



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

FOURTH SECTION

CASE OF ERAT AND SAĞLAM v. TURKEY

(Application no. 30492/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

26 March 2002

This judgment may be subject to editorial revision.

In the case of Erat and Sağlam v. Turkey,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

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

Having deliberated in private on 15 May 2001 and on 5 March 2002,

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

PROCEDURE

1. The case originated in an application (no. 30492/96) 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 two Turkish nationals, Ms Esma Erat and Mr Metin Sağlam (“the applicants”), on 19 December 1995.

2. The applicants were represented before the Court by Ms Naciye Kaplan, Ms Filiz Köstak and Ms Bedia Buran 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 applicants complained under Article 3 of the Convention that they had been severely tortured while in police custody.

4. On 15 May 2001, after obtaining the parties’ observations, the Court declared the application admissible.

5. 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. On 4 May 1998 and 1 July 1998, having obtained the parties’ observations, the Court declared the application admissible in so far as it had been communicated to the Government.

6. On 9 October 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 28 November 2001 and on 2 January 2002 the

Government's and the applicants' representatives respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

A. Regarding the first applicant

7. On 27 February 1995 the applicant was taken into custody in Istanbul by the police officers from the Istanbul Anti-Terror Branch (*Terörle Mücadele Şube Müdürlüğü*).

8. The applicant alleges that she was physically and psychologically tortured while in custody. On the first day of her custody she was taken to a dark room and stripped naked. She was subjected to sexual harassment and subjected to electric shocks through her nipples, sexual organ, fingers and toes. She was strung up by her arms in the form of torture known as "Palestinian hanging" and was again subjected to electric shocks. This treatment continued in the following days. She was not allowed to go to the toilet and was not given food and drink. She was threatened and beaten.

9. On 6 March 1995 the applicant was interrogated by police officers. During her interrogation she confessed her involvement in the activities of the PKK while she was in Germany. She further stated that she had come to Turkey with a counterfeit passport in order to see her family and work for the PKK.

10. On 13 March 1995 the applicant was seen by Dr Günay Ağıl at the Istanbul Forensic Medicine Institute. In a medical report Dr Ağıl noted 3 white scars on the applicant's right arm and brown scars on her right and left shoulders. The lesions on the applicant's body had occurred 7 or 10 days before the medical examination because she was still suffering from pain in her shoulders and groin. The doctor stated that the injuries were not life threatening and certified the applicant fit for work.

11. On 13 March 1995 the public prosecutor at the Istanbul State Security Court questioned the applicant. During her questioning the applicant denied the allegations against her and stated that she had signed her statement under duress. She further stated that she had come to Turkey from Austria with a counterfeit passport in order to see her family. The applicant concluded that she had no involvement in the activities of the PKK.

12. On 13 March 1995 a judge at the Istanbul State Security Court ordered the applicant's detention on remand. During her questioning the applicant reiterated the statement she made to the public prosecutor and

denied the allegations against her. She further stated that her statement had been taken under torture.

13. On 14 March 1995 the applicant was seen by the prison doctor, Önder Uyar who noted in his report the presence of abrasions and pigmentation on the applicant's right and left armpits, 2x2 cm haematomas on both legs, desquamation and circle shaped pigmentation on the tibia, haematomas on the ankles, ecchymoses on both nipples, temporary paralysis of the right shoulder and numbness of both arms. The prison doctor concluded that the Istanbul Forensic Medicine Institute should draft the final medical report. The applicant alleges that the prison administration rejected her request for a further medical examination.

14. On 24 April 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 having been engaged in acts aimed at the separation of a part of the territory of the State. Three other persons, including the second applicant, were charged along with the applicant. The public prosecutor gave a detailed account of the acts in which all the accused were allegedly involved. The public prosecutor requested that the applicant be convicted and sentenced under Article 168/2 of the Turkish Criminal Code (*Türk Ceza Kanunu*) and Article 5 of the Prevention of Terrorism Act (*Terörle Mücadele Kanunu*).

15. On 1 June 1995 the applicant filed a complaint with the office of the Istanbul Public Prosecutor. She alleged that she had been severely tortured in the Istanbul Anti-Terror Branch while in custody. She also submitted the medical report dated 14 March 1995.

16. On 21 September 1995 the Fatih Public Prosecutor decided that no prosecution should be brought (*takipsizlik kararı*) against the police officers of the Istanbul Anti-Terror Branch. According to the public prosecutor, there existed no evidence to substantiate that the accused police officers had committed the alleged crime.

17. On 13 October 1995 the applicant filed an objection (*takipsizlik kararına itiraz*) with the Istanbul Assize Court (*İstanbul Ağır Ceza Mahkemesi*). She alleged that the prison administration rejected her request of a further medical examination at the Istanbul Forensic Medicine Institute. She submitted that the medical report prepared by the prison doctor should be considered as evidence of torture. The applicant concluded that she would lodge an application with the European Court of Human Rights under Article 3 of the European Convention of Human Rights if the court were to reject her objection.

18. On 20 November 1995 the Beyoğlu Assize Court rejected the applicant's objection. The court held that there existed no evidence to substantiate that the accused police officers had committed the alleged crime.

19. On 17 December 1997 the Istanbul State Security Court sentenced the applicant to three years and nine months' imprisonment under Article 169 of the Turkish Criminal Code and Article 5 of Law no. 3713.

B. Regarding the second applicant

20. On 8 March 1995 the applicant was taken into custody in Istanbul by the police officers from the Istanbul Anti-Terror Branch.

21. The applicant alleges that when he was arrested he was shoved into a car and was forced to remain in a crouched position for three hours. He was blindfolded, insulted, hit and punched. When he was brought to the anti-terror branch he was stripped naked and hung up on a beam. He was tied down with weights and was forced to remain in that position for a long time. He was also forced to listen to sounds of screaming. His testicles were squeezed. He was subjected to electric shocks through his penis and toes. He was sprayed with cold water and again subjected to electric shocks. After the electric shock he fainted. He recovered when he was again sprayed with cold water. He found himself lying on the floor. The police officers tried to move his arms and inserted an unknown object into his anus. He was then strung up by his arms in the form of torture known as "Palestinian hanging" and was once more subjected to electric shocks. He was not given food and drink for five days and was forced to sign some documents.

22. On 16 March 1995 the applicant was interrogated by police officers. During his interrogation he confessed his involvement in the activities of the PKK, such as a bomb attack at premises of a political party. He stated that after the bomb attack he had tried to escape from Turkey. He illegally went to Greece but was caught there and interrogated by the Greek police and the Greek secret service agents. They took him to a camp called Lavrion. After having stayed there for 15 days with the other members of the PKK and the members of the Turkish leftist organisations he moved to a house near Athens where he was trained to make bombs.

23. On 20 March 1995 the applicant was questioned by the public prosecutor at the Istanbul State Security Court. He rejected the allegations against him and said that he had given his statement under torture. He further rejected his involvement in the activities of the PKK and in a bomb attack at the premises of a political party. He stated that he was forced to accept this allegation under duress.

24. On 20 March 1995 a judge at the Istanbul State Security Court ordered the applicant's detention on remand. During his questioning the applicant reiterated the statement he had made to the public prosecutor and denied the allegations against him. He stated that his statement was taken under torture.

25. On 20 March 1995 the applicant was seen by the prison doctor, Kemal Güler who noted in his report the presence of abrasions on the

applicant's left arm, numbness of armpits, a 5x5 cm lesion on the right malleolus, hyperaemic area on the left malleolus, an abrasion on the left kneecap, a 2x2 cm scar on the right kneecap, oedema and pain on the testicles and respiration problems. The prison doctor concluded that the Istanbul Forensic Medicine Institute should draft the final medical report. The applicant alleges that the prison administration rejected his request of a further medical examination.

