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

SECOND SECTION

CASE OF OYA ATAMAN v. TURKEY

(Application no. 74552/01)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

In the case of Oya Ataman v. Turkey,

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

Jean-Paul Costa, *President*,
András Baka,
Rıza Türmen,
Mindia Ugrekhelidze,
Elisabet Fura-Sandström,
Danutė Jočienė,
Dragoljub Popović, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 74552/01) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Ms Oya Ataman (“the applicant”) on 15 March 2001.

2. The applicant was represented by Mr G. Şan, of the Istanbul Bar. The Turkish Government (“the Government”) did not appoint an Agent for the purposes of the proceedings before the Court.

3. On 8 March 2005 the Court declared the application partly inadmissible and decided to communicate the complaints under Articles 3 and 11 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Istanbul.

5. On 22 April 2000 the applicant, a lawyer and member of the administrative board of the Istanbul Human Rights Association, 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.

6. At about 12 noon a group of forty to fifty persons brandishing placards and signs gathered in the square, under the leadership of the applicant and Eren Keskin, a lawyer and President of the Istanbul Human Rights Association. The police asked the group to disperse and to end the gathering, and informed them via a loudspeaker that the demonstration, for which advance notice had not been submitted, was unlawful and was likely to cause public-order problems at a busy time of day.

7. The demonstrators refused to obey and attempted to continue marching towards the police, who dispersed the group using a kind of tear gas known as "pepper spray". The police arrested thirty-nine demonstrators, including the applicant, and took them to a police station.

8. After an identity check, and in view of her profession, the applicant was released at 12.45 p.m.

9. On 26 April 2000 the applicant lodged a criminal complaint with the Beyoğlu prosecutor's office 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.

10. On 29 June 2000 the public prosecutor's office discontinued the proceedings on the ground that no offence had been committed.

11. On 25 July 2000 the applicant applied to the Beyoğlu Assize Court seeking to have that decision set aside.

12. On 25 September 2000 the Assize Court upheld the decision that there was no case to answer.

II. RELEVANT LAW AND PRACTICE

A. Domestic legislation on freedom of assembly

1. Constitutional guarantees

13. Article 34 of the Constitution provides:

> "Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.
>
> ...
>
> The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law."

2. The Demonstrations Act

14. At the material time section 10 of Law no. 2911 on assemblies and marches was worded as follows:

> "In order for a meeting to take place, the governor's office or authorities of the district in which the demonstration is planned must be informed, during opening hours and at least seventy-two hours prior to the meeting, by a notice containing the signature of all the members of the organising board ..."

15. Section 22 of the same Act prohibits demonstrations and processions on public streets, in parks, places of worship and buildings in which public services are based. Demonstrations organised in public squares must comply with security instructions and not disrupt individuals' movement or public transport. Finally, section 24 provides that demonstrations and processions which do not comply with the provisions of this Act will be dispersed by force on the order of the governor's office and after the demonstrators have been warned.

B. Opinion of the Venice Commission

16. The European Commission for Democracy through Law (the Venice Commission) at its 64th plenary session (21-22 October 2005) adopted an opinion interpreting the OSCE/ODHIR guidelines on drafting laws on freedom of assembly with regard to the regulation of public meetings. It set out its approach in this area, particularly with regard to advance notice of demonstrations in public places.

> "29. Establishing a regime of prior notification of peaceful assemblies does not necessarily extend to an infringement of the right. In fact, in several European countries such regimes do exist. The need for advance notice generally arises in respect of certain meetings or assemblies – for instance, when a procession is planned to take place on the highway, or a static assembly is planned to take place on a public square – which require the police and other authorities to enable it to occur and not to use powers that they may validly have (for instance, of regulating traffic) to obstruct the event."

However, the Venice Commission clearly emphasised that the regime of prior notification must not in any circumstances indirectly restrict the right to hold peaceful meetings by, for instance, providing for too detailed and complicated requirements, or imposing too onerous procedural conditions (paragraph 30 of the opinion).

