

Application No. 13591/88
by Yüksel CAVUSOGLU
against the Federal Republic of Germany

The European Commission of Human Rights sitting in private
on 11 October 1989, the following members being present:

MM. C.A. NØRGAARD, President

J.A. FROWEIN

S. TRECHSEL

F. ERMACORA

G. SPERDUTI

E. BUSUTTIL

G. JØRUNDSSON

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.-C. SOYER

H.G. SCHERMERS

H. DANELIUS

G. BATLINER

J. CAMPINOS

H. VANDENBERGHE

Mrs. G.H. THUNE

Sir Basil HALL

MM. C.L. ROZAKIS

L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 7 January 1988
by Yüksel CAVUSOGLU against the Federal Republic of Germany and
registered on 5 February 1988 under file No. 13591/88;

Having regard to the Commission's decision of 14 March 1989 to
give notice of the application to the respondent Government and to
invite them to present before 2 June 1989 their observations in
writing on the admissibility and merits of the application;

Having regard to the Government's letter, enclosing a copy of
their letter to the applicant's representative with a draft agreement,
of 29 May 1989;

Having regard to the Government's letter of 23 June 1989
enclosing the agreement reached between the parties;

Having regard to the report provided for in Rule 40 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish citizen born in 1942 and living at
Heilbronn. He is represented by Rechtsanwalt N. Wingerter, a lawyer
practising at Heilbronn.

The facts submitted may be summarised as follows.

By a regulatory fine order (Bussgeldbescheid) of 19 June 1985
the Labour Exchange (Arbeitsamt) of Heilbronn imposed on the applicant

a regulatory fine (Geldbusse) of 800 DM for infringing, as an employer, Article 19 para. 1 no. 5 in conjunction with Article 229 para. 1 no. 2 of the Employment Promotion Act (Arbeitsförderungsgesetz).

On the applicant's objection (Einspruch) the District Court (Amtsgericht) of Heilbronn fixed 22 May 1986 as date of the trial. An interpreter was appointed for this hearing.

The Court again imposed a fine of 800 DM on the applicant and a fine of 200 DM on his accomplice E. It also ruled that they had to bear the costs of the proceedings.

On 6 August 1986 the Court Cashier's Office (Gerichtskasse) fixed the costs to be paid by the applicant at 178 DM, of which 88 DM represented the applicant's share of the interpreter's fee of 176 DM.

On 27 May 1987 the applicant entered an objection (Erinnerung) against the bill of costs to the extent that it included his share of the interpreter's fee. He alleged a violation of Article 5 (sic) para. 3 (e) of the Convention and relied on the Öztürk judgment of 21 February 1984 (Eur. Court H.R., Series A no. 73).

On 15 September 1987 the District Court dismissed the objection as unfounded under No. 1904 of the Schedule to the Court Costs Act (Kostenverzeichnis zum Gerichtskostengesetz). It stated that the Schedule, as amended in 1980 (BGBl I p. 1503), had entered into force after the Convention and therefore prevailed over Article 6 para. 3. Judgments of the European Court of Human Rights could not nullify domestic law.

On 10 December 1987 the applicant's appeal (Beschwerde) was declared inadmissible by the Regional Court (Landgericht) of Heidelberg. The Court, noting that the applicant contested his obligation to pay his share - 88 DM - of the interpreter's fee, found that the value of the subject matter of the appeal (Wert des Beschwerdegegenstands) did not exceed 100 DM, as required for an appeal under Article 5 para. 2, first sentence, of the Court Costs Act.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 January and registered on 5 February 1988.

On 14 March 1989 the Commission decided to bring the application to the notice of the respondent Government and to invite them to present before 9 June 1989 their observations in writing on the admissibility and merits of the application.

By a letter of 29 May 1989 the Government informed the Commission of the terms of a draft agreement which they had sent to Rechtsanwalt Wingerter.

Under cover of their letter of 23 June 1989 the Government submitted the agreement reached between the parties.

