



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

FIRST SECTION

CASE OF SAKI v. TURKEY

(Application no. 29359/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

30 October 2001

This judgment may be subject to editorial revision.

In the case of Saki v. Turkey,

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

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr GAUKUR JÖRUNDSSON,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 May 2001 and on 9 October 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 29359/95) 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 a Turkish national, Özgül Saki ("the applicant"), on 1 September 1995.

2. The applicant was represented before the Court by Mr Engin Cinmen, a lawyer practising in Istanbul. The Turkish Government ("the Government") did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained that she had been a victim of a violation of Articles 3 and 13 of the Convention in that while she was in the hands of the police between 8.50 a.m. and 10 p.m. on 1 May 1994 she was physically and mentally abused.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 15 May 2001, having obtained the parties' observations, the Court declared the application admissible.

5. On 29 June 2001, after an exchange of correspondence, 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. On 19 September 2001 and on 11 September 2001 the applicant's representative and the Agent of the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. On 1 May 1994, at 8.50 a.m., the applicant was arrested in the Moda district of Istanbul by plainclothes police officers and was taken to Kadıköy police station for interrogation. The reason for her arrest was the arresting police officer's suspicion that she was going to participate in an unauthorised 1 May demonstration. According to the applicant, the police officers assaulted and beat her when they were putting her into the car and also while she was in the car. The applicant submits that when the police officers took her to the police station and told her that they would subject her to a body search, she refused to be searched by a male officer. The applicant claims that at this point, Abdullah Süzer, a police commissioner, beat her. She was then searched by a female officer.

7. Later the same day, the applicant was transferred to Yeldeğirmeni police station in order to check whether she had any previous criminal records. It was subsequently established that she had no previous criminal records and she was released the same evening at 10 p.m. According to the document she signed before her release, she had suffered no material or moral damages and she declared to be prepared to come back to the station in the future if further information was needed from her. According to the applicant, the police commissioner told the applicant before her release that if she made a complaint about him, he would kill her.

8. On 3 May 1994 the applicant, in person, submitted a letter to the Kadıköy public prosecutor in which she complained of the treatment to which she had been subjected. The applicant does not have a copy of this letter in her possession, and neither have the Government, who were requested by the Court to do so, submitted a copy. The prosecutor sent her to the Kadıköy Branch of the Forensic Medicine Institute where she was examined by a doctor and a medical report was issued. According to this report, there were abrasions on her legs which had been caused by rubbing against a surface and which had formed scabs. The medical report concluded that these findings did not constitute a danger to her life but would prevent her from carrying out her work for three days.

9. The prosecutor, pursuant to the provisions of the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu*), sent the file to the Kadıköy District Administrative Council (*Kadıköy İlçe İdare Kurulu*) in order to seek authorisation to prosecute the police commissioner who had allegedly ill-treated the applicant.

10. Another statement was taken from the applicant at a police station on 5 September 1994 in which the applicant maintained her allegations that she had been beaten and threatened.

11. In its decision of 29 December 1994 the District Administrative Council stated that the medical report in question had been issued three days after the incident and that it was possible that the applicant's injuries had

been sustained through other causes during this time. It also pointed out that the applicant had signed a statement prior to her release in which she declared that she had suffered no material or moral damages. The District Administrative Council, pursuant to Article 5 of the Law on the Prosecution of Civil Servants and Article 164 of the Code of Criminal Procedure (*Ceza Muhakemeleri Usulü Kanunu*), decided not to authorise the prosecution of the police commissioner in question. This decision was appealed *ex officio* to the Istanbul Regional Administrative Court (*İstanbul Bölge İdare Mahkemesi*), which has jurisdiction to hear appeals from district administrative councils. In a final decision of 29 May 1995 the Regional Administrative Court upheld the decision of the District Administrative Council.

THE LAW

12. On 13 September 2001 the Court received the following declaration from the Government:

“I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to Ms Özgül Saki the amount of 55,000 French francs with a view to securing a friendly settlement of the application registered under no. 29359/95. This sum, which also covers legal expenses connected with the case, shall be paid, free of any taxes that may be applicable, to a bank account named by the applicant. The sum shall be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

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 occurrences.

It is accepted that the recourse to ill-treatment of detainees constitutes a violation of Article 3 of the Convention and the Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such forms of ill-treatment – including the obligation to carry out effective investigations – is 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 application as well as more effective investigations.

The Government consider that the supervision by the Committee of Ministers 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.

Finally, the Government undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

13. On 19 September 2001 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Turkey are prepared to pay *ex gratia* the sum of 55,000 French francs covering both pecuniary and non-pecuniary damage and costs to the applicant, Ms Özgül Saki, with a view to securing a friendly settlement of application no. 29359/95 pending before the Court. I have also taken note of the declaration made by the Government.

I accept the proposal and waive any further claims in respect of Turkey relating to the facts of this application. I declare that the case is definitely settled.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

14. 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).

15. 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 30 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President