



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

CASE OF SUR v. TURKEY

(137/1996/756/955)

JUDGMENT

STRASBOURG

3 October 1997

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SUMMARY¹

Judgment delivered by a Chamber

Turkey – ill-treatment during detention in police custody (Article 3 of the Convention)

RULE 49 §§ 2 AND 4 OF RULES OF COURT A

Friendly settlement reached between Turkish Government and applicant – no reason of public policy requiring further consideration of case.

Conclusion: case struck out of Court's list (unanimously).

COURT'S CASE-LAW REFERRED TO

27.8.1992, Tomasi v. France; 4.12.1995, Ribitsch v. Austria; 18.12.1996, Aksoy v. Turkey

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

In the case of Sur v. Turkey¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. GÖLCÜKLÜ,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr A. SPIELMANN,

Sir John FREELAND,

Mr M.A. LOPES ROCHA,

Mr D. GOTCHEV,

Mr P. KÜRIS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 September 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 28 October 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 21592/93) against the Republic of Turkey lodged with the Commission under Article 25 by a Turkish national, Mr Abdullah Sur, on 15 March 1993.

The Commission's request referred to Articles 44 and 48 (a) of the Convention and to the declaration whereby Turkey recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 3 of the Convention.

Notes by the Registrar

1. The case is numbered 137/1996/756/955. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he did not wish to take part in the proceedings.

3. The Chamber to be constituted included *ex officio* Mr F. Gölcüklü, the elected judge of Turkish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 30 October 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr C. Russo, Mr A. Spielmann, Sir John Freeland, Mr M.A. Lopes Rocha, Mr D. Gotchev and Mr P. Kūris (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Turkish Government ("the Government") and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 23 May 1997. The Delegate of the Commission did not submit any observations.

5. On 5 September 1997 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. On 17 September 1997 the Government sent to the Registrar by fax the text of an agreement reached with the applicant on 12 September.

7. The Delegate of the Commission, who had been consulted about the agreement, expressed his opinion on 19 September 1997.

8. On the same date the President decided to adjourn *sine die* the hearing due to be held on 24 September 1997.

9. On the last-mentioned date the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

10. Mr Abdullah Sur, a jeweller who was born in 1948, worked at the material time in a jeweller's shop in Istanbul. It was alleged that, when asked by a customer to melt down some pieces of gold, he had added some copper to the gold he had been given, thus devaluing it.

A. The applicant's detention in police custody

11. Following a complaint by the customer concerned, the police arrested Mr Sur on 11 May 1992 and took him into police custody at the security police headquarters in Istanbul.

On 12 May the police questioned him in connection with their enquiries about the above events and referred him to the Istanbul public prosecutor. On the same day the public prosecutor asked the investigating judge to order the detention pending trial of the applicant and another suspect.

12. On 13 May 1992, after examining Mr Sur, the investigating judge attached to the Istanbul District Court refused to issue a warrant for the arrest of the two suspects, who were released pending trial.

B. The criminal proceedings against the police

13. On 14 May 1992 the applicant lodged a complaint with the Istanbul public prosecutor against the police officers who had questioned him during his detention in police custody. He accused them of ill-treating him in order to extract a confession. He asserted in particular that he had been blindfolded for part of the time, that he had been beaten with sticks and fists and that electric shocks had been administered to his hands and feet. He asked to be examined by a specialist in forensic medicine.

14. On 15 May the public prosecutor's office granted this request. On the same day the applicant was examined by a doctor from the Institute of Forensic Medicine (an official body), whose report mentioned "extensive bruising caused by blows to the area of the testicles on both sides, and swelling and hyperaemia (congestion) on the backs of the hands". The doctor stated that the injuries were not life-threatening and certified the applicant unfit for work for five days.

15. On 29 June 1992 the public prosecutor, having noted that the applicant had not been able to identify the police officers who had allegedly inflicted the ill-treatment, ordered the discontinuation of the proceedings.

16. The applicant appealed against this order to the President of the Beyoğlu Assize Court, who dismissed the appeal on 21 October 1992.

17. The Minister of Justice lodged an appeal against the above ruling in the interests of the law. On 11 April 1994 the Court of Cassation allowed this appeal and set aside the impugned decision.

18. The Istanbul public prosecutor, to whom the case had been remitted, brought criminal proceedings in the Istanbul Assize Court under Article 243 of the Criminal Code against the two police officers in whose charge the applicant had been during his detention in police custody, accusing them of torturing him.

19. On 19 October 1994 Mr Sur joined these criminal proceedings as a civil party, lodging a civil claim for, *inter alia*, one hundred million Turkish liras in compensation for the non-pecuniary damage he had sustained. In the Assize Court he asserted that the two police officers who questioned him had first blindfolded him and then tied him to a wooden post, beaten him, made him lie naked on the floor and administered electric shocks to his feet, fingernails and testicles.

20. In a judgment of 7 February 1995 the Istanbul Assize Court acquitted the two police officers by a majority vote. It found that although it had been established, through the medical report of 15 May 1992, that the applicant had indeed suffered ill-treatment at the Istanbul security police headquarters, it had not been possible to determine the identity of the people who had ill-treated or tortured him. There was insufficient evidence that the two police officers who had taken down Mr Sur's statement had been the ones who had ill-treated him in order to extract a confession from him. Consequently, the court dismissed the applicant's claim for compensation.

