



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

SECOND SECTION

CASE OF MACİR v. TURKEY

(Application no. 28516/95)

JUDGMENT
(Friendly settlement)

STRASBOURG

22 April 2003

This judgment is final but it may be subject to editorial revision.

In the case of Macir v. Turkey,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr C. BİRSAN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

Mr F. GÖLCÜKLÜ, *ad hoc judge*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 28 March 2000 and on 1 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 28516/95) 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, Beyaz Macir (“the applicant”), on 30 June 1995.

2. The applicant, who had been granted legal aid, was represented by Mr Mark Muller and Mr Tim Otty, lawyers practising in the United Kingdom, and by Ms Anke Stock of the Kurdish Human Rights Project (London). The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant complained, *inter alia*, under Articles 2 and 13 of the Convention that her husband was killed by undercover agents of the State and that no effective investigation was carried out.

4. Following communication of the application to the Government, 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 28 March 2000, having obtained the parties’ observations, the Court declared the application admissible in so far as it had been communicated to the Government.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. On 26 November 2002, 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 30 January 2003 and on 4 October 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

7. The applicant is a Turkish citizen of Kurdish origin and lives in Adana, Turkey. Her husband, Hacı Sait Macir, was a former HEP (*Halkın Emek Partisi*-People's Labour Party) and DEP (*Demokrasi Partisi* – Democracy Party) delegate. At the material time he was a member of the provincial committee of HADEP (*Halkın Demokrasi Partisi* – People's Democracy Party) and was the president of the party's commission in the Mutlu neighbourhood. He was also the owner of the Güneydoğu cafe in the Yüreğir district of Adana.

8. On 3 October 1994 the president of the provincial committee of HADEP, Rebi̇h Çabuk and a member of the same committee, Sefer Cerf were shot dead in front of the Güneydoğu cafe. The applicant's husband witnessed these killings.

9. On the same day the applicant's husband was taken to the police station to give a statement. He stated that on 3 October 1994, at 9 a.m., he saw Sefer Cerf collapse after he being shot. He did not see the identity of the two gunmen who immediately ran away. The applicant alleges that her husband was taken to the police station on the pretext of giving a statement. However, he was threatened by the police officers and was asked about his association and friendship with Rebi̇h Çabuk and Sefer Cerf. The applicant also alleges that her husband was continuously subjected to harassment after this incident and that the police closed the Güneydoğu cafe for three days without giving any reasons.

10. On 5 October 1994, Ahmet Dizman, who was at the Güneydoğu cafe at the time Rebi̇h Çabuk and Sefer Cerf were killed and took Rebi̇h Çabuk to the hospital in his car, was abducted from the Erzurumlular cafe by plain-clothes policemen. He was taken to a deserted field where he was beaten. During this incident the police asked him if he knew Sait Macir. His abductors told Ahmet Dizman that they would kill Sait Macir.

11. In a record of the investigation into the killing of Rebi̇h Çabuk and Sefer Cerf dated 10 October 1994, the applicant's husband appeared among the witnesses who had given statements to the police.

12. On 30 December 1994 the applicant's husband was shot in front of the Güneydoğu cafe. He was taken to hospital, where he died on 1 January 1995.

13. In a police report dated 30 December 1994 it is recorded that one empty 38 calibre cartridge was found at the spot where the applicant's

husband was shot. A sketch of the crime scene was also attached to this document.

14. On 30 December 1994 two eyewitnesses, Ahmet Sarıkaya and Bilal Ünver, gave statements to the police. They stated that they drove the applicant's husband to hospital. They did not see the identity of the gunmen.

15. On 2 January 1995 the applicant was invited to the hospital to identify her husband's body. At the hospital the applicant gave a statement to the Adana public prosecutor, Vahit Civelek. She stated that her husband had no enemies and that she did not know who could have killed him.

16. A preliminary autopsy on Sait Macir was carried out on 2 January 1995. It was concluded that he died as a result of gunshot wounds. Blood and organ samples were taken from the body for toxicological examination.

17. On the same day Mr Civelek requested the Adana Forensic Medicine Institution to conduct the final autopsy examination of Sait Macir's body.

18. By letter dated 9 January 1995, with reference to the findings of the ballistics examination of 10 January 1995¹, the Adana Police Headquarters informed the office of the Adana public prosecutor that Sait Macir's killers were still unidentified.

19. In a ballistics report prepared by the Criminal Police Laboratory of Adana dated 10 January 1995, it is recorded that one cartridge was submitted for a ballistics examination in relation to the killing of Sait Macir. As to the findings of the examination, the report states that the cartridge examined was a Makarov type, 9 mm and 38 calibre. The cartridge bore no resemblance to any other cartridges from other incidents involving unknown perpetrator killings examined previously by the laboratory.

