



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

FIRST SECTION

CASE OF ERCAN v. TURKEY

(Application no. 31246/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

25 September 2001

This judgment may be subject to editorial revision.

In the case of Ercan v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr GAUKUR JÖRUNDSSON,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 17 October 2000 and on 4 September 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 31246/96) 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, Ms Ayfer Ercan ("the applicant"), on 26 January 1996.

2. The applicant was represented before the Court by Mr Özcan Kılıç, a lawyer 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 under Article 3 of the Convention that she was tortured while in police custody.

She maintained under Article 5 §§ 1 (a) and (b), 3 and 4 of the Convention that she was not arrested for the purpose of bringing before a competent legal authority, that she was kept in police custody for fifteen days without being brought before a judge and that Turkish law does not provide any remedy by which she can challenge the lawfulness of her arrest.

The applicant further asserted under Article 6 §§ 1 and 3 (c) of the Convention that she did not receive a fair hearing since she was tried by the Istanbul State Security Court which lacked independence and impartiality and that she was not permitted the assistance of a lawyer during her questioning by the police, the public prosecutor and the State Security Court judge.

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. On 17 October 2000, having obtained the parties' observations, the Court declared the applicant's complaints under Articles 3, 5 §§ 3 and 4, 6 §§ 1 and 3 (c) of the Convention admissible and the remainder of the application inadmissible.

6. On 16 May 2001, 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 31 May 2001 and on 9 July 2001 the applicant's representative and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. On 26 July 1995 the applicant was together with her boyfriend, Tarık Ziya Yıldırım, in a park in the Bakırköy neighbourhood of Istanbul when a policeman asked to see their identity cards. The policeman searched them and found two guns in a bag belonging to Tarık Ziya Yıldırım. He called the police station asking for a group of police officers to come and take them into police custody.

8. While they were waiting Tarık Ziya Yıldırım and the policeman suddenly started to fight. Bullets hit both of them. The applicant and his boyfriend tried to escape but the police officers arrived and caught them. The policeman died on the spot and Tarık Ziya Yıldırım died after his admission to the hospital.

9. The applicant was taken into police custody for interrogation at the Istanbul Police Headquarters.

10. On 28 July 1995 the Istanbul Police Headquarters requested the Public Prosecutor attached to the Istanbul State Security Court to authorise an extension of the applicant's detention period.

11. On the same date the Public Prosecutor at the Istanbul State Security Court authorised the Istanbul Police Headquarters to extend the detention period until 8 August 1995 starting from 26 July 1995.

12. On 8 August 1995 the Istanbul Police Headquarters again requested the Public Prosecutor to authorise an extension of one day of the applicant's detention period. On the same day the Public Prosecutor authorised the Police Headquarters to extend the detention period for one day.

13. On 8 August 1995 the applicant was interrogated by the police officers. During the interrogation she stated that she was a member of an illegal organisation, namely the Leninist Guerrilla Troops (*Leninist Gerilla*

Birlikleri), the armed fraction of the illegal Turkish Communist Labour Party/Leninist (*Türkiye Komünist Emek Partisi/Leninist*). She further stated that in the struggle between Tarık Ziya Yıldırım and the policeman she shot the latter.

14. The applicant alleges that she was physically and physiologically tortured into signing her statement.

15. On 9 August 1995 the applicant was seen by a doctor at the Istanbul Forensic Medicine Institute who noted in his report that there were no signs of beating or injuries consistent with the use of force on her body.

16. On 9 August 1995 the applicant was brought before the Public Prosecutor at the Istanbul State Security Court. She denied the allegations against her and stated that she did not shoot the policeman. She further rejected her statement in the police custody.

17. On 9 August 1995 the applicant was brought before a judge at the Istanbul State Security Court. She denied the allegations against her and stated that her statement taken in police custody was untrue. The State Security Court judge decided the applicant's detention on remand.

18. On 11 August 1995 the applicant was seen by the prison doctor who noted in his report that the applicant lost power of her left hand and was suffering from numbness on her left arm from her shoulders to her fingers. The doctor further stated that the applicant had pain moving her left arm.

