



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

SECOND SECTION

CASE OF SÜNNETÇİ v. TURKEY

(Application no. 28632/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

22 July 2003

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

In the case of Sünnetçi v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNDSSON,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr M. UGREKHELIDZE, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 1 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 28632/95) 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, Mahmut Sünnetçi (“the applicant”), on 18 July 1995.

2. The applicant, who had been granted legal aid, was represented by Mr M. Sezgin Tanrikulu, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained that he was subjected to torture 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 28 March 2000, having obtained the parties’ observations, the Court declared the application admissible.

5. On 18 March 2003, 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 24 March 2003 and on 11 June 2003, the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1967 and lives in Germany.

7. On 22 August 1994 the applicant was taken into custody in Diyarbakır on suspicion of membership of the PKK (Workers' Party of Kurdistan).

8. On the same date the applicant was seen by a doctor at the Diyarbakır State Hospital who noted in his report that there were no signs of beating or injuries on his body consistent with the use of force.

9. In a letter dated 30 August 1994 the Diyarbakır Police Headquarters informed the Diyarbakır State Hospital that the applicant was in bad health and that he needed to be examined by a doctor.

10. A medical report prepared by Dr Serda Ballı in the Diyarbakır State Hospital on the same date recorded that the applicant was suffering from fever and nausea.

11. On 31 August 1994 the applicant was interrogated by police officers. During his interrogation, the applicant confessed to his involvement in the activities of the PKK such as bombings, making explosives and organising the sub-committees of the organisation. The applicant alleged that he was severely tortured during the interrogation.

12. On 31 August 1994 at 3.00 p.m. three warders who were in charge from 7.00 p.m. on 30 August 1994 to 8.00 a.m. on 31 August 1994, drafted a report. It was stated in the report that the applicant, after having complained of the heat in his cell, had taken off his shirt and rubbed his back against the edge of the fixed concrete bed. This had resulted in bruising to his back.

13. On 1 September 1994 the applicant was transferred to the Dicle University Medical Hospital on account of his serious condition.

14. On 2 September 1994 the applicant gave a statement in the hospital to a public prosecutor attached to the Diyarbakır State Security Court. The applicant denied the allegations against him and stated that he was tortured into signing a statement drafted by police officers when he was blindfolded. He further stated that he had had no health problems before being taken into custody. The prosecutor noted, with reference to the applicant's medical report, that the applicant was suffering from acute renal insufficiency (*akut böbrek yetmezliği*).

15. On 2 September 1994 a judge at the Diyarbakır State Security Court ordered the applicant's detention on remand.

16. On 13 September 1994 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment with the same court. The prosecutor accused the applicant of providing explosives to other members of the organisation, establishing the provincial committee of the organisation and bombing the premises of banks and of a political party. In the light of the evidence in the case-file the prosecutor requested that the applicant be

convicted and sentenced under Article 125 of the Turkish Criminal Code (*Türk Ceza Kanunu*).

17. At two hearings before the Diyarbakır State Security Court on 1 May 1995 and 6 July 1995 the applicant's lawyer alleged that his client had been subjected to torture while in custody. He pointed out that the court should have regard to the fact that the public prosecutor had questioned the applicant in the hospital. He requested the court to initiate an investigation into the applicant's allegation of torture pursuant to Articles 151 and 152 of the Code of Criminal Procedure. The court decided that it would examine the applicant's allegation in its final decision.

18. In a letter of 12 April 1997 in which reference is made to the applicant's application to the European Commission of Human Rights, the Ministry of Justice, International Law and Foreign Relations Directorate (*Adalet Bakanlığı, Uluslararası Hukuk ve Dış İlişkiler Genel Müdürlüğü*), requested the public prosecutor at the Diyarbakır State Security Court to initiate an investigation into the applicant's allegation of torture.

19. On 26 February 1998 the Commission for the Prosecution of Civil Servants in the Diyarbakır province (*Diyarbakır Valiliği Memurin Muhakematı Komisyonu*) decided that no prosecution should be brought against the police officers Mustafa Bölük and Hasan Koçak who had allegedly tortured the applicant. It was noted that there was no evidence to conclude that the police officers had committed the alleged crime.

20. On 11 August 1998 the applicant filed an appeal with the Supreme Administrative Court (*Danıştay*) against the decision of the Commission for the Prosecution of Civil Servants. The applicant reiterated his allegation that he had been tortured.

21. On 22 December 1998 the Diyarbakır State Security Court acquitted the applicant. The court held that there was no evidence on which to convict the applicant other than the statement he gave while in police custody.

THE LAW

22. On 11 June 2003 the Court received the following declaration from the Government:

"1. The Government regret the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions. It is accepted that the recourse to ill-treatment of detainees constitutes 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 acts and the obligation to carry out effective investigations are 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 case as well as more effective investigations.

2. I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to the applicant, Mr Mahmut Sünnetçi, an all-inclusive amount of EUR 25,000 (twenty-five thousand Euros) [EUR 3,500 of which in respect of costs and expenses], with a view to securing a friendly settlement of his application registered under no. 28632/95. 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. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

3. 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.

4. 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."

23. On 24 March 2003 the Court received the following declaration signed by the applicant's representative:

"1. In my capacity as the representative of the applicant, Mr Mahmut Sünnetçi, I have taken cognisance of the terms of the declaration made by the Government of the Republic of Turkey as well as the undertakings contained in that declaration, including the payment to the applicant of an all-inclusive amount of EUR 25,000 (twenty-five thousand Euros) [EUR 3,500 of which in respect of costs and expenses] with a view to concluding a friendly settlement of his case that originated in application no. 28632/95.

2. Having been duly consulted, the applicant accepts the terms of the above-mentioned declaration and, in consequence, waives all other claims against the Republic of 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."

24. 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).

25. 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 22 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President