disseminating propaganda based on lies, such as that the PKK has been defeated, that it has lost thousands of its men and that it will not recover. In the press, it has also been reported that the PKK has not been crushed and that it has emerged from this war ever more powerful. It has further been reported in the press that by disseminating such propaganda, they [the State] are deceiving themselves but that they need such propaganda to maintain high spirits”.

15. On 12 October 1995 the applicant appealed alleging, *inter alia*, that Article 7 § 5 of the Prevention of Terrorism Act was inapplicable in her case and that the court had convicted her solely on the basis of an interview contained in pp. 243-250 of the book. She referred to her rights under Article 10 of the Convention.

16. In a decision of 26 December 1995, the 9th Chamber of the Court of Cassation, upholding the cogency of the Istanbul State Security Court’s assessment of the evidence and its reasoning in rejecting the applicant’s defence, dismissed the appeal.

17. On 6 February 1996 the applicant was notified about her prison sentence and the fine.

18. On 29 August 1996 the applicant began serving her prison sentence at Bayrampaşa Prison in Istanbul.

THE LAW

19. On 7 March 2003 the Court received the following declaration from the Government:

“The Government note that the Court’s rulings against Turkey in cases involving prosecutions under the provisions of the Prevention of Terrorism Act relating to freedom of expression 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.

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 (Res DH (2001) 106), which they will apply to the circumstances of cases such as the instant one.

I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant, the amount of 9,500 (nine thousand five hundred) Euros with a view to securing a friendly settlement of the application registered under no. 32455/96. 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. 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.

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 20 February 2003 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Turkey are prepared to pay me *ex gratia* the sum of 9,500 (nine thousand five hundred) Euros with a view to securing a friendly settlement of the application registered under no. 32455/96. 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. 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.

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 I 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."

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 27 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President