

Press release issued by the Registrar

CHAMBER JUDGMENT
PAŞA AND ERKAN EROL v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Paşa and Erkan Erol v. Turkey* (application no. 51358/99).

The Court held unanimously that there had been:

- **a violation of Article 2** (right to life) of the European Convention on Human Rights in respect of Erkan Erol, who was wounded by an anti-personnel mine while grazing his sheep;
- **no violation of Article 6 § 1** (right to a fair trial) **or Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction) of the Convention, the Court awarded Erkan Erol 30,505 euros (EUR) for pecuniary and non-pecuniary damage and EUR 1,076 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicants, Paşa Erol and his son Erkan, are Turkish nationals who were born in 1943 and 1986 respectively and live in Tunceli (Turkey).

In March 1995 Paşa Erol, at that time the village mayor, was informed that anti-personnel mines had been laid along one side of the premises of the Akdemir gendarmerie command in the district of Pertek (Tunceli). The zone in question was cordoned off with “barbed wire at waist level” and warning signs were placed at 20-metre intervals. Over the following days, local people were informed orally that the area, which they used for grazing, had been mined.

On 11 May 1995 Erkan, then aged nine, was grazing his sheep. They strayed into the mined area and Erkan, together with other children aged between seven and 13, followed the animals across the barbed-wire fence. Erkan tried to pick up a piece of metal, which turned out to be a mine, and he was wounded by the ensuing explosion. He was taken by military helicopter to Elazığ civil hospital, where he had his left leg amputated at the knee.

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 a 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.

A rescue operation was organised using a military helicopter to evacuate the other children, some of whom had been slightly injured in the explosion.

In April 1996 Paşa Erol brought administrative proceedings against the Ministry of the Interior, seeking compensation on account of the dearth of safety measures around the military zone. Malatya administrative court dismissed his application on the ground that, according to the evidence before it, safety measures had in fact been taken around the mined area, which had been marked out by “signs and warning notices”, and the local people had been informed. The court did not find the State to have been at fault, since Erkan had crossed into a prohibited area and was himself responsible for the accident, whilst his father had been negligent.

The Supreme Administrative Court upheld that judgment on 24 November 1998.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 September 1999 and declared admissible on 28 February 2006.

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

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

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants complained in particular that the authorities had failed to protect citizens' right to life in allowing anti-personnel landmines to be laid without taking the necessary safety measures. They relied, in particular, on Article 2, Article 6 § 1 and Article 13.

Decision of the Court

Article 2 of the Convention

The Turkish Government argued that Paşa Erol had also been responsible for ensuring that the inhabitants of the village were informed, as he was their mayor at the time. They also criticised him for neglecting his parental responsibility by leaving his nine-year-old son alone without supervision.

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

The Court was of the opinion that, in view of the nature of mayoral duties and the responsibilities he had assumed, Paşa Erol had been under an obligation to warn the gendarmerie that existing safety measures were inadequate and that additional measures should be taken. Moreover, he had himself behaved irresponsibly by entering the mined area prior to the incident.

Under those circumstances the Court allowed the Turkish Government's preliminary objection concerning Paşa Erol's administrative and parental responsibility in his son's accident and concluded that he could not claim to be the victim, within the meaning of Article 34 of the Convention, of a violation of Article 2.

Erkan, for his part, had complained of a violation of his right to life, since he had had his leg amputated following the explosion of an anti-personnel mine, which had almost cost him his life.

The Court noted that the anti-personnel mines had been laid to protect the gendarmerie near the village. Because of the danger they represented, in particular for young children, the use of anti-personnel mines had been widely condemned by international opinion and had ultimately been prohibited under the Ottawa Convention, which Turkey had in fact signed in 2003.

The Court further noted that the mined area had been the village pastureland where the villagers had regularly gone to feed their animals. Having regard to the specific situation of the land, the safety measures had been of particular importance and it had been the authorities' duty, failing the provision of other means of protection by the regional gendarmerie, to take any necessary measures to prevent innocent civilians from entering the area. But it had been cordoned off by only two rows of barbed wire, which were too far apart to ensure effective protection.

Moreover, even though the local people had been told about the mines, the children could not really have been expected, in the natural environment and given the way of life in a very rural community where they were actively involved in day-to-day tasks, such as grazing animals, to have behaved in the same way as responsible adults when faced with such dangers.

In conclusion, the Court found it incomprehensible that a grazing area should have been mined and simply surrounded by two rows of barbed wire that were relatively far apart and clearly insufficient to prevent children crossing over. It thus concluded that Turkey had not taken all the necessary measures to ensure protection from the risk of death or injury.

Accordingly, there had been a violation of Article 2 in respect of Erkan Erol.

Article 6 § 1 and Article 13

The Court considered that the administrative remedy available had not been ineffective within the meaning of Article 6 § 1 and Article 13. It therefore held that there had been no violation of those articles.

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

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

***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.*