19. On 17 August 1995 the Public Prosecutor at the Istanbul State Security Court filed a bill of indictment with the Istanbul State Security Court, accusing the applicant of membership of an illegal armed organisation and the killing of a policeman. The Public Prosecutor requested that the applicant be convicted and sentenced under Article 146 of the Criminal Code.

20. On 23 October 1995 a group of doctors at the Istanbul Forensic Medicine Institute issued a medical report in which it was noted that the applicant had been examined on 11 August, 2 October and 11 October 1995. In the medical examination on 2 October 1995 it was found that the applicant had difficulties in moving her left shoulder and that she was suffering from flexion and extension on her arm. She had similar problems on her fists and on her right shoulder. The applicant was also suffering from negative biceps and stiloradial reflexes and lesion on the upper, middle and lower brachial pectus. In the medical examination conducted on 11 October 1995 it was found that the applicant was suffering from lesion on brachial pectus, negative bone reflexes and hipostasis on the right arm. The doctors certified that the applicant was unfit for work for 15 days.

21. On 24 January 1996 the applicant filed an application with the Fatih Public Prosecutor's office in Istanbul, alleging that she had been subjected to torture while in police custody. She stated that she was electrocuted, hosed with cold water, beaten and insulted. She was hit on the soles of her feet (*falaka*) and was subjected to sexual harassment. She was kept standing

handcuffed and was not allowed to sleep. She was strung up by her arms in the form of torture known as “Palestinian hanging”. She submitted the medical examination results as evidence of torture.

22. On 25 April 1996 the Fatih Public Prosecutor decided that no prosecution should be brought (*takipsizlik kararı*) against the police officers from the Istanbul Police Headquarters. The Public Prosecutor stated that the applicant had been summoned for the purpose of giving a statement regarding to her allegations. However, she failed to appear before his office. The police officers that were questioned denied the allegations. On 9 August 1995 the applicant was seen by a doctor who noted in his report that there were no signs of beating or injuries consistent with the use of force on her body. The prosecutor concluded that the applicant failed to substantiate her allegations.

23. On 22 May 1996 the applicant filed an objection (*takipsizlik kararına itiraz*) with the Istanbul Assize Court. She referred to the medical report dated 23 October 1995 as evidence to her allegations.

24. On 7 August 1996 the Beyoğlu Assize Court rejected the applicant’s objection.

25. On 4 May 1998 the Istanbul State Security Court convicted the applicant of membership an illegal organisation. It sentenced the applicant to lifetime imprisonment under Article 146 § 1 of the Turkish Criminal Code.

26. On 2 March 1999 the Court of Cassation upheld the decision of the Istanbul State Security Court.

THE LAW

27. On 23 July 2001 the Court received the following declaration from the Government:

“I declare that the Government of the Republic of Turkey offer to *ex gratia* to Ms Ayfer Ercan the amount of 30,000 pounds sterling with a view to securing a friendly settlement of her application registered under N° 31246/96. This sum, which also covers legal expenses connected with the case, shall be paid to a bank account named by the applicant. The sum shall be payable within three months from the date 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.

The Government regret the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained in custody notwithstanding existing Turkish legislation and the resolve of the Government to prevent such occurrences.

It is accepted that the recourse to torture, inhuman or degrading treatment or punishment of detainees constitutes a violation of Article 3 of the Convention and the Government undertake to issue appropriate instructions and adopt all necessary

measures to ensure that the prohibition of such forms of ill-treatment - including the obligation to carry out effective investigations - is respected in the future. The Government refer in this connection to the commitments which they undertook in the Declaration agreed on in Application no. 34382/97 and reiterate their resolve to give effect to those commitments. They note that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of ill-treatment in circumstances similar to those of the instant application as well as more effective investigations.

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

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."

28. On 11 June 2001 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Turkey are prepared to pay, within three months after the notification of the judgment delivered by the Court pursuant to the Article 39 of the European Convention on Human Rights, a sum totaling 30,000 pounds sterling on an *ex gratia* basis covering both pecuniary and non-pecuniary damage and costs to Ms Ayfer Ercan with a view to securing a friendly settlement of the application no. 31246/96 pending before the Court. This sum shall be paid to a bank account named by the applicant.

I accept the proposal and waive any further claims in respect of Turkey relating to the facts of this application. I declare that the case is definitely settled.

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 the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

29. 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).

30. 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 25 September 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President