C. International regulations on the use of "tear gas"

17. Under Article I § 5 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993 ("the CWC"), each State Party undertakes not to use riot control agents as a method of warfare. Tear gas or

so-called “pepper spray” are not considered chemical weapons (the CWC contains an annex listing the names of prohibited chemical products). The use of such methods is authorised for the purpose of law enforcement, including domestic riot control (Article II § 9 (d)). Nor does the CWC state which State bodies may be involved in maintaining public order. This remains a matter for the sovereign power of the State concerned.

The CWC entered into force with regard to Turkey on 11 June 1997.

18. It is recognised that the use of “pepper spray” can produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis or allergies. In strong doses, it may cause necrosis of tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging (haemorrhaging of the suprarenal gland).

THE LAW

I. AS TO THE ADMISSIBILITY

19. The Court considers, in the light of the parties’ submissions, that this part of the application raises complex issues of fact and law which require examination on the merits; accordingly, it cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As no other ground for declaring it inadmissible has been established, the Court declares the remainder of the application admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained that a tear gas, known as “pepper spray”, had been used to disperse a group of demonstrators, provoking physical unpleasantness such as tears and breathing difficulties. She relied on Article 3 of the Convention, which provides:

> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

21. The Government noted that the gas used to disperse the demonstrators complied with health requirements and with international conventions. They explained that the gas used was Oleoresin Capsicum (OC), known as “pepper spray”, and submitted an expert report on this product. They also noted that the applicant had not submitted any medical report as evidence of possible ill-effects caused by the gas.

22. The applicant contested the Government’s argument.

23. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Treatment is considered to be “inhuman” if, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. Furthermore, in considering whether a treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI).

24. The Court will examine the facts in the light of its well-established case-law (see, among several other examples, *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII; *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports* 1996-V; *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269; and *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV).

25. The Court will first examine the issue of the use of “pepper spray”. It notes that this gas, used in some Council of Europe member States to keep demonstrations under control or to disperse them in case they get out of hand, is not among the toxic gases listed in the Annex to the CWC. However, it notes that the use of this gas may 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 (see paragraph 18 above).

26. However, the Court observes that the applicant did not submit any medical reports to show the ill-effects she had suffered after being exposed to the gas. The applicant, who had been released shortly after being arrested, had not asked for a medical examination either (see *Kılıçgedik v. Turkey* (dec.), no. 55982/00, 1 June 2004). In short, there is no shred of evidence to substantiate her allegations of treatment contrary to Article 3 of the Convention.

27. The Court therefore holds that there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

28. The applicant complained of an infringement of her right to freedom of expression and of assembly, in that the demonstration and the reading of a press statement, scheduled for the end of the event, had been prohibited by the police.

The Court points out that, in its partial decision on the admissibility of the application, it stated its intention to examine these complaints under Article 11 of the Convention, the relevant parts of which provide:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association ...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime ... or for the protection of the rights and freedoms of others. ..."

29. The Government submitted that the meeting in question had been organised unlawfully in that no advance notification had been sent to the relevant authorities. They pointed out that the second paragraph of Article 11 imposed limits on the right of peaceful assembly in order to prevent disorder.

30. The Court notes at the outset that there is no dispute as to the existence of an interference in the applicant's right of assembly. This interference had a legal basis, namely section 22 of Law no. 2911 on assemblies and marches, and was thus "prescribed by law" within the meaning of Article 11 § 2 of the Convention. There remains the question whether the interference pursued a legitimate aim and was necessary in a democratic society.

1. Legitimate aim

31. The Government submitted that the interference pursued legitimate aims, including the prevention of disorder and protection of the rights of others.

32. The Court considers that the disputed measure may be regarded as having pursued at least two of the legitimate aims set out in paragraph 2 of Article 11, namely the prevention of disorder and the protection of the rights of others, specifically the right to move freely in public without restriction.

