



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

THIRD SECTION

CASE OF TANIYAN v. TURKEY

(Application no. 29910/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

17 March 2005

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

In the case of Taniyan v. Turkey,

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

Mr B.M. ZUPANČIČ, *President*,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Ms R. JAEGER, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 24 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 29910/96) 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, Necati Taniyan (“the applicant”), on 10 October 1995.

2. The applicant, who had been granted legal aid, was represented by Mr Metin Iriz, Mrs Şehnaz Turan, Mrs Ruşen Doğan and Mr Yaşar Aydın, lawyers 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 about the confiscation of almost all issues of his newspaper starting from its first day of publication until it was closed down approximately four months later. He relied on Articles 6, 10, 13, 14 and 18 of the Convention.

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. Mr Rıza Türmen, the judge elected in respect of Turkey, withdrew from sitting in the case. (Rule 28 of the Rules of Court). The Government accordingly appointed Mr Feyyaz Gölcüklü to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

5. On 5 December 2002, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

6. On 12 October 2004, 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 4 January 2005 and on 10 February 2005 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

8. The applicant was born in 1947 and lives in Artvin.

9. The applicant is the owner of *Yeni Politika* a daily newspaper published in Istanbul. From the first day of publication, i.e. 13 April 1995, until 16 August 1995, confiscation orders were issued for 117 out of 126 issues of the newspaper either under the provisions of Prevention of Terrorism Act or under Article 312 of the Criminal Code.

10. The applicant appealed against the confiscation orders of the newspaper twenty-one times between 19 April and 22 May 1995. His appeals were dismissed by the Istanbul Security Court.

11. On 16 August 1995, following the applicant's objection to a new confiscation order, the Istanbul State Security Court dismissed his appeal and ruled, *inter alia*, that *Yeni Politika* had attempted to follow the line of *Özgür Gündem* and *Özgür Ülke*, two newspapers formerly charged with making separatist propaganda and praising the activities of a terrorist organisation and which were no longer in circulation. After this decision *Yeni Politika* closed down.

THE LAW

12. On 4 January 2005 the Court received the following declaration from the Government:

“1. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant the amount of EUR 7,710 (seven thousand seven hundred and ten euros) with a view to securing a friendly settlement of his application registered under no. 29910/96. This sum, which also covers legal 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. This sum shall be payable, free of any taxes that may be applicable, within three months from the date of the judgment delivered by the Court pursuant to the 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.

2. The Court's rulings against Turkey in cases involving measures and prosecutions under the provisions of the Prevention of Terrorism Act and under former Article 312 of the Penal Code clearly showed that Turkish law and practice needed 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. To that end, section 8 of the Prevention of Terrorism Act was abolished by Law no. 4928 and amendments were made by the Government to Article 312 by Law no. 4744. The Government undertake to ensure that the amended Article 312 will be applied in accordance with the requirements of Article 10 of the Convention as interpreted in the Court's case-law.

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."

13. On 10 February 2005 the Court received the following declaration signed by the applicant:

"1. I note that the Government of Turkey are prepared to pay me *ex gratia* the sum of EUR 7,710 (seven thousand seven hundred and ten euros) with a view to securing a friendly settlement of my application registered under no. 29910/96. This sum, which is to cover any pecuniary or 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.

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."

14. 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).

15. 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 17 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President