



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

FOURTH SECTION

CASE OF ÇELİK v. TURKEY

(Application no. 41993/98)

JUDGMENT
(Friendly Settlement)

STRASBOURG

27 July 2004

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

In the case of Çelik v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr R. TÜRMEK,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 6 July 2004,

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

PROCEDURE

1. The case originated in an application (no. 41993/98) 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 Turkish nationals, Mr İsmail Çelik and Mrs Hanım Çelik ("the applicants"), on 27 April 1998.

2. The applicants were represented by Mr İ. Gündüz, a lawyer practising in Malatya. The Turkish Government ("the Government") did not designate an Agent for the purpose of the proceedings before the Court.

3. The applicants complained of the unlawful killing of their son by the security forces. In this respect, they invoked Articles 2 and 6 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 1 June 1999 the case was communicated to the respondent Government.

6. On 6 May 2003, having obtained the parties' observations, the Court declared the application admissible.

7. On 8 January 2004 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. The applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicants were born in 1944 and they live in Malatya.

9. On the evening of 5 November 1996, ten PKK members came to the applicants' house. The same day, security forces were informed that a group of PKK members were hiding in the applicants' village and they carried out an operation in the village to apprehend the PKK members.

10. At around 11 p.m. the security forces surrounded the applicants' house and requested them to come out. The applicants and their sons Bülent, born in 1974, and Turabi, born in 1977, emerged from their house. They showed the security forces the direction in which the PKK members had fled. A clash broke out and the security forces fired a rocket which killed Bülent.

11. Following the death of his son, the first applicant stated before the Doğanşehir public prosecutor that his son had been killed by the security forces. The applicant asked the prosecutor to initiate criminal proceedings.

12. A preliminary investigation into the incident was commenced by the Doğanşehir public prosecutor. The prosecutor subsequently decided that he had no jurisdiction to prosecute and transferred the case file to the Doğanşehir District Administrative Council.

13. On 31 July 1997 the Doğanşehir District Administrative Council issued a decision stating that no prosecution should be brought against the members of the security forces. The Council concluded that the applicants' son had died in the course of a confrontation between PKK members and the security forces.

14. The applicants filed an objection with the Malatya Regional Administrative Court against the decision of 31 July 1997.

15. On 29 September 1997 the Regional Administrative Court dismissed the applicants' objection.

THE LAW

16. On 12 May 2004 the Court received the following declaration from the Government:

"1. The Government regret the occurrence of individual cases of death resulting from the failure of the authorities to take the necessary measures to safeguard the lives of individuals, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the right to life – including the obligation to carry out effective investigations – is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths in circumstances similar to those of the instant application as well as more effective investigations.

2. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to Mr İsmail Çelik and Mrs Hanım Çelik, parents of Bülent Çelik, an all-inclusive amount of EUR 60,000 (sixty thousand euros), with a view to securing a friendly settlement of their application registered under no. 41993/98. 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 be converted into Turkish liras at the rate applicable at the date of payment, 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.

3. The Government consider that the supervision by the Committee of Ministers of the Council of Europe 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."

17. On 24 March 2004 the Court received the following declaration signed by the applicants' representative:

"1. In my capacity as the representative of the applicants, Mr İsmail Çelik and Mrs Hanım Çelik, 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 EUR 60,000 (sixty thousand euros) with a view to concluding a friendly settlement of their case that originated in application no. 41993/98. 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."

18. 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).

19. 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 27 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President