26. On 24 April 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 having been involved in a bomb attack at premises of a political party and having been engaged in acts aimed at the separation of a part of the territory of the State. Three other persons, including the first applicant, were charged along with the applicant. The public prosecutor gave a detailed account of the acts in which all the accused were allegedly involved. The public prosecutor requested that the applicant be convicted and sentenced under Article 168/2 of the Turkish Criminal Code (*Türk Ceza Kanunu*) and Article 5 of the Prevention of Terrorism Act (*Terörle Mücadele Kanunu*).

27. On 25 May 1995 the applicant filed a complaint with the office of the Istanbul Public Prosecutor. He alleged that he was severely tortured in the Istanbul Anti-Terror Branch while in custody. He submitted the medical report dated 20 March 1995.

28. On 14 September 1995 the Fatih Public Prosecutor decided that no prosecution should be brought (*takipsizlik kararı*) against the police officers of the Istanbul Anti-Terror Branch. According to the public prosecutor, there existed no evidence to substantiate that the accused police officers had committed the alleged crime.

29. On 13 October 1995 the applicant filed an objection (*takipsizlik kararına itiraz*) with the Istanbul Assize Court (*İstanbul Ağır Ceza Mahkemesi*). He alleged that the prison administration had rejected his request of a further medical examination at the Istanbul Forensic Medicine Institute. The medical report prepared by the prison doctor should be considered as evidence of torture. The applicant concluded that he would lodge an application with the European Court of Human Rights under Article 3 of the European Convention of Human Rights if the court were to reject his objection.

30. On 20 May 1996 the Beyoğlu Assize Court decided to commit for trial the police officers who allegedly tortured the applicant.

31. On 19 November 1997 the Istanbul public prosecutor lodged a bill of indictment with the Istanbul Assize Court against the police officers.

32. On 1 April 1999 the Istanbul Assize Court acquitted the police officers. The court held that there existed no evidence to substantiate that the police officers had committed the alleged crime.

33. On 13 April 1999 the Istanbul Assize Court's decision became final, as the public prosecutor did not lodge an appeal.

THE LAW

34. On 11 January 2002 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 each of the applicants an all-inclusive amount of 150,000 French francs with a view to securing a friendly settlement of their application registered under no. 30492/96. This sum, which also covers legal expenses connected with the case, shall be free of any tax that may be applicable and be paid in French francs to a bank account named by the applicants and/or their duly authorised representative. This sum shall be payable within three months from the date of the notification 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.

2. The Government regret the occurrence of individual cases of ill-treatment by the authorities of persons detained in custody, as in the case of the applicants, Mrs Esma Erat and Mr Metin Sağlam, notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions.

3. It is accepted that the recourse to ill-treatment, as in the circumstances of the present case, and the failure to conduct effective investigations constituted a violation of Article 3 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such actions – including the obligation to carry out effective investigations as required by Articles 3 and 13 is respected. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in, among other things, more effective investigations into cases of ill-treatment in circumstances similar to those of the instant application.

4. 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.

5. 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.”

35. On 2 January 2002 the Court had received the following declaration signed by the applicant's representative:

“In my capacity as the representative of the applicants, Mrs Esma Erat and Mr Metin Sağlam, I have taken cognisance of the declaration of the Government of the Republic of Turkey that they are prepared to make to each of the applicants an *ex gratia* all-inclusive payment of 150,000 French francs, with a view to concluding a

friendly settlement of the case that originated in application no. 30492/96. This sum, which also covers legal expenses connected with the case, will be paid in accordance with the terms stipulated in the said declaration within three months after notification of the Court's judgment delivered pursuant to Article 39 of the European Convention on Human Rights.

Having duly consulted the applicants, I accept that offer and they, in consequence, waive all other claims against Turkey in respect of the matters that were at the origin of the application. We declare that the case has been settled finally and we 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.

This declaration is made within the scope of the friendly settlement which the Government and I, in agreement with the applicants, have reached.”

36. 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).

37. 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 26 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President