



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

THIRD SECTION

CASE OF ÖRNEK AND EREN v. TURKEY

(Application no. 41306/98)

JUDGMENT
(Friendly Settlement)

STRASBOURG

15 July 2004

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

In the case of Örnek and Eren 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. TÜRMEEN,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 24 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 41306/98) 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, Mr Tacettin Örnek and Mr Abdulvahap Eren (“the applicants”), on 9 March 1998.

2. The applicants, who had been granted legal aid, were represented by Mr M. Vefa, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent, Mr E. İşcan, Minister Plenipotentiary, Deputy Director General for Council of Europe and Human Rights.

3. The application mainly concerns the applicants’ ill-treatment under police custody. In this respect, they invoked Articles 3, 6, 13 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 22 June 1999 the case was communicated to the respondent Government.

7. 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 (Rule 52 § 1).

8. On 9 January 2003, having obtained the parties' observations, the Court declared the application partly admissible and the remainder of the complaints were declared inadmissible.

9. On 30 September 2003 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. The applicants and the Government submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

10. The applicants, who were born in 1962 and 1966 respectively, live in Mardin.

11. On 4 January 1998 police officers from the Mardin Security Directorate, together with soldiers from the gendarmerie station, arrived in Yüceli village and gathered the villagers in the village square. 20 villagers, including the applicants, were asked to indicate the places where PKK members were hiding. Subsequently the applicants were taken to the Mardin Security Directorate.

12. On 5 January 1998 the applicants were examined by a forensic doctor. According to the medical report, the first applicant bore a swelling measuring 8 by 3 cm on the right side of his chin, a laceration and bruising measuring 4 by 3 cm on the back of his right shoulder, a laceration measuring 6 by 2 cm on the left tibia, widespread old scars measuring 8 and 3 cm on the right knee, a laceration measuring 4 by 3 cm on the left calf and widespread lacerations around the lips. Another report was prepared for the second applicant, which noted the presence of old abrasions measuring 4 by 3 cm on his left tibia and 2 by 2 cm on his right tibia and 13 or 14 old scars on his right arm.

13. Following the medical examinations, the applicants were brought back to the Mardin Security Directorate and placed in custody. During their custody period, the applicants were blindfolded, stripped naked, subjected to verbal abuse, hosed with cold water, beaten with a truncheon, strung up by their arms and electric shocks were administered on their bodies. They were also threatened with death and forced to sign statements.

14. On 8 January 1998 the applicants were medically examined by a doctor once again. The doctor drew up reports and noted the presence of various injuries similar to those recorded in the medical reports of 5 January 1998.

15. On 8 January 1998 the applicants were brought before the Mardin Magistrate Court in Criminal Matters. The first applicant admitted before the judge that he had helped the PKK in the past by buying and transferring food for its members. The second applicant denied the charges against him however accepted that he had bought food for PKK members on one occasion. The court ordered their detention on remand.

16. On 21 January 1998 the chief public prosecutor at the Diyarbakır State Security Court filed an indictment with the court and charged the applicants with membership of the PKK. The charges were brought under Article 168 § 2 of the Criminal Code and Article 5 of the Prevention of Terrorism Act (Law no. 3713).

17. On 23 January 1998 the applicants were brought before the Diyarbakır State Security Court for a preliminary hearing. In view of the nature of the offence and the evidence contained in the file, the court ordered the applicants to remain in detention on remand.

18. On 19 March 1998, the applicants' lawyer asserted before the court that the applicants had been tortured by police officers from the Mardin Security Directorate. He accordingly requested that criminal proceedings be instigated against the police officers. The court decided to consider this request at a later stage.

19. On 28 May 1998 the applicants argued before the court that their police statements had been extracted under torture. As the second applicant was suffering from tuberculosis, they asked the court to release the second applicant on bail. This request was rejected.

20. On 26 November 1998 the Diyarbakır State Security Court found the first applicant guilty of aiding and abetting a terrorist organisation under Article 169 of the Criminal Code and sentenced him to three years and nine months' imprisonment. The court further acquitted the second applicant of the charges against him.

21. The first applicant appealed against the judgment. He submitted to the Court of Cassation that he had been subjected to torture under custody and that the ill-treatment was proved by two medical reports.

22. On 6 July 1999 the Court of Cassation rejected the appeal.

23. No criminal proceedings have been brought against the police officers who had allegedly tortured the applicants.

THE LAW

24. On 1 June 2004 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 in custody 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 as in the applicants' case 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 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 applicants, Mr Tacettin Örnek and Mr Abdulvahap Eren, an all-inclusive amount of EUR 50,000 (fifty thousand Euros) (EUR 4,000 of which in respect of costs and expenses), with a view to securing a friendly settlement of their application registered under no. 41306/98. 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 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. 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."

25. On 17 May 2004 the Court received the following declaration signed by the applicants' representative:

"1. In my capacity as the representative of the applicants, Mr Tacettin Örnek and Mr Abdulvahap Eren, 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 applicants of an all-inclusive amount of EUR 50,000 (fifty thousand Euros) (EUR 4,000 of which in respect of costs and expenses) with a view to concluding a friendly settlement of their case that originated in application no. 41306/98.

2. Having been duly consulted, the applicants accept the terms of the above-mentioned declaration and, in consequence, waive 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."

26. 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).

27. 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 15 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President