



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

FOURTH SECTION

CASE OF RESUL SADAK AND OTHERS v. TURKEY

(Application no. 74318/01)

JUDGMENT
(Revision)

STRASBOURG

8 January 2008

FINAL

08/04/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Resul Sadak and Others v. Turkey (request for revision of the judgment of 5 December 2006),

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Rıza Türmen,

Kristaq Traja,

Stanislav Pavlovski,

Ján Šikuta, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 74318/01) 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 twelve Turkish nationals, Mr Resul Sadak, Mr Nihat Osal, Mr Mehmet Çakar, Mr Rustem Bayar, Mr Tahir Kutlu, Mr Cengiz Balık, Mr İzzet Belge, Mr Abdurrazak İnan, Mr Mehmet Temelkuran, Mr Mehmet Nezir Ayan, Mr Yakup Uyar and Mr Erdal Güler (“the applicants”), on 1 April 2001.

2. In a judgment delivered on 5 December 2006, the Court declared the part of the application concerning Erdal Güler inadmissible and held that there had been a violation of Article 5 § 3 of the Convention in respect of the remainder of the applicants. The Court also decided to award Mr Resul Sadak, Mr Nihat Osal, Mr Mehmet Çakar, Mr Rustem Bayar, Mr Tahir Kutlu, Mr Cengiz Balık, Mr İzzet Belge, Mr Abdurrazak İnan, Mr Mehmet Temelkuran, Mr Mehmet Nezir Ayan, Mr Yakup Uyar 1 800 Euros (EUR) each in respect of non-pecuniary damage and EUR 1 000 jointly in respect of costs and expenses and dismissed the remainder of the claims for just satisfaction.

3. On 18 April and 24 April 2007 the Government and the applicants' representative requested revision of the judgment within the meaning of Rule 80 of the Rules of Court, submitting that Mehmet Temelkuran had passed away on 26 May 2005.

4. On 3 July 2007 the Court considered the requests for revision. It decided to refuse the Government's request for revision of the judgment and striking out of the Court's list of cases the application brought by

Mehmet Temelkuran. The Court decided to give the Government three weeks in which to submit any observations on the applicants' representative's request. Those observations were received on 19 July 2007.

THE LAW

THE REQUEST FOR REVISION

5. The applicants' representative requested revision of the judgment of 5 December 2006, which he had been unable to have executed because Mr Mehmet Temelkuran had died before the judgment had been adopted. Mrs Behiye Temelkuran, Mr Mahmut Temelkuran, Mrs Mevlude Gerez (Temelkuran), Mr Abdurrahman Temelkuran, Mrs Emine Temelkuran, Mrs Mucibet Yurtseven (Temelkuran), Mrs Nezahat Temelkuran, Mr Selim Temelkuran, Mrs Güllü Fidan (Temelkuran), Mrs Nuriye Akay (Temelkuran), Mrs Atike Temelkuran, Mrs Nesibe Temelkuran, Mrs Nimet Temelkuran and Mr Reşit Temelkuran were the heirs and should therefore receive the sums awarded to the deceased.

6. The Government requested the Court to strike the application brought by Mr Mehmet Temelkuran out of its list of cases since his heirs had not expressed their wish to pursue the application while it had been pending before the Court.

7. The Court considers that the judgment of 5 December 2006 should be revised under Rule 80 of the Rules of Court, the relevant parts of which provide:

“A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.

...”

8. It accordingly decides to award the heirs jointly the amounts it had previously awarded to Mr Mehmet Temelkuran, namely EUR 1 800 for non-pecuniary damage and Mr Mehmet Temelkuran's share on EUR 1 000, the amount awarded jointly to the applicants for costs and expenses in the judgment of 5 December 2006.

9. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicants' representative's request for revision of the judgment of 5 December 2006 admissible;

Consequently,

2. *Declares* the part of the application concerning Erdal Güler inadmissible;
3. *Declares* the remainder of the application admissible in respect of the applicants Resul Sadak, Nihat Osal, Mehmet Çakar, Rüstem Bayar, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrezak İnan, Mehmet Temelkuran, Mehmet Nezir Ayan and Yakup Uyar;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into new Turkish liras at the rate applicable at the date of settlement:
 - (i) EUR 1 800 (one thousand eight hundred Euros) to Resul Sadak, Nihat Osal, Mehmet Çakar, Rüstem Bayar, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrezak İnan, Mehmet Nezir Ayan and Yakup Uyar each in respect of non-pecuniary damage;
 - (ii) EUR 1 800 (one thousand eight hundred Euros) to Mehmet Temelkuran's heirs, Behiye Temelkuran, Mahmut Temelkuran, Mrs Mevlude Gerez (Temelkuran), Abdurrahman Temelkuran, Emine Temelkuran, Mucibet Yurtseven (Temelkuran), Nezahat Temelkuran, Selim Temelkuran, Güllü Fidan (Temelkuran), Nuriye Akay (Temelkuran), Atike Temelkuran, Nesibe Temelkuran, Nimet Temelkuran and Reşit Temelkuran jointly in respect of non-pecuniary damage;
 - (iii) EUR 1 000 (one thousand Euros) to Resul Sadak, Nihat Osal, Mehmet Çakar, Rüstem Bayar, Tahir Kutlu, Cengiz Balık, İzzet Belge, Abdurrezak İnan, Mehmet Nezir Ayan, Yakup Uyar and Mehmet Temelkuran's heirs jointly in respect of costs and expenses;
 - (iv) any taxes that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.]

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President