



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

FOURTH SECTION

CASE OF KALIN, GEZER AND ÖTEBAY v. TURKEY

(Applications nos. 24849/94, 24850/94 and 24941/94)

JUDGMENT
(Friendly settlement)

STRASBOURG

28 October 2003

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

In the case of Kalin, Gezer and Ötebay v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr R. TÜRMEŒ,
Mrs V. STRÁŒNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENŞ-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 October 2003,

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

PROCEDURE

1. The case originated in three applications (nos. 24849/94, 24850/94 and 24941/94) 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, Talip Kalin, Ali Gezer and Ekrem Ötebay (“the applicants”), on 1 August 1994 and on 11 August 1994 for the last applicant.

2. The applicants were represented by Mr Talat Tepe, 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 under Article 3 of the Convention that they had been subjected to ill-treatment while in police custody. They also complained under Article 5 § 3 of the Convention that they had not been brought promptly before a judge or other officer authorised by law to exercise judicial power. The applicants maintained that they had been held in police custody for twenty-three, thirty-one and twenty-five days respectively.

4. Following communication of the applications 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 18 January 2000, having obtained the parties' observations, the Court declared the applications admissible. The applicants' further complaints were declared inadmissible.

5. On 28 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 8 April 2003 and on 22 July 2003 the applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicants Talip Kalın, Ali Gezer and Ekrem Ötebay are Turkish citizens who live in Ağrı, Kahramanmaraş and Muş respectively. The first applicant was born in 1967, the second and the third applicants in 1973. They are all represented before the Court by Mr Talat Tepe, a lawyer practising in Istanbul.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

Application no. 24849/94

8. On 17 February 1994 the applicant was taken into police custody in Istanbul on suspicion of membership of the PKK. According to the official files the apprehension seems to have occurred on 24 February 1994.

9. On 28 February 1994 the applicant was interrogated by police officers and made confessions, allegedly under duress.

10. On 9 March 1994 the applicant, however, denied the allegations against him before the public prosecutor at the Istanbul State Security Court ("the public prosecutor").

11. On the same day the applicant was seen by a doctor at the Istanbul Forensic Medicine Institute who did not note any signs of beating or injuries on the applicant's body.

12. On 11 March 1994 the applicant was put in detention on remand. On 22 March 1994 the applicant was further examined by the prison doctor who noted in his report the presence of some injuries on his body.

13. On 27 March 1994 the applicant filed a complaint with the office of the Istanbul public prosecutor alleging that he had been subjected to torture while in custody, which lasted twenty-three days.

14. On 23 June 1994 the public prosecutor filed an indictment with the Istanbul State Security Court requesting the conviction and sentencing of the applicant under Article 125 of the Criminal Code and Article 5 of the Prevention of Terrorism Act.

15. On 21 December 1995 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court against the four police officers who allegedly tortured the applicant.

16. On 27 June 1996 the Istanbul Assize Court held that there was no evidence on which to convict the police officers.

Application no. 24850/94

17. On 9 February 1994 the applicant was taken into police custody in Istanbul on suspicion of membership of the PKK. According to the official files the apprehension seems to have occurred on 28 February 1994.

18. On 1 March 1994 during interrogation by the police officers the applicant confessed his involvement in certain PKK activities.

19. On 9 March 1994 the applicant was seen by a doctor at the Istanbul Forensic Medicine Institute who noted the presence of some injuries on the applicant's body, which were not life-threatening but would prevent him from working for two days.

20. On 9 March 1994 during questioning by the public prosecutor at the Istanbul State Security Court ("the public prosecutor") the applicant stated that he had signed his statement under duress and denied all the allegations.

21. On 11 March 1994 the Istanbul State Security Court ordered the applicant's detention on remand.

22. In an indictment dated 23 June 1994, the public prosecutor requested the conviction and sentencing of the applicant under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act.

23. On 23 March 1994 the applicant was examined by the prison doctor. The doctor noted in his report the presence of fading bruises and injuries on the applicant's body. The applicant later underwent another medical examination where the same fading injuries were noted.

24. On 11 July 1994 the applicant filed a complaint with the Istanbul public prosecutor alleging that he had been tortured while in custody which had lasted thirty-one days.

25. On 5 June 1995 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court against the police officers who allegedly ill-treated the applicant.

26. On 23 September 1996 the Istanbul Assize Court rejected the applicant's allegation that he had been tortured due to lack of evidence.

27. On 5 March 1999 the Istanbul State Security Court acquitted the applicant.

Application no. 24941/94

28. On 20 February 1994 the applicant was taken into police custody on suspicion of membership of the PKK. According to the official documents the applicant appears to have been arrested on 7 March 1994.

29. On 17 March 1994 during his questioning by the police officers the applicant confessed his involvement with the activities of the PKK, allegedly under duress.

30. On 18 March 1994 the applicant was seen by a doctor at the Istanbul Forensic Medicine Institute who did not note any signs of beating or use of force on his body.

31. On 21 March 1994 during his questioning before the Istanbul State Security Court the applicant confessed to the charges against him. On the same day the Istanbul State Security Court judge ordered the applicant's detention on remand.

32. On 23 June 1994 the public prosecutor filed an indictment with the Istanbul State Security Court requesting the conviction and sentencing of the applicant under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act.

33. On 22 March 1994 the applicant was further examined by the prison doctor who noted in his report the presence of some injuries on the applicant's body.

34. On 9 May 1994 the applicant underwent another medical examination where the doctor noted the previous medical findings as well as other injuries. The report concluded that these injuries were not life-threatening but would prevent the applicant from working for seven days.

35. On 11 July 1994 the applicant filed a complaint with the office of the Istanbul public prosecutor complaining that he had been tortured while detained in police custody and that his detention period had lasted too long.

36. On 28 September 1995 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court (*Istanbul Ağır Ceza Mahkemesi*) against the police officers who allegedly ill-treated the applicant.

37. On 7 December 1995 the Istanbul Assize Court rejected the applicant's allegation that he had been tortured. The court reasoned that there was no evidence to support his allegation.

38. On 5 March 1999 the Istanbul State Security Court ordered that the applicant's case be severed from the cases brought against the other defendants as he had not submitted his defence to the court.

THE LAW

39. On 22 July 2003 the Court received the following declaration from the Government:

“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 occurrences. It is accepted that the recourse to torture, inhuman or degrading treatment or punishment of detainees constitutes 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. 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 applications as well as more effective investigations.

2. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to each of the applicants, Talip Kalin, Ali Gezer and Ekrem Ötebay, an all-inclusive amount of EUR 27,000 (twenty-seven thousand euros) with a view to securing a friendly settlement of their joint applications registered under nos. 24849/94, 24850/94, 24941/94. This sum, which also covers legal expenses connected with the case, shall be paid in euros, free of any taxes that may be applicable, to a bank account named by the applicants, 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.

3. The Government consider that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary co-operation in this process will continue to take place.

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."

40. On 8 April 2003 the Court received the following declaration signed by the applicants' representative:

"1. In my capacity as the representative of the applicants, Mr Kalin, Mr Gezer and Mr Ötebay, I have taken cognisance of the declaration of the Government of the Republic of Turkey that they are prepared to make to each of the applicants an *ex gratia* all-inclusive payment of 27,000 EUR (twenty-seven thousand euros) with a view to concluding a friendly settlement of their case that originated in application nos. 24849/94, 24850/94, 24941/94. 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."

41. 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).

42. 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 28 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRAZTA
President