



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

FIRST SECTION

CASE OF ÜLKÜ DOĞAN AND OTHERS v. TURKEY

(Application no. 32270/96)

JUDGMENT
(Friendly Settlement)

STRASBOURG

19 June 2003

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

In the case of Ülkü Doğan and Others v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr V. ZAGREBELSKY, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 27 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 32270/96) 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 three Turkish nationals, Ülkü Doğan, Celal Yalçıtaş and Servet Çolak (the applicants’), on 8 July 1996

2. The applicants were represented by Mr İbrahim Ergün, 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 applicants complained that they had been subjected to treatment contrary to Article 3 of the Convention whilst in custody. They also complained that they had been victims of a violation of Article 5 §§ 3 and 4 and Article 6 § 3 (c) of the Convention in that they were not brought promptly before a judge, that they were unable to challenge the lawfulness of their detention period and that they were denied the assistance of a lawyer during their pre-trial detention. They finally complained under Article 14 of the Convention that they were discriminated against.

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 14 March 2002, having obtained the parties’ observations, the Court declared the complaints under Articles 3, 5 and 6 of the Convention admissible.

5. On 17 February 2003 and on 19 March 2003 the applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicants were born in 1964, 1968 and 1968 respectively and live in Adana.

7. According to intelligence gathered by Adana Police Headquarters, members of an illegal organisation called Ekim (*October*) were going to distribute posters and put up banners in protest against redundancies and price rises. The police felt that these activities were intended to provoke the public and informed its anti-terrorist department. This department planned an operation to apprehend members of Ekim and also to seize organisational documents. According to official documents in the file, the operation started at 12.30 a.m. on 12 May 1996.

8. According to the applicants, however, they were all arrested at 11.00 p.m. on 11 May 1996. Ülkü Doğan, the first applicant, was arrested by members of the anti-terrorist department when he was on his way home, Celal Yalçıtas, the second applicant, was arrested at a house in Adana and the third applicant, Servet Çolak, was arrested at a friend's house. A large number of documents, containing articles protesting against issues such as torture in police custody, disappearances and unequal division of income, were also seized during these arrests.

9. According to the official reports of the apprehension and seizure, drawn up and signed by the police officers who conducted this operation, these arrests were effected on 12 May 1996. Also according to these reports, neither the second nor the third applicant put up any resistance at their arrests.

10. On 13 May 1996, the chief of the anti-terrorist department of Adana police asked the Adana public prosecutor to authorise the applicants' detention in police custody for a period of 15 days. On the same day, the prosecutor, pursuant to Article 9 of Law No. 2845 and Article 30 of Law No. 3842, acceded to this request.

11. The applicants submit that in the course of their police custody they were subjected to various types of torture. In particular, they were hung from their arms, given electric shocks to various parts of their bodies, kept naked under or on big slabs of ice, beaten up, hosed with cold water, insulted, prevented from sleeping and threatened with death.

12. On 23 May 1996 the applicants were taken to the Adana branch of the Forensic Medicine Institute, where they were examined and medical reports were drawn up. In the medical report relating to the first applicant, cuts which had formed scabs were observed on both wrists and on the right ankle. The medical report drawn up in relation to the second applicant states that there were cuts on both arms as well as a cut below the left knee all of which had healed. The third applicant's medical report states that there was a cut below the right knee and two cuts in the vertebral region, all of which had healed.

13. On the same day, 23 May 1996, the applicants were brought before the Adana public prosecutor, who sent them to the Fourth Chamber of the Criminal Court of Peace in Adana. Before the Justice of the Peace of that Chamber, the applicants denied the accusations against them and complained that they had made their statements under torture. They were detained on remand, under Article 104 of the Code of Criminal Procedure, on the grounds of the state of the evidence and the nature of the offence of which they stood accused, which could be classified as a serious crime. The applicants were not represented by a lawyer before the Justice of the Peace.

14. On 3 June 1996 the Chief Prosecutor of the National Security Court in Konya prepared an indictment submitting that the applicants and five other persons were guilty of membership of the armed terrorist organisation Ekim pursuant to Article 168 § 2 of the Turkish Criminal Code and also Article 5 of Law No. 3713.

15. During the proceedings before the Konya National Security Court the applicants informed the Court that they had been tortured in custody.

16. On 26 November 1996 the National Security Court in Konya held that the applicants had aided Ekim by making propaganda and it sentenced them to ten months' imprisonment and a fine of 41,666,666 Turkish Liras. Taking into account the time they had already spent in detention, they were immediately released.

17. The applicants appealed against this judgment. The Ninth Chamber of the Criminal Division of the Court of Cassation upheld the decision of the Konya National Security Court on 4 March 1999.

18. The public prosecutor has not taken any action with regard to the applicants' claims brought forward in the proceedings before the Justice of the Peace, that they were tortured during custody.

THE LAW

19. On 19 March 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 in custody 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 as claimed in the present case constitute 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 applicants, Mr Ülkü Doğan, Mr Celal Yalçınbaş and Mr Servet Çolak, an all-inclusive amount of 80,000 EUR (eighty thousand), with a view to securing a friendly settlement of their application registered under no. 32270/96. This sum, which also covers legal 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 applicants and/or their 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 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 undertake not to request that the case to be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

20. On 17 February 2003 the Court received the following declaration signed by the applicants' representative:

“1. In my capacity as the representative of the applicants, I have taken cognisance of the declaration of the Government of the Republic of Turkey that they are prepared to make to the applicants, Mr Ülkü Doğan, Mr Celal Yalçınbaş and Mr Servet Çolak, an *ex gratia* all-inclusive payment of 80,000 EUR (eighty thousand euros), with a view to concluding a friendly settlement of their case that originated in application no. 32270/96. This sum, which also covers the costs and expenses related to the case, will be paid in accordance with the terms stipulated in the said declaration within three months after notification of the Court's judgment delivered pursuant to Article 39 of the European Convention on Human Rights.

2. Having duly consulted the applicants, I accept that offer and they, in consequence, waive 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.

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

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 19 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President