2. Necessary in a democratic society

33. In the Government's opinion, the applicant had taken part in a demonstration, held in a public square without prior notification and contrary to the relevant domestic legislation. They also noted that, together with other demonstrators, the applicant had not complied with the order to disperse. In those circumstances, and taking into account the margin of appreciation afforded to States in this sphere, the Government considered that the risk of disruption to civilians who were in the park at a busy time of day and the demonstrators' resistance justified the dispersal of the gathering in question. In their opinion, the police intervention had been a necessary measure within the meaning of the second paragraph of Article 11 of the Convention.

34. The applicant alleged that the police had intervened without waiting for the public statement to be read out, on the pretext that the meeting was disrupting public order.

35. The Court refers in the first place to the fundamental principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III; *Piermont v. France*, 27 April 1995, §§ 76-77, Series A no. 314; and *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens.

36. The Court also notes that States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right. Finally, it considers that, although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights (see *Djavit An*, cited above, § 57).

37. As a preliminary point, the Court considers that these principles are also applicable with regard to demonstrations and processions organised in public areas (see *Djavit An*, cited above, § 56). It notes, however, that it is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorisation and regulates the activities of associations (see *Djavit An*, cited above, §§ 66-67).

38. Having regard to the domestic legislation, the Court observes that no authorisation is required for the holding of public demonstrations; at the material time, however, notification was required seventy-two hours prior to the event. In principle, regulations of this nature should not represent a hidden obstacle to the freedom of peaceful assembly as it is protected by the Convention. It goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility; this being so, it is important that associations and others organising demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force.

39. The Court considers, in the absence of notification, the demonstration was unlawful, a fact that the applicant does not contest. However, it points out that an unlawful situation does not justify an infringement of freedom of assembly (see *Cisse v. France*, no. 51346/99, § 50, ECHR 2002-III). In the instant case, however, notification would have enabled the authorities to take the necessary measures in order to minimise the disruption to traffic that the demonstration could have caused during rush hour. In the Court's opinion, it is important that preventive security measures such as, for example, the presence of first-aid services at the site

of demonstrations, be taken in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature.

40. It appears from the evidence before the Court that the group of demonstrators was informed a number of times that their march was unlawful and would disrupt public order at a busy time of day, and had been ordered to disperse. The applicant and other demonstrators did not comply with the security forces' orders and attempted to force their way through.

41. However, there is no evidence to suggest that the group in question represented a danger to public order, apart from possibly disrupting traffic. There were at most fifty people, who wished to draw attention to a topical issue. The Court observes that the rally began at about 12 noon and ended with the group's arrest within half an hour. It is particularly struck by the authorities' impatience in seeking to end the demonstration, which was organised under the authority of the Human Rights Association.

42. In the Court's view, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.

43. Accordingly, the Court considers that in the instant case the police's forceful intervention was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

44. There has accordingly been a violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

46. The applicant claimed 1,190.83 euros (EUR) in respect of pecuniary damage for having been prevented from working for six hours on the day of the demonstration and EUR 20,000 in respect of the non-pecuniary damage which she alleged she had sustained.

47. The Government contested these amounts.

48. The Court finds no causal link between the violation found and the pecuniary damage alleged, and dismisses this claim. In addition, with regard

to the non-pecuniary damage, it considers that the applicant is sufficiently compensated by the finding of a violation of Article 11 of the Convention.

B. Costs and expenses

49. The applicant also claimed EUR 8,051.77 for the costs and expenses incurred before the Court.

50. The Government considered that sum exorbitant.

51. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In this connection, it notes that the applicant has not furnished any evidence in support of the costs and expenses incurred. It remains the case, however, that preparation of the instant judgment necessarily incurred certain costs. Accordingly, ruling on an equitable basis, the Court considers it reasonable to award the applicant EUR 1,000 under this head.

C. Default interest

52. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 11 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable on that amount, to be converted into new Turkish liras at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Jean-Paul Costa
Deputy Registrar	President