The President of the Assize Court expressed a dissenting opinion. He argued that the accused should have been convicted under Article 245 of the Criminal Code, which prohibits the ill-treatment of suspects by police officers.

21. Mr Sur and the Istanbul public prosecutor appealed on points of law against the judgment of 7 February 1995. The Court of Cassation upheld the impugned judgment on 8 November 1995.

C. The civil action for damages

22. The applicant brought an action against the two police officers who had ill-treated him in the Istanbul Ninth Civil Court. He claimed twenty million Turkish liras in compensation for the non-pecuniary damage he had suffered.

23. On 10 March 1997 the Civil Court ruled that since the perpetrators of the alleged ill-treatment were officials of the Ministry of the Interior, the action for compensation should have been brought against the Ministry.

24. The Civil Court dealing with the action subsequently brought against the Ministry of the Interior ruled that it did not have jurisdiction, stating that such an action should be brought in the administrative courts.

II. RELEVANT DOMESTIC LAW

1. *The Constitution*

25. Article 17 § 3 of the Constitution provides:

“No one may be subjected to torture or ill-treatment or to punishment or treatment incompatible with human dignity.”

2. *The Criminal Code*

26. The relevant provisions of the Criminal Code are the following:

Article 243

“A President or member of a court or official body or any other public official who, in order to extract a confession of guilt in respect of a criminal offence, tortures or ill-treats any person, engages in inhuman conduct or violates human dignity, shall be punished by up to five years’ imprisonment and disqualified from holding public office temporarily or for life.

The sentence incurred under Article 452, where such conduct causes death, or under Article 456 in other cases, shall be increased by between one third and one half.”

Article 245

“An enforcement official, a police officer or any other official responsible for enforcement who performs his duties in an unlawful manner, whether spontaneously or on the orders of a superior, or who ill-treats, assaults or injures a third party while doing so, shall be sentenced to between three months’ and three years’ imprisonment and suspended from duty.”

PROCEEDINGS BEFORE THE COMMISSION

27. The applicant applied to the Commission on 15 March 1993. Relying on Articles 3 and 13 of the Convention, he complained of ill-treatment inflicted by police officers while he was in police custody at security police headquarters in Istanbul and of the fact that he had not had an effective remedy, in that the public prosecutor dealing with his complaint against those officers had discontinued the proceedings against them.

28. The Commission declared the complaint relating to a violation of Article 3 admissible and the remainder of the application (no. 21592/93) inadmissible. In its report of 3 September 1996 (Article 31) it expressed the unanimous opinion that there had been a violation of Article 3 of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

AS TO THE LAW

29. On 12 September 1997, Mr Aslan Gündüz, acting for the Government, and Mr Ergin Cinmen, the applicant's lawyer, signed the following agreement in Istanbul:

"1. In case no. 21592/93, examined by the European Commission of Human Rights, which adopted its report relating thereto on 3 September 1996, the Turkish Government undertake to pay the applicant the sum of FRF 100,000 (one hundred thousand French francs) on account of the events which gave rise to the application.

2. The Government also undertake to pay the applicant's legal representative the sum of FRF 15,000 (fifteen thousand French francs) to cover his legal services.

3. The payment of the above sums covers all the costs, expenses and fees incurred by the applicant and his lawyer.

4. Regard being had to the undertaking given in paragraphs 1 and 2, the applicant and the Government request the European Court of Human Rights to strike case no. 137/1996/756/955 out of the list under Rule 49 § 2 of Rules of Court A, since the agreement reached is of a kind to provide a solution of the matter.

5. In addition, the applicant declares that he considers the case settled and that he will not institute any further proceedings before the national or international authorities in respect of the events which gave rise to the above application.

6. The aforesaid sums shall be paid by the Government within three months of the date on which the court shall have given its judgment. The payment shall be made to the bank accounts of the applicant and his lawyer with a Turkish bank, numbers of which they shall communicate to the Government, in Turkish liras at the exchange rate of the French franc which the Turkish Central Bank shall fix on the day when the payment of the sums is finally authorised.

In case the Government fail to make the aforesaid payment within three months, they shall pay 3.5 (three and a half) per cent annual default interest on the unpaid sums in French francs."

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is available from the registry.

30. The Delegate of the Commission was consulted (Rule 49 § 2) and indicated that he did not object to the case being struck out of the Court's list.

31. The Court takes formal note of the friendly settlement reached by the Government and the applicant. In view of its responsibilities under Article 19 of the Convention, it would nevertheless be open to the Court to proceed with its consideration of the case if a reason of public policy (*ordre public*) appeared to necessitate such a course (Rule 49 § 4), but it discerns no such reason. In that connection it recalls that in a number of previous cases it has settled issues similar to those raised by the instant case under Article 3 of the Convention (see the *Tomasi v. France* judgment of 27 August 1992, Series A no. 241-A, the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, and the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI). In so doing, it clarified the nature and extent of the obligations undertaken in this area by the Contracting States.

Accordingly, it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 § 2, second sub-paragraph, of Rules of Court A on 3 October 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar