



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

THIRD SECTION

CASE OF SÜLEYMAN KAPLAN v. TURKEY

(Application no. 38578/97)

JUDGMENT
(Friendly Settlement)

STRASBOURG

10 October 2002

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

In the case of Kaplan v. Turkey,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŖ,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 19 September 2002,

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

PROCEDURE

1. The case originated in an application (no. 38578/97) 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, Süleyman Kaplan (“the applicant”), on 28 January 1996.

2. The applicant was represented by Ms N. Hatipoğlu, a lawyer practising in Ankara. 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 he was tortured while in police custody

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. On 12 June 2001, having obtained the parties' observations, the Court (Third Section) declared the application admissible.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section.

6. On 19 April 2002, 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 5 June 2002 and on 19 August 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. On 3 May 1995 the applicant was arrested by police officers from the Anti-Terror branch of the Ankara Police Headquarters. He was accused of being a member of an illegal organisation, the TDKP/GKB (*Türk Devrimci Komünist Partisi/Genç Komünistler Birliği* – The Turkish Revolutionary Communist Party/Young Communists' Union).

8. The applicant alleges that he was beaten, hung by his arms, given electric shocks to his body and threatened with death during his interrogation by the police officers.

9. On 15 May 1995 the applicant was examined by a doctor at the Ankara Forensic Medicine Institute who noted in his report the presence of numerous differently shaped and coloured bruises on his shoulders, on the left upper part of his fist, his back and thigh. The doctor further noted the presence of four ecchymoses on the applicant's outer gluteal. The applicant was also suffering from pain in his chest. The doctor concluded that the applicant would be unfit for work for five days.

10. On 15 May 1995 the applicant was questioned by the public prosecutor, Ali Rıza Konuralp, at the Ankara State Security Court. During his questioning the applicant denied the allegations against him and stated that he had signed his statement under duress. The applicant also refused to give a detailed statement, saying that he was suffering from trauma resulting from the severe torture to which he was subjected while in police custody.

11. On the same day the Ankara State Security Court ordered the applicant's detention on remand.

12. On 21 July 1995 the applicant submitted a written statement to the public prosecutor at the Ankara State Security Court. The statement reads as follows:

“On 3 May 1995 I was arrested by three plain-clothes men. ... They [later] told me that they were police officers. I was handcuffed and blindfolded. Thirty or forty minutes [after my arrest] I was brought to a deserted area. As soon as they took me out of the car they started beating me. At the same time they were asking me if I was a member of the terrorist organisation. ... They were also asking about the names of the other members. When I told them that I was not a member of the organisation they continued hitting and asking me the same questions again. They took off my clothes and beat me with my belt. This [treatment] continued for three hours. ... Afterwards they put a gun to my head and threatened me with death. I repeated that I had nothing to say. They told me that they would take me to Gölbaşı and that I would get lost there. They also told me that they would not kill me immediately because they wanted me first to suffer. It was getting dark. They put me in the car and drove towards a building, which, I understood afterwards, was the Ankara Police Headquarters. I was dragged into a cell. I do not remember what they were saying because I was unconscious. I only remember them hitting me. After a while they took me out of the cell and brought me into a room called “the room with mirrors”. [My wife was there]. ... They told me that they would let us go if I told them the truth. ... After a while they brought me back to the cell. Two days later they came back to my cell with some papers. They wanted me to sign the papers. After having read the papers I told them

that I would not sign the papers because those papers contained untrue statements about my wife and me. They again brought me to the room with mirrors. A.K with whom I was working was there. They told me that A.K and I had been involved in illegal activities. They again asked me to sign the papers. When I refused the allegations they again started beating me. After a while they hung me by my arms. I was unconscious and naked. They squeezed my testicles, hosed me with cold water and gave electric shocks. They were giving pauses at regular intervals. During one of those pauses they brought in my wife and told her to sign the documents. They were torturing and beating my wife in front of me. They took me back to my cell after three or four hours. They again took me to the torture room and asked me if I would sign the papers. When I refused to sign the papers they recommenced the same treatment. I lost consciousness. They brought my wife back and started beating her. They told me that I would watch them raping her. When they started to take my wife's clothes off I told them that I would sign all the papers and asked them not to harm my wife. I told my wife to sign all the papers as well and I signed all the papers without having read them.”

13. On 17 October 1995 the applicant lodged a complaint with the Ankara public prosecutor. He stated that he had been subjected to torture while in custody and requested that the police officers who tortured him be identified and brought to justice.

