



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

THIRD SECTION

CASE OF AYŞENUR ZARAKOLU v. TURKEY (no. 2)

(Application no. 37061/97)

JUDGMENT
(Friendly Settlement)

STRASBOURG

2 October 2003

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

In the case of Ayşenur Zarakolu v. Turkey (no. 2),

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŖ,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 11 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 37061/97) 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 (“the applicant”), on 20 May 1997.

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 ordered the seizure of a book published by her publishing company. The applicant also complained under Article 6 § 2 of the Convention that the seizure of the book, which was not based on a finding of guilt following fair proceedings, had violated her right to be presumed innocent until proved guilty. She further submitted that the seizure constituted an unjustified interference with her right to freedom of expression by a public authority within the meaning of Articles 9 and 10 of the Convention. Invoking Article 13 of the Convention, the applicant complained of a lack of effective remedies in domestic law in respect of the above complaints. The applicant finally invoked Article 14 of the Convention in conjunction with Articles 9 and 10 of the Convention and alleged that the seizure of the book on account of the use of certain words such as “Kurdish”, “Kurdish Nation” and “Kurdistan” constituted discrimination on the ground of political opinion.

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 11 May 1999 the application was communicated to the Government.

6. On 5 December 2002, having obtained the parties' observations, the Court declared the complaints under Articles 10 and 14 admissible. The applicant's other complaints were declared inadmissible.

7. On 20 March 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 9 May 2003 and on 23 June 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. 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.

9. 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.

10. 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).

11. The applicant was the owner of a publishing company, *Belge Uluslararası Yayıncılık*, in Istanbul.

12. In June 1996 the applicant's company published a book entitled *Özgürlüğün Bedeli* (The Price of Freedom), written by Lissy Schmidt, a German journalist. The book, which was translated from German to Turkish, is a chronological compilation of articles and interviews involving the socio-economic and political evolution of an autonomous Kurdish region in Northern Iraq and criticism of Turkey's policy on the Kurdish issue.

13. On 15 January 1997 the principal public prosecutor at the Istanbul State Security Court lodged an application with the court requesting an order for the seizure of the book.

14. On the same day the 6th Chamber of the Istanbul State Security Court, sitting with a single civilian judge, ordered the seizure of the book in

accordance with Article 28 of the Constitution and Article 86 of the Code of Criminal Procedure. The court considered that the chapter between pages 111 and 120 of the book contained separatist propaganda against the integrity of the State.

15. On 29 January 1997 the applicant filed an objection with the Istanbul State Security Court against its order of 15 January 1997. She pleaded that the book, including the article impugned by the principal public prosecutor, did not contain any element of separatist propaganda. She further stated that the court's order lacked reasons and merely repeated the request of the Public Prosecutor. She maintained that in publishing the book she aimed at enjoying her right to express ideas and impart information to the public. She also contended that the court's order for the seizure of the book contravened Articles 6, 9 and 10 of the Convention. She finally asked the court to set aside the seizure order of 15 January 1997.

16. On 3 February 1997 the 1st Chamber of the Istanbul State Security Court, sitting with three full members, including a military member, unanimously dismissed the applicant's objection and upheld the order for the seizure of the book.

17. In the meantime, on 28 April 1997 the principal public prosecutor at the Istanbul State Security Court filed an indictment with the court charging the applicant and two others who had translated the book, with disseminating separatist propaganda, an offence under Article 8 of the Prevention of Terrorism Act (Law No. 3713). The public prosecutor alleged that the applicant published a book, translated from German to Turkish by Süheyla Kaya and Zeynep Herkmen, in which references were made, between the pages 111-119, 163-165 and 167-182, to a certain part of Turkish territory as "Kurdistan". He requested that the court punish the applicant in accordance with Article 8 § 3 of Law no. 3713, and that the incriminated book be confiscated in accordance with Article 36 of the Turkish Criminal Code.

18. In the proceedings before the 6th Chamber of the Istanbul State Security Court the applicant denied the charges against her. She pleaded that the incriminated book did not contain any separatist propaganda against the integrity of the State. She asserted that the book was the analysis of certain events in the eyes of a journalist.

19. On 13 October 1997 the Istanbul State Security Court postponed the criminal proceedings against the applicant pursuant to Article 1 § 3 of Law no. 4304 of 14 July 1997. The court also decided, under Article 2 of the same Law, that the criminal proceedings would be set aside provided that the applicant did not intentionally commit any offence in her capacity as an editor within three years of this decision.

20. The applicant appealed against the Istanbul State Security Court's decision of 13 October 1997.

21. On 13 April 1999 the 9th Chamber of the Court of Cassation dismissed the appeal.

THE LAW

22. On 24 June 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.

2. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant, the amount of 5,000 (five thousand) euros with a view to securing a friendly settlement of the application registered under no. 37061/97. 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.

3. 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.”

23. On 15 May 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 5,000 (five thousand) euros with a view to securing a friendly settlement of the application registered under no. 37061/97. 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.”

24. 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).

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

Vincent BERGER
Registrar

Georg RESS
President