CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF CARALAN v. TURKEY

(Application no. 27529/95)

JUDGMENT
(Friendly Settlement)

STRASBOURG

25 September 2003

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

In the case of Caralan v. Turkey,

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

Mrs F. TULKENS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
Mr F. GÖLCÜKLÜ, ad hoc *judge*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 14 November 2002 and on 4 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 27529/95) 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 a Turkish national, Ms Semra Caralan ("the applicant"), on 18 April 1995.

2. The applicant was represented by Mr Kamil Tekin Sürek, 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 her right to a fair hearing was breached because the criminal proceedings brought against her were not concluded within a reasonable time and that she was tried and convicted by the Istanbul State Security Court which lacked independence and impartiality. 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 under Article 18 of the Convention that the restrictions which were applied to her freedom of expression under the Anti-Terror Law were inconsistent with the legitimate aims prescribed in Article 10 § 2 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 14 November 2002, having obtained the parties' observations, the Court declared the application admissible. The applicant's complaint under Article

6 § 1 of the Convention concerning the length of the criminal proceedings was declared inadmissible.

5. On 11 April 2003 and on 9 July 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 1949 and lives in Istanbul.

7. At the time of the events giving rise to the present application the applicant was the major shareholder and the editor in a publication company called "Evrensel Ltd".

8. In 1992 Evrensel Limited published a book entitled "Conference Documents" (*Konferans Belgeleri*) comprising documents related to a conference organised by the Turkish Revolutionary Communist Party (an outlawed political party in Turkey).

9. On 2 September 1992 the public prosecutor at the Istanbul State Security Court charged the applicant under sections 7 and 8 of the Anti-Terror Law with disseminating propaganda against the indivisible integrity of the State and making propaganda of terrorist organisations.

10. In the proceedings before the Istanbul State Security Court, the applicant pleaded that the book only contained historical documents. She also referred to her freedom of expression.

11. In a judgment dated 1 July 1993, the Court found the applicant guilty of disseminating separatist propaganda, an offence under section 8 of the Anti-Terror Law as the publisher of the book. The applicant was sentenced to five months' imprisonment and payment of a fine. The Court noted that the book referred to a certain part of the Turkish territories as Kurdistan. The book also claimed that Turkish citizens living in those territories were of the Kurdish nation and that they should be given the right to self-determination, including the right to form a separate State, and that the Turkish army had invaded those territories. The Court concluded the book had disseminated propaganda against the indivisible integrity of the State.

12. The applicant appealed. She submitted that her conviction constituted an unjustified interference with her freedom of expression guaranteed under Article 10 of the Convention.

13. On 2 December 1993 the Court of Cassation quashed the decision of the State Security Court. It considered that the publication of the book constituted an offence also under section 7 of the Anti-Terror Law, disseminating propaganda of terrorist organisations, and that the applicant should have been also convicted separately under section 7.

14. In a judgment dated 24 March 1994 the Istanbul State Security Court considered that the applicant should be sentenced to 10 months' imprisonment and a fine under sections 7 and 8 of the Anti-Terror Law. However, having regard to the fact that no appeal had been filed by the Public Prosecutor against the judgment of 1 July 1993, the Court held that the applicant's sentence should not exceed the sentence pronounced in that judgment. The applicant was finally sentenced to five months' imprisonment and payment of a fine of 41,666,666 Turkish Lira (TRL).

15. The applicant appealed. On 22 September 1994 the Court of Cassation, upholding the cogency of the State Security Court's reasoning and evaluation of evidence in the judgment of 24 March 1994, dismissed the appeal.

16. On 18 October 1994 the public prosecutor at the Istanbul State Security Court notified the prison sentence and fine to the applicant.

17. On 17 March 1995 the applicant began serving her sentence at the Bayrampaşa Prison in Istanbul. She was later transferred to the prison in İzmit. She was released after having served 112 days in prison. She also paid TRL 27,090,000 of the fine.

18. On 27 October 1995, after the custodial sentence imposed on the applicant was enforced, Law no. 4126 came into force amending, *inter alia,* section 8 of Law no. 3713. It modified the *mens rea* laid down by the former text of section 8 as to the commission of the act of propaganda in question. It also imposed a lighter custodial sentence for that offence, but increased the fines. In a temporary provision, Law no. 4126 also provided for an *ex officio* re-examination of earlier convictions imposed under section 8.

19. The applicant's case was re-examined *ex officio* by the Istanbul State Security Court. In its judgment of 22 December 1995 the State Security Court finally sentenced Ms Caralan to five months' imprisonment and a fine of TRL 41,666,666, which it decided to defer in accordance with section 6 of Law no. 647. The court stipulated that a new judgment had thus been delivered, and ordered that execution of the previous sentence be stopped.

20. The applicant appealed to the Court of Cassation. On 27 February 1997 the Court of Cassation quashed the judgment of 22 December 1995 on the ground that the trial court had erred in not commuting the applicant's prison sentence to a fine as required by domestic law.

21. On 19 June 1997 the Istanbul State Security Court commuted the applicant's prison sentence to a fine of TRL 750,000. The sentence was suspended.

22. The applicant appealed again. She argued that the prison sentence imposed on her had already been served and therefore the court was wrong in suspending the sentence. In her petition to the Court of Cassation the applicant also referred to her rights under Articles 6 and 10 of the Convention.

23. While the proceedings were still pending, Law no. 4304 was promulgated on 14 August 1997. That Law provided for the deferment of judgment and of execution of sentence in respect of offences committed by editors before 12 July 1997.

24. In a judgment of 12 September 1997 the State Security Court decided, pursuant to section 1(3) of Law no. 4304, to defer judgment against the applicant, but to proceed to delivery if, within three years from the date of deferment, the applicant was convicted of an intentional offence in her capacity as editor, and, lastly, that the criminal proceedings against her would be discontinued if no similar conviction was made before the expiry of that three-year period.

THE LAW

25. On 10 July 2003 the Court received the following declaration from the Government:

> "1. 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.
>
> 2. 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 (ResDH (2001) 106), which they will apply to the circumstances of cases such as the instant one.
>
> 3. 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. 27529/95. 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.

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."

26. On 24 April 2003 the Court received the following declaration signed by the applicant's representative:

"1. 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. 27529/95. 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."

27. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). In the light of the Government's undertakings 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).

28. 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 25 September 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Françoise TULKENS
Deputy Registrar	President