The agreement reads as follows:

(German original)

"VEREINBARUNG

über das Individualbeschwerdeverfahren Nr. 13591/88
Yüksel Cavusoglu gegen die Bundesrepublik Deutschland

zwischen

Herrn Yüksel Cavusoglu, Bergstrasse 16 D, 7100 Heilbronn,
vertreten durch Rechtsanwälte Norbert Wingerter, Volker Hohbach, Anke
Stiefel-Bechdorf, Christoph Haussmann in Heilbronn

und

der Bundesrepublik Deutschland vertreten durch Ministerialdirigent
Dr. Meyer-Ladewig, Bundesministerium der Justiz, 5300 Bonn 2

1. Die dem Beschwerdeführer in dem Bussgeldverfahren - 21 OWi 2315/85 b -
mit Kostenrechnung vom 17. Oktober 1988 in Rechnung gestellten
Dolmetschergebühren in Höhe von 88,- DM (achtundachtzig Deutsche
Mark) werden erlassen.
2. Die Bundesregierung zahlt dem Beschwerdeführer zur Abgeltung der
ihm im Erinnerungs- und Beschwerdeverfahren gegen diesen Kostenansatz
und anlässlich der Einlegung der Individualbeschwerde bei der Euro-
päischen Menschenrechtskommission entstandenen Kosten und Auslagen
einen Betrag von insgesamt 600,- DM (sechshundert Deutsche Mark).
3. Der Betrag zu 2. wird an die Verfahrensbevollmächtigten des
Beschwerdeführers, Rechtsanwälte Norbert Wingerter, Volker Hohbach
u.a. überwiesen, die sich verpflichten, die Bundesregierung hinsicht-
lich der Zahlung gegenüber dem Beschwerdeführer freizustellen.
4. Der Beschwerdeführer erklärt die Beschwerde hiermit für erledigt
und ist mit der Streichung aus dem Register durch die Europäische
Kommission für Menschenrechte einverstanden.

Bonn, den 29. Mai 1989

Heilbronn, den

gez. Meyer-Ladewig

gez. Wingerter

(Ministerialdirigent
Dr. Meyer-Ladewig)

(Rechtsanwalt Wingerter)"

(English translation)

"AGREEMENT

concerning the proceedings relating to individual Application No. 13591/88
Yüksel Cavusoglu against the Federal Republic of Germany

between

Mr. Yüksel Cavusoglu, Bergstrasse 16 D, 7100 Heilbronn,
represented by MM. Norbert Wingerter, Volker Hohbach, Mrs. Anke
Stiefel-Bechdorf and Mr. Christoph Haussmann, lawyers in Heilbronn,

and

the Federal Republic of Germany, represented by Dr. Meyer-Ladewig,
Ministerialdirigent, Federal Ministry of Justice, 5300 Bonn 2

1. Interpretation costs of 88 DM (eighty-eight Deutschmark) claimed
from the applicant in regulatory proceedings (Ref. 21 OWi 2315/85 b)
in a bill of costs of 17 October 1988 shall be waived.
2. In satisfaction of the costs and expenses incurred by the applicant
in the objection and appeal proceedings to the above-mentioned bill
of costs and in the submission of the application to the European
Commission of Human Rights, the Federal Government shall pay to the
applicant the sum of 600 DM (six hundred Deutschmark).

3. The sum referred to in paragraph 2. above shall be paid to the applicant's representatives in the proceedings, MM. Norbert Wingerter, Volker Hohbach and others, who undertake to indemnify the Federal Government against the applicant in respect of the payment.
4. The applicant declares that the application is settled and that he agrees to it being struck out of the list of cases of the European Commission of Human Rights.

Bonn, 29 May 1989

Heilbronn,

(signed) Meyer-Ladewig

(signed) Wingerter

(Ministerialdirigent
Dr. Meyer-Ladewig)

(Rechtsanwalt Wingerter)"

The Government state that they have arranged for the above sums to be paid. They request that the application be struck out of the Commission's list of cases.

REASONS FOR THE DECISION

Rule 44 para. 1 of the Rules of Procedure provides:

"1. Unless it considers that any reason of a general character affecting the observance of the Convention justifies further examination of an application, the Commission may strike it out of its list of cases:
a. where the applicant states that he wishes to withdraw his application; or
b. where the circumstances ... lead to the conclusion that he does not intend to pursue his application."

The Commission notes that the parties have reached an agreement on the applicant's claims. The Government request that the application be struck off the list. The applicant states that his application is settled and he agrees to the Government's request.

The Commission finds no reason of a general character affecting the observance of the Convention which, following the above agreement between the parties, necessitates a further examination of the present application. It notes that, in view of the Öztürk judgment, the Federal Republic of Germany has, by Article 2 para. 1 of an Act of 15 June 1989 (Gesetz zur Regelung des Geschäftswertes bei land- und forstwirtschaftlichen Betriebsübergaben und zur Änderung sonstiger kostenrechtlicher Vorschriften, BGBl I p. 1083), amended Nr. 1904 of the Schedule to the Court Costs Act. Under the amended provision interpretation costs incurred in regulatory proceedings will only be claimed from the accused if the court finds that he caused them unnecessarily.

For these reasons, the Commission

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)

