

Press release issued by the Registrar

**CHAMBER JUDGMENT
OYA ATAMAN v. TURKEY**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Oya Ataman v. Turkey* (application no. 74552/01).

The Court held unanimously that there had been

- **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;
- **a violation of Article 11** (freedom of assembly and association).

The Court considered that the finding of a violation of the Convention constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant and awarded her 1,000 euros for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicant, Oya Ataman, is a 36-year-old Turkish national who lives in Istanbul. She is a lawyer and president of the Istanbul Human Rights Association.

In April 2000 the applicant organised a demonstration in Sultanahmet Square in Istanbul, in the form of a march followed by a statement to the press, to protest against plans for “F-type” prisons.

At about midday the police asked the group of 40-50 people, who were demonstrating by waving placards, to break up. As the demonstrators refused to obey them, the police dispersed the group using a kind of tear gas known as “pepper spray”. They arrested 39 demonstrators, including the applicant, who was released after an identity check.

The applicant lodged a criminal complaint against the head of the Istanbul security police and the police officers concerned, alleging that she had been ill-treated through the use of pepper spray, unlawfully arrested and prevented from making the public statement scheduled for the end of the demonstration. The public prosecutor's office discontinued the proceedings and its ruling was upheld by the Assize Court on 25 September 2000.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 March 2001.

Judgment was given by a Chamber of 7 judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
András **Baka** (Hungarian),
Riza **Türmen** (Turkish),
Mindia **Ugrekheldze** (Georgian),
Elisabet **Fura-Sandström** (Swedish),
Danutė **Jočienė** (Lithuanian),
Dragoljub **Popović** (Serbian), *judges*,

and also Stanley **Naismith**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Articles 3 and 11, the applicant complained that tear gas had been used to disperse the demonstrators and that her rights to freedom of expression and freedom of association had been infringed.

Decision of the Court

Article 3

The Court first noted that pepper spray was used in some Council of Europe member States to keep demonstrations under control or to disperse them in case they got out of hand. It was not among the toxic gases listed in the Annex to the CWC (1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction). However, the Court noted that the use of this gas could produce side-effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of tear ducts and eyes, spasms, thoracic pain, dermatitis or allergies.

In the present case the Court observed that the applicant had not submitted any medical reports to show the ill-effects she had suffered after being exposed to the gas. Since she had been released shortly after being arrested, she had not asked for a medical examination either.

In those circumstances, the Court considered that there was no evidence to substantiate the applicant's allegations of ill-treatment. It therefore held that there had been no violation of Article 3.

Article 11

The Court noted that there had been an interference with the applicant's freedom of assembly. The interference had been prescribed by the Assemblies and Marches Act (Law

¹ This summary by the Registry does not bind the Court.

no. 2911) and had pursued the legitimate aims of preventing disorder and preserving the rights of others and the right to move freely in public without restriction.

The Court observed that the demonstration had been unlawful, and this was not disputed by the applicant. However, an unlawful situation could not justify an infringement of freedom of assembly.

It appeared from the evidence before the Court that the group of demonstrators had been informed a number of times that the march was illegal and would disturb public order at a busy time of day, and that they had been ordered to disperse. The applicant and other demonstrators had not complied with the security forces' orders and had attempted to force their way through. However, there was no evidence to suggest that the group of demonstrators had represented any danger to public order, apart from possibly disrupting traffic. There had been at most fifty people, who had wished to draw public attention to a topical issue. The rally had begun at about midday and had ended with the group's arrest within half an hour. The Court was particularly struck by the authorities' impatience in seeking to end the demonstration, which had been organised under the authority of the Human Rights Association.

In the Court's view, where demonstrators did not engage in acts of violence it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by the Convention was not to be deprived of all substance.

In those circumstances, the Court considered that the police's forceful intervention had been disproportionate and had not been necessary for the prevention of disorder within the meaning of the Convention. It therefore held that there had been a violation of Article 11.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.