



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

THIRD SECTION

**CASE OF SİNCAR AND OTHERS v. TURKEY**

*(Application no. 46281/99)*

JUDGMENT  
*(Friendly settlement)*

This version was rectified on 29 June 2006  
under Rule 81 of the Rules of the Court

STRASBOURG

2 February 2006

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



**In the case of Sincar and Others 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 R. TÜRMEŒ,

Mr C. BİRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mrs R. JAEGER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 46281/99) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Turkish nationals, Mrs Cihan Sincar, Mr Oktay Baęatır and Mr Mehmet Hanifi Baran<sup>1</sup> (“the applicants”), on 25 January 1999.

2. The applicants, who had been granted legal aid, were represented by Mr M. Vefa, a lawyer practising in Diyarbakır. 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 5 § 3 the Convention that the length of their detention in police custody was excessive. They also complained about the lack of an effective domestic remedy where they can complain about the length of their detention in police custody.

4. On 24 March 2005, after obtaining the parties’ observations, the Court declared the application admissible in so far as these complaints are concerned. Further complaints were declared inadmissible on the same date.

5. On 6 July 2005, 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 27 July 2005 and on 29 November 2005 the applicants and the Government

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1. Rectified on 29 June 2006. The name of Mehmet Hanifi Baran read Mehmet Hanafi Baran in the former version of the judgment.

respectively submitted formal declarations accepting a friendly settlement of the case.

## THE FACTS

6. The applicants are Turkish nationals who were born in 1957, 1962 and 1964 and live in Ankara, Batman and Diyarbakır, respectively

7. On 16 November 1998 the head of the Diyarbakır Security Directorate requested the Diyarbakır Public Prosecutor to issue a search warrant in order to inspect the Diyarbakır and Batman offices of HADEP (*Halkın Demokrasi Partisi*-People's Democracy Party), where demonstrations and hunger strikes were allegedly being organised, in order to protest the arrest of the PKK leader Abdullah Öcalan. The public prosecutor issued the search warrant on the same day.

### *1. Regarding the first and second applicants*

8. On 18 November 1998 the applicants were taken into police custody by the police officers at the Batman Security Directorate.

9. In a letter dated 20 November 1998 the Diyarbakır Security Directorate requested the Diyarbakır Public Prosecutor to extend the applicants' detention period until 22 November 1998 together with hundred and seven others. On the same day, considering the number of the accused and the difficulty to obtain evidence, the public prosecutor authorised to extend the detention period as requested.

10. On 22 November 1998 a judge at the Diyarbakır State Security Court decided to extend the applicants' detention period until 28 November 1998, following the Diyarbakır Security Directorate's second request.

11. On 26 November 1998 the applicants were first brought before a public prosecutor and then a judge at the Diyarbakır State Security Court, where they refused all allegations against them. The judge ordered their release pending trial.

12. On 17 December 1998 the Diyarbakır Public Prosecutor filed a bill of indictment with the Diyarbakır State Security Court accusing the first applicant of aiding and abetting members of a terrorist organisation. On the same day three public prosecutors attached to the Diyarbakır State Security Court decided that no prosecution should be brought against the second applicant on the ground that there existed no evidence to convict him.

13. On 3 April 2001 the Diyarbakır State Security Court decided to defer the imposition of a final sentence upon the first applicant, pursuant to Law no. 4616. The court held, under Article 1 § 4 of the same law, that the criminal proceedings against her would be suspended and a final sentence

would be imposed should she be convicted of a further intentional offence within five years of this decision.

## 2. Regarding the third applicant

14. On 17 November 1998 the applicant was taken into police custody together with a group of twenty people outside the party's headquarter in Diyarbakır.

15. In a letter dated 18 November 1998 the Diyarbakır Security Directorate requested the Diyarbakır Public Prosecutor to extend the detention period of the applicant along with hundred and ten others until 21 November 1998. On the same day the public prosecutor authorised the security directorate to extend the detention period until that date.

16. On 20 November 1998, following a request from the Diyarbakır Security Directorate and considering the number of the accused, the judge at the Diyarbakır State Security Court decided to extend the detention period until 26 November 1998.

17. On 25 November 1998 the applicant was brought before a public prosecutor and a judge at the Diyarbakır State Security Court. The judge ordered the applicant's release pending trial.

18. On 22 February 2001 the Diyarbakır State Security Court decided to defer the imposition of a final sentence upon the applicant, pursuant to Law no. 4616. The court held, under Article 1 § 4 of the same law, that the criminal proceedings against the applicant would be suspended and a final sentence would be imposed should he be convicted of a further intentional offence within five years of this decision.

## THE LAW

19. On 29 November 2005 the Court received the following declaration from the Government:

"I declare that the Government of Turkey offer to pay *ex gratia* to the applicants an all-inclusive amount of EUR 9,600 (nine thousand six hundred euros) with a view to securing a friendly settlement of the above-mentioned application pending before the European Court of Human Rights.

This sum, which is to cover any damages as well as costs and expenses, 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. It shall be payable within three months from the date of the notification of the judgment 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. The payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

20. On 27 July 2005 the Court received the following declaration signed by the applicants’ representatives:

“I note that the Government of Turkey are prepared to pay *ex gratia* to the applicants an all-inclusive amount of EUR 9,600 (nine thousand six hundred euros) with a view to securing a friendly settlement of the above-mentioned application pending before the European Court of Human Rights.

This sum, which is to cover any damages as well as costs and expenses, 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. It shall be payable within three months from the date of the notification of the judgment 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.

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 resolution of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicants 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 delivery of the Court’s judgment.”

21. 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).

22. 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 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Boštjan M. ZUPANČIČ  
President