



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

THIRD SECTION

CASE OF AYŞENUR ZARAKOLU v. TURKEY (no. 3)

(Application no. 37062/97)

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. 3),

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. TÜRMEŒ,
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. 37062/97) 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 an 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 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 29 June 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 April 1994 the applicant's company published a book entitled *Emekçiye Mektuplar-1, Türkiye'nin Düzeni ve Kürt Sorunu* (Letters to the Worker-1, The Order of Turkey and the Kurdish Problem), written by Haluk Gerger. The book is a chronological compilation of newspaper articles written by the author and published in various newspapers between 1991 and 1993.

13. On 8 March 1995 the chief public prosecutor at the Istanbul State Security Court examined the book and decided not to take any action in respect of its publication.

14. On 17 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 which was by that time in its 4th edition.

15. 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, Article 86 of the Code on Criminal Procedure and Article 2 § 1 of the Press Law no. 5680. The court considered that the book, at certain pages and taken as a whole, contained statements which provoked feelings of hatred and enmity among the people by discriminating on the grounds of race and region, offences under Article 8 of the Prevention of Terrorism Act (Law No. 3713) and under Article 312 § 2 of the Criminal Code respectively.

16. On 29 January 1997 the applicant filed an objection with the Istanbul State Security Court against its order of 17 January 1997. She pleaded that the book as a whole, including the pages impugned by the principal public prosecutor, did not contain any element of the offence described in Article 8 of the Law No. 3713 or in Article 312 § 2 of the Criminal Code. 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 17 January 1997.

17. On 3 February 1997 the 6th Chamber of the Istanbul State Security Court, sitting with three full members including a military member, dismissed the applicant's objection and upheld the order for the seizure of the book.

18. On 2 July 1997 the principal public prosecutor at the Istanbul State Security Court filed an indictment charging the applicant with disseminating separatist propaganda under Article 8 of the Prevention of Terrorism Act, and with incitement to hatred under Article 312 § 2 of the Criminal Code.

19. On 16 June 1998 the Istanbul State Security Court noted that the chief public prosecutor at the Istanbul State Security Court had already examined the book on 8 March 1995 and had decided not to take any action. The court stated that it was not clear how and why an indictment was filed on 2 July 1997, outside the statutory period. The court finally decided to discontinue the trial on the ground that the statute of limitations in respect of the offences in question was one year from the publication of the book.

THE LAW

20. 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. 37062/97. 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."

21. 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. 37062/97. 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."

22. 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).

23. 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