14. On 11 December 1995 the applicant appeared before the Ankara Public Prosecutor, Mehmet Bozkurt. He reiterated his allegations before the prosecutor.

15. On 7 May 1996 the Ankara Public Prosecutor, Ramazan Gündüz, issued a decision based on lack of jurisdiction (*görevsizlik kararı*). The prosecutor decided to transfer the case-file to the office of the Ankara Governor pursuant to Article 15 of Law no. 3713.

16. On 24 June 1996 the Ankara State Security Court convicted the applicant for his involvement in an armed gang. The court sentenced him to twelve years and six months' imprisonment under Article 168/2 of the Turkish Criminal Code and Article 5 of Law no. 3713.

17. On 28 June 1996 Ramazan Er, the chief of police (*İl Emniyet Müdürü*), appointed Superintendent (*başkomiser*) Hilmi Eser to conduct an investigation against the police officers who allegedly tortured the applicant.

18. On 12 July 1996 the police officers Hayati Akça, Ali Tosun, Kadri Tuncer and Osman Menteşe gave statements to Mr Eser. They rejected the allegations of torture, stating that they had collected sufficient evidence to charge the applicant without resorting to torture. They also stated that the applicant was injured during the struggle when he was arrested. The police officers concluded that it was probable that the applicant had intentionally injured himself in order to accuse the police officers of ill-treatment.

19. On 24 July 1996 the applicant gave a statement to Mr Eser. He reiterated his allegations of torture.

20. On 18 September 1996 Superintendent Hilmi Eser drafted a recommendation report (*fezleke*) in which it is stated that, in the light of the statements taken and the relevant evidence in the case-file, there existed no

evidence to substantiate that the police officers committed the alleged crime. The report further stated:

“The medical report that the complainant relies on is dated 15 May 1995 and refers to the medical examination carried out before he had been brought before the judge. However, in his statement taken in custody the complainant did not say that he had given this statement under duress and pressure. He also did not mention that he had been subjected to ill-treatment. The complainant lodged his complaints seven months after he was detained on remand. This confirms that the complainant lodged these complaints in order to show himself as a member of the organisation and to attract the sympathy of the other members of the organisation in prison. The bruises on the applicant's fists occurred as a result of the handcuffs. The other bruises occurred because the applicant injured himself in order to accuse the police officers.”

21. Mr Eser concluded that the police officers had performed their duty with diligence and recommended that no prosecution be brought against them.

22. On 1 October 1996 the Ankara Provincial Administrative Council (*İl İdare Kurulu*) decided to commit the accused police officers for trial (*lüzum-u muhakemelerine*). The Council further decided that the proceedings should be initiated before the Ankara Criminal Court of First Instance (*Asliye Ceza Mahkemesi*) as the matter fell within the jurisdiction of that court.

23. The police officers appealed. On 24 November 1998 the Supreme Administrative Court (*Danıştay*) quashed the decision of the Ankara Provincial Administrative Council of 1 October 1996 on the grounds that it was for the competent public prosecutor to initiate proceedings against the accused police officers. The Supreme Administrative Court concluded that the case-file should be transferred to the office of the competent public prosecutor.

24. On 25 December 1998 the Ankara public prosecutor filed a bill of indictment with the Ankara Assize Court against the four police officers who allegedly tortured the applicant. These proceedings are apparently still pending.

THE LAW

25. On 5 June 2002 the Court received the following declaration signed by the applicant's representative:

“In my capacity as the representative of the applicant, Mr Süleyman Kaplan, I have taken cognisance of the declaration of the Government of Turkey that they are prepared to make to the applicant an *ex gratia* all-inclusive payment of EUR 28,000 (twenty-eight thousand euros), with a view to concluding a friendly settlement of the case that originated in application no. 38578/97. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and 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 applicant, I accept that offer and he, in consequence, waives 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 applicant, have reached.”

26. On 19 August 2002 the Court received the following declaration from the Government:

“1. I declare that the Government of Turkey offer to pay *ex gratia* to the applicant, Mr Süleyman Kaplan, an all-inclusive amount of EUR 28,000 (twenty-eight thousand euros) with a view to securing a friendly settlement of his application registered under no. 38578/97. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be free of any tax that may be applicable and be paid in Euros to a bank account named by the applicant and/or his 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 applicant, Mr Süleyman Kaplan, 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 Council of Europe 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.”

27. 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).

28. 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 10 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Gerog RESS
President