



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

FIRST SECTION

CASE OF BİNBAY v. TURKEY

(Application no. 24922/94)

JUDGMENT
(Friendly settlement)

STRASBOURG

21 October 2004

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

In the case of Binbay v. Turkey,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 30 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 24922/94) 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 a Turkish national, Yavuz Binbay (“the applicant”), on 11 August 1994.

2. The applicant, who had been granted legal aid, was represented by Ms A. Stock of the Kurdish Human Rights Project in London. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that he was the victim of a series of acts of violence and intimidation against his person and property, committed by the authorities or with their connivance between 21 March 1992 and 11 February 1994 on account of his activities in the Human Rights Association and his Kurdish origin. He invoked Articles 2, 3 5, 6, 8, 10, 13 and 18 of the Convention and Article 1 of Protocol No. 1.

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.

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr R. Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr F. Gölcüklü to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).]

6. On 3 February 2000 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed First Section (Rule 52 § 1).

8. After various exchanges of correspondence in response to proposals for a friendly settlement of the case within the meaning of Article 38 § 1 (b) of the Convention, on 15 June and 25 June 2004 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. The applicant was born in 1956 and currently lives in Diyarbakır. He was a shopkeeper at the time of the events giving rise to the application as well as the president of the Van branch of the Human Rights Association and a member of the Association's National Management Committee.

10. The facts of the case, as submitted by the parties and set out in the Court's admissibility decision of 3 February 2000, were disputed. They may be summarised as follows.

The applicant

11. On 21 March 1992, during the Newroz Festival, incidents occurred in Van which eventually led to a curfew being imposed. The applicant alleges that he was severely beaten outside the building of the People's Labour Party ("HEP") by police officers. He spent nine days in hospital. Following his discharge from hospital, he was charged with public order offences and detained on remand. He was eventually acquitted for lack of evidence.

12. Also on 21 March 1992, the applicant's shop was raided, the only shop out of 22 on the same floor to be raided. Goods and equipment in the shop were damaged or stolen. His subsequent claim for compensation was rejected by the Van Administrative Court.

13. On 30 August 1992 the applicant's car was damaged while parked opposite his house in Van. Between 5 November 1993 and 13 January 1994 he was taken into custody on three separate occasions. According to the applicant, he and his family received threatening and abusive telephone calls, sometimes three a day, ordering him to leave Van or be killed.

14. On 11 February 1994 the applicant was attacked by two men who followed him on his way to a meeting at a friend's office. When he recovered consciousness, he found himself in a lift-shaft. He sustained serious injuries. According to the applicant, the police did not follow-up this

incident. After his discharge from hospital, the applicant received telephone calls warning him that he would not escape the next time.

The Government

15. The Government maintained that there were illegal demonstrations, violence and looting in Van on 21 March 1992. The applicant was injured by stone-throwing demonstrators when he emerged from the HEP building where he had taken shelter. He was rescued from the crowd by the police and taken to hospital. He was later charged with, *inter alia*, organising the illegal demonstration and eventually acquitted.

16. As to the lift-shaft incident of 11 February 1994, the Government stated that the police questioned the applicant on two occasions in connection with the incident, but he refused to provide them with any information. Accordingly, the police were unable to make any progress in their investigation.

17. The Government denied that the applicant had ever been subject to arbitrary arrest. They refuted his claims that the authorities had been involved, either directly or indirectly, in any of the various incidents described by him and maintained that he had failed to exhaust domestic remedies in connection with his allegations.

THE LAW

18. On 30 June 2004 the Court received the following declaration from the Government:

“The Government regret the occurrence of individual cases of assaults against individuals, including at the time of and during their detention, as well as threats to their person and property, and the failure of the authorities to carry out effective investigations into allegations of this nature, as in the case of the applicant, Mr Yavuz Binbay, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such failures.

It is accepted that acts of serious assault, intimidation or harassment, including by means of arbitrary detention and damage to property, and the authorities’ failure to investigate these matters, as claimed in the instant case, constitute a violation of Articles 3, 5 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the rights guaranteed by these Articles – including the obligation to carry out effective investigations – are 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 assaults in circumstances similar to those set out in the instant application as well as more effective investigations.

I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant, Mr Yavuz Binbay, the amount of 45,000 (forty-five thousand) euros with a view to securing a friendly settlement of his application registered under no. 24922/94. This sum, which also covers legal expenses connected with the case, shall be free of any tax that may be applicable and shall be paid to a bank account named by the applicant and/or his duly authorised representative. The sum, to be converted into pounds sterling at the rate applicable at the date of settlement, 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. 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.

The Government consider that the supervision by the Committee of Ministers under Article 46 of the Convention of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will be made in this context. To this end, necessary co-operation in this process will continue to take place.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the Court's judgment has been delivered."

19. On 23 June 2004 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Turkey, in addition to making a declaration in respect of the complaints raised in application no. 24922/94, are prepared to pay the sum of 45,000 (forty-five thousand) euros covering pecuniary and non-pecuniary damage and costs to Mr Yavuz Binbay with a view to securing a friendly settlement of this application pending before the Court.

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.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the Court's judgment has been delivered."

20. 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).

21. 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 21 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President