



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

SECOND SECTION

CASE OF DEĞİRMENÇİ AND OTHERS v. TURKEY

(Application no. 31879/96)

JUDGMENT
(Friendly settlement)

*(This version has been rectified under Article 81 of the Rules of Court
on 18 November 2003.)*

STRASBOURG

23 September 2003

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

In the case of Değirmenci and Others 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 R. TÜRMEŖEN,

Mr C. BİRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 24 September 2002 and on 2 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 31879/96) 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 37 Turkish nationals whose names appear in the table below (“the applicants”), on 27 May 1996.

2. The applicants were represented by Ms Şenal Sarıhan, a lawyer practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court. Five of the applicants, namely İbrahim Arslan, Özgür Ovacık, Celal Mut, Ercan Uğur and Bedia Zehra Torun had been granted legal aid.

3. The applicants complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings. 20 of the 37 applicants, namely, Şaban Değirmenci, Mehmet Baha Çetintaş, Yılmaz Ergül, İbrahim Arslan, Ercan Uğur, İsmail Tayfun Üstün, Abdullah Evcil, Abdullah Şengörenoğlu, İsmail Tümay, Ziya Uncu, Mehmet Üresin, Naci Zaman, Özgür Ovacık, Kemal Elhan, Bedia Zehra Torun, Arif Kandemir, Nejdett Özen, Metin Bakkalcı, Lütfi Doğan Kılıç and Hürriyet Eđer also alleged a violation of Article 6 § 1 of the Convention since they had been denied their right to a fair hearing by an independent and impartial tribunal and their right to have adequate time and facilities for the preparation of their defence within the meaning of Article 6 § 3 (b) of the Convention. The applicants finally alleged violations of Articles 3 and 5 § 3 of the Convention.

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 30 November 1999 the applicants' complaints were communicated to the Government. Their complaints under Articles 3 and 5 § 3 of the Convention, as well as the complaint introduced by 14 of the applicants concerning the impartiality and independence of the Ankara Martial Law Court which convicted them, were declared inadmissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. On 24 September 2002, having obtained the parties' observations, the Court declared the application partially admissible and partially inadmissible.

8. On 27 September 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 6 November 2002 and on 24 April 2003 the applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. Between 1979 and 1985 the applicants were arrested by policemen and placed in police custody. They were accused of membership of an illegal organisation, the Dev-Yol (Revolutionary Way). The Ankara Martial Law Court (*Sıkıyönetim Mahkemesi*) remanded the applicants in custody.

10. The beginning and the end of the criminal proceedings against the applicants are as follows:

Applicant's name	Beginning of the criminal proceedings	End of the criminal proceedings
1) Şaban Değirmenci	17 February 1981	27 December 1995
2) Mehmet Baha Çetintaş	5 February 1981	27 December 1995
3) Yılmaz Ergül	17 July 1980	27 December 1995
4) İbrahim Arslan	9 July 1981	27 December 1995
5) Ercan Uğur	18 August 1981	27 December 1995
6) İsmail Tayfun Üstün	27 December 1980	27 December 1995
7) Abdullah Evcil	9 April 1980	27 December 1995
8) Abdullah Şengörenoğlu	6 December 1980	27 December 1995
9) İsmail Tümay	12 December 1980	27 December 1995
10) Ziya Uncu	24 November 1980	27 December 1995
11) Mehmet Üresin	17 July 1980	27 December 1995

12) Naci Zaman	17 September 1980	27 December 1995
13) Özgür Ovacık	24 September 1980	27 December 1995
14) Kemal Elhan	27 October 1980	27 December 1995
15) Murat Parlakay	23 November 1980	still pending
16) Celal Mut	1 October 1980	still pending
17) Mehmet Hassoy	24 January 1980	still pending
18) Bedia Zehra Torun	22 January 1981	27 December 1995
19) Arif Kandemir	10 September 1981	27 December 1995
20) Nejdett Özen	11 April 1980	27 December 1995
21) Metin Bakkalcı	8 October 1980	27 December 1995
22) Lütfi Doğan Tılıç	20 April 1981	27 December 1995
23) Hürriyet Eđer	2 September 1979	27 December 1995
24) Esmâ Güzel	9 September 1980	27 December 1995
25) Tuncay Kara	24 November 1980	27 December 1995
26) Ali Özkan Çakırlar	1 December 1980	27 December 1995
27) Ertuğrul Özbek	31 August 1980	27 December 1995
28) Mehmet Şahin	4 September 1980	27 December 1995
29) Mehmet Akif Aküzüm	31 October 1980	27 December 1995
30) Mehmet Nuri Sarpkaya	11 November 1980	27 December 1995
31) Abdülrezzak Erten	29 October 1980	27 December 1995
32) İlhan Burhan Çam ¹	7 November 1980	27 December 1995
33) Hacı Badem	9 September 1980	27 December 1995
34) Sami Altuntaş	29 October 1980	27 December 1995
35) Ahter Yıldız	12 July 1981	27 December 1995
36) Recai Kireç	7 September 1979	27 December 1995
37) Halil Ulutaş	21 September 1984	27 December 1995

[1. Rectified on 18 November 2003. The name of İlhan Burhan Çam was mentioned as : 'Burhan Çam'.]

11. On 26 February 1982 the Military Public Prosecutor filed a bill of indictment with the Ankara Martial Law Court setting out the charges against 723 defendants, including the applicants. He accused the applicants of membership of an organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime, contrary to Article 146 § 1 of the Turkish Criminal Code.

12. On different dates the applicants were all released pending trial by the Ankara Martial Law Court.

13. After martial law was lifted, the Ankara Martial Law Court was thereafter referred as the Martial Law Court attached to the 4th Army Corps.