20. On 17 January 1994 the Adana Forensic Medicine Institution concluded its toxicological examination. No alcohol or toxic material was found in the blood samples.

21. On 18 January 1995 the Adana public prosecutor issued a decision of lack of jurisdiction (*görevsizlik kararı*). The prosecutor decided that, having regard to the evidence in the case file, Sait Macir had been killed by terrorists. The matter therefore fell within the jurisdiction of Konya State Security Court (*Konya Devlet Güvenlik Mahkemesi*) pursuant to Law no. 3713. The prosecutor ordered that the case file be transferred to the office of the public prosecutor in the Konya State Security Court.

22. On 24 January 1995 the Adana Forensic Medicine Institute (*Adana Adli Tıp Kurumu*) finalised the autopsy report on Sait Macir. According to the report, Sait Macir died as a result of gunshot wounds.

23. On 27 January 1995 the Konya State Security Court Prosecutor issued a decision of lack of jurisdiction (*görevsizlik kararı*). The prosecutor stated that there existed no evidence to substantiate that Sait Macir had been

¹ The letter is dated 9 January 1995 although it refers to the ballistics examination of 10 January 1995.

killed by a terrorist organisation or for ideological reasons. Therefore, the prosecutor decided to transfer the case file to the office of the Adana Public Prosecutor, as the matter did not fall within the jurisdiction of his office.

24. By letter of 22 February 1995 the Adana Public Prosecutor requested the Adana Police Headquarters to keep him informed of developments in the investigation into the killing of the applicant's husband every three months.

25. In a letter dated 20 July 1995 the Adana Police Headquarters informed the office of the Adana Public Prosecutor that the investigation was still being pursued and that the perpetrators had not yet been identified.

26. On 15 February 1996 the Adana Public Prosecutor requested the Adana Police Headquarters to keep him informed of developments every three months until the end of the statutory prescription period, namely 20 December 2014.

27. By letter of 19 June 1996 the Adana Public Prosecutor requested the Adana Police Headquarters to see to it that two eyewitnesses, Ahmet Sarıkaya and Bilal Ünver, were summoned to appear before him.

28. On the same date the Adana Public Prosecutor requested the Adana Police Headquarters to inform him of any recent developments in the investigation into the killing of the applicant's husband and inquired whether the perpetrators had been identified yet.

THE LAW

29. On 4 October 2002 the Court received the following declaration from the Government:

“1. I declare that the Government of Turkey offer to pay *ex gratia* to the applicant, Mrs Beyaz Macir an all-inclusive amount of EUR 70,000 (seventy thousand euros), with a view to securing a friendly settlement of her application registered under no. 28516/95. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be free of any tax that may be applicable and be paid in euros to a bank account named by the applicant and shall be payable within three months from the date of the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final settlement of the case.

2. The Government regret the occurrence of individual cases of death resulting from the failure to protect the lives of individuals and the failure of the authorities to carry out effective investigations into the circumstances surrounding the death of individuals, as in the case of the applicant's husband, Mr Hacı Sait Macir, notwithstanding existing Turkish legislation and the resolve of the Government to remedy such failures.

3. It is accepted that such failures constituted a violation of Articles 2 and 13 of the Convention and, having regard to the anguish caused to the family members, of

Article 3. The Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the right to life – including the obligation to carry out effective investigations – is respected in the future. It is noted in this connection that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of deaths in circumstances similar to those of the instant application and in more effective investigations being carried out.

4. The Government consider that the supervision by the Committee of Ministers of the Council of Europe 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.

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

30. On 30 January 2003 the Court received the following declaration signed by the applicant's representative:

"In my capacity as the representative of the applicant, Mrs Beyaz Macir, I have taken cognisance of the terms of the declaration of the Government of Turkey including the payment to the applicant of an *ex gratia* all-inclusive amount of EUR 70,000 (seventy thousand euros) with a view to concluding a friendly settlement of her case that originated in application no. 28516/95. This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses related to the case, will be paid in accordance with the terms stipulated in the said declaration within three months after notification of the Court's judgment delivered pursuant to Article 39 of the European Convention on Human Rights.

Having duly consulted the applicant, I accept that offer and she, in consequence, waives all other claims against the Republic of Turkey in respect of the matters that were at the origin of the application. We declare that the case has been settled finally and we undertake not to request the reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment.

This declaration is made within the scope of the friendly settlement which the Government and I, in agreement with the applicant, have reached."

31. 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).

32. 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 22 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President