14. On 19 July 1989 the Martial Law Court convicted the applicants and sentenced them to various terms of imprisonment.

15. As the applicants' sentences exceeded 15 years' imprisonment, their cases were automatically referred to the Military Court of Cassation (*Askeri Yargıtay*).

16. Following promulgation of the Law of 26 December 1994, which abolished the jurisdiction of the martial law courts, the Court of Cassation (*Yargıtay*) acquired jurisdiction over the cases, and the files were sent to it.

17. On 27 December 1995 the Court of Cassation decided:

- to uphold the first-instance court's judgment in respect of 13 of the applicants (Baha Çetintaş, Yılmaz Ergül, Mehmet Üresin, İbrahim Arslan, Tayfun Üstün, Abdullah Evcil, Kemal Elhan, Ercan Uğur, Naci Zaman, Özgür Ovacık, Abdullah Şengörenöğlu, İsmail Tümay and Ziya Uncu);

- to quash the first-instance court's judgment on the ground that the court had failed to apply the legal provisions relevant to the crime in question in respect of 3 of the applicants (Murat Parlakay, Celal Mut and Mehmet Hassoy) and to transfer the cases to the Ankara Assize Court; and

- to uphold the first-instance court's judgment with some amendments in respect of 7 of the applicants (Arif Kandemir, Hürriyet Eğer, Nejdett Özen, Lütü Doğan Tılıç, Bedia Zehra Torun, Metin Bakkalcı and Şaban Değirmenci).

18. As regards 14 of the applicants (Tuncay Kara, Ertuğrul Özbek, Mehmet Şahin, İlhan Burhan Çam [Rectified on 18 November 2003. The name of İlhan Burhan Çam was mentioned as : 'Burhan Çam'.], Esma Güzel, Ali Özkan Çakırlar, Mehmet Akif Aküzüm, Mehmet Nuri Sarpkaya, Abdülrezzak Erten, Hacı Badem, Sami Altıntaş, Ahter Yıldız, Recai Kireç and Halil Ulutaş), the Court of Cassation held that the criminal proceedings should be discontinued on the ground that the prosecution was time-barred (*zamanaşımı*).

THE LAW

19. On 28 April 2003 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 applicants, Mr Şaban Değirmenci, Mr Mehmet Baha Çetintaş, Mr Yılmaz Ergül, Mr İbrahim Arslan, Mr Ercan Uğur, Mr İsmail Tayfun Üstün, Mr Abdullah Evcil, Mr Abdullah Şengörenöğlu, Mr İsmail Tümay, Mr Ziya Uncu, Mr Mehmet Üresin, Mr Naci Zaman, Mr Özgür Ovacık, Mr Kemal Elhan, Mr Murat Parlakay, Mr Celal Mut, Mr Mehmet Hassoy, Mrs Bedia Zehra Torun, Mr Arif Kandemir, Mr Nejdett Özen, Mr Metin Bakkalcı, Mr Lütü Doğan Tılıç, Mrs Hürriyet Eğer, Mrs Esma Güzel, Mr Tuncay Kara, Mr Ali Özkan Çakırlar, Mr Ertuğrul Özbek, Mr Mehmet Şahin, Mr Mehmet Akif Aküzüm, Mr Mehmet Nuri Sarpkaya, Mr Abdülrezzak Erten, Mr İlhan Burhan Çam [Rectified on 18 November 2003. The name of İlhan Burhan Çam was mentioned as : 'Burhan Çam'.], Mr Hacı Badem, Mr Sami Altıntaş, Mr Ahter Yıldız, Mr Recai Kireç, Mr Halil Ulutaş, an all-inclusive amount of 572,900 EUR (five

hundred and seventy two thousand nine hundred euros), with a view to securing a friendly settlement of their application registered under no. 31879/96. 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 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. The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

20. On 15 November 2002 the Court received the following declaration signed by the applicants' representative:

“1. In my capacity as the representative of the applicants, Mr Şaban Değirmenci, Mr Mehmet Baha Çetintaş, Mr Yılmaz Ergül, Mr İbrahim Arslan, Mr Ercan Uğur, Mr İsmail Tayfun Üstün, Mr Abdullah Evcil, Mr Abdullah Şengörenoğlu, Mr İsmail Tümay, Mr Ziya Uncu, Mr Mehmet Üresin, Mr Naci Zaman, Mr Özgür Ovacık, Mr Kemal Elhan, Mr Murat Parlakay, Mr Celal Mut, Mr Mehmet Hassoy, Mrs Bedia Zehra Torun, Mr Arif Kandemir, Mr Nejdett Özen, Mr Metin Bakkalcı, Mr Lütfi Doğan Tılıç, Mrs Hürriyet Eger, Mrs Esma Güzel, Mr Tuncay Kara, Mr Ali Özkan Çakırlar, Mr Ertuğrul Özbek, Mr Mehmet Şahin, Mr Mehmet Akif Aküzüm, Mr Mehmet Nuri Sarpkaya, Mr Abdülrezzak Erten, Mr İlhan Burhan Çam [Rectified on 18 November 2003. The name of İlhan Burhan Çam was mentioned as : 'Burhan Çam'.], Mr Hacı Badem, Mr Sami Altuntaş, Mr Ahter Yıldız, Mr Recai Kireç, Mr Halil Ulutaş, I have taken cognisance of the declaration of the Government of the Republic of Turkey that they are prepared to make to the applicants an *ex gratia* all-inclusive payment of 572,900 EUR (five hundred and seventy two thousand nine hundred euros) with a view to concluding a friendly settlement of their case that originated in application no. 31879/96. 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 23 September 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President