



Detainee's arm ripped off by a mechanical digger when security forces used excessive force during Burdur prison riot

In today's Chamber judgment in the case [Saçılık and Others v. Turkey](#) (application no. 43044/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment and lack of effective investigation) of the European Convention on Human Rights

Principal facts

The case concerned a complaint brought by Veli Saçılık and 24 other Turkish nationals, formerly detainees in Burdur Prison (Turkey), about a large-scale security operation carried out in the prison on 5 July 2000.

The applicants alleged that the force used against them during the operation had been unnecessary and excessive. On 4 July 2000 nine of the applicants had informed the prison authorities that they intended to refuse to attend a hearing the next day in protest at beatings and ill-treatment on their way to and from court hearings. The next day 415 gendarmes and soldiers were sent to the prison. They set fire to the prisoners' cells, leaving two of the applicants with burns, confined them to one part of the prison and used teargas and chemical gases against them. Mr Saçılık further alleged that a digger, brought in to open a hole in the wall where the prisoners were barricaded, tore off his left arm. The arm, first left in the rubble, was later retrieved from the mouth of a stray dog. Further allegations include a gas bomb being detonated – which seriously damaged the hand and eardrum of one of the applicant's – and soldiers sexually assaulting two of the women applicants (Azime Arzu Torun and Mürüvet Küçük) with a truncheon and fluorescent light stick. The detainees were eventually all left handcuffed with their hands behind their backs for 15 hours and systematically beaten with truncheons.

The Government claimed that the security forces had had to intervene in the prison to quell a prison riot and restore safety and security. Following an exchange of letters in the weeks before the riot, Burdur Assize Court, the governor of Burdur Prison as well as the local prosecutor, wanting to ensure attendance of detainees at the hearing of 5 July, had requested the intervention as they were convinced that the situation could only be resolved by forceful means. The prisoners, refusing to go to the court hearing on their cases, set fire to dormitories and corridors, barricaded themselves in and attacked the

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

security forces with hand-made harpoons, iron bars and explosive corrosive chemicals. 17 members of the security forces were wounded during the rioting.

The applicants, initially taken to hospital, were subsequently examined by doctors on a number of occasions. The ensuing medical reports noted that the applicants had extensive injuries and bruising all over their bodies. Five of the applicants arrived at hospital in what was considered to be a life-threatening condition either due to gas intoxication or, as concerned Mr Saçilik, due to the injury to his arm, which could not be stitched back on and which he ended up losing permanently. Another applicant was diagnosed with a perforated eardrum and hearing loss. Azime Arzu Torun, who had made allegations of sexual assault, was examined by doctors who reported that her hymen was intact.

A criminal investigation, launched at the request of the applicants, was initially carried out by the military. The soldiers questioned all denied using force against the inmates, which was corroborated by the prison governor and gendarmerie commander. The preliminary investigation concluded in August 2000 that the soldiers had not ill-treated any of the inmates and that those allegations had been invented in order to damage the reputation of the armed forces. The same line of investigation was subsequently followed by the civilian prosecutors: notably it found that the security forces had had to use force against the resistance of terrorists and that the allegations of ill-treatment were unfounded and ill-intentioned. Under pressure from a colonel in Ankara to put an end to the investigation as he complained that exorbitant compensation was being awarded to the inmates in parallel administrative proceedings, the prosecuting authorities finally decided in March 2005 not to prosecute any members of the security forces. They found in particular that the soldiers had had to resort to force to quell the riot and that the force used had been no more than what was absolutely necessary.

In February 2008 criminal proceedings brought against the applicants for rioting were terminated as the statutory time-limit had expired.

Veli Saçilik brought administrative proceedings claiming compensation from the Ministries of Justice and the Interior in which he was awarded and paid EUR 140,000 for his injury. Those proceedings are still pending on appeal.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that they had been subjected to systematic, disproportionate and unjustified violence during the incident in Burdur Prison and that their refusal to attend a hearing had been used as a pretext to carry out the operation. They further alleged that the ensuing investigations into their allegations had been inadequate and had simply been carried out for appearances' sake.

The application was lodged with the European Court of Human Rights on 30 November 2005.

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

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 David Thór **Björgvinsson** (Iceland),
 Dragoljub **Popović** (Serbia),
 András **Sajó** (Hungary),
 Işıl **Karakas** (Turkey),
 Guido **Raimondi** (Italy), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The Court considered that the injuries – some life-threatening – recorded in the applicants' medical reports had been severe enough to come within the scope of Article 3.

The Government's explanation that the applicants had provoked such injuries by refusing to attend a hearing and rioting was not credible. The authorities had never apparently attempted to question the inmates about their safety concerns when attending hearings or, if necessary, ensure their safety. Furthermore, it was clear from the exchange of letters between Burdur Assize Court, the Burdur Governor and the local prosecutor that no alternative method other than force had been considered to ensure the applicants' attendance at the hearing. Indeed, these letters contradicted the Government's submission that the inmates had already been rioting before the soldiers' arrival and suggested that the uprising only started once the soldiers had intervened. Moreover, there was no evidence to prove that the applicants had used force against the soldiers.

Nor had the investigation come up with any more plausible explanation for the applicants' injuries. Regrettably it had been conducted at the initial stage by governors and military officers, all of whom were hierarchical superiors of the soldiers allegedly responsible for the ill-treatment, who could not possibly be considered independent or impartial. The judicial authorities were therefore denied access to evidence at the crucial early stage of the investigation. However, even when they did subsequently take charge of the investigation, they did not take the applicants any the more seriously, referring to them repeatedly as "terrorists" and "ill-intentioned". Indeed, the independence and impartiality of the entire investigation had been tainted by the army colonel's letter urging the investigating prosecutor to bring the investigation to an end due to exorbitant compensation claims. Finally, the Court noted that the prosecutor's decision of March 2005 not to prosecute because the soldiers had had to resort to force to quell the riot had been in contradiction with the denials by all those involved in the operation – the soldiers, governor and gendarmerie commander alike – that no force had been used. The Court was therefore at a loss to understand on what basis exactly the prosecutor had come to his conclusion.

The Court therefore concluded that the Government had failed to provide a plausible explanation as to how detainees in their custody, vulnerable by the very nature of their position, had sustained their injuries, in violation of Article 3. It also held that there had been a further violation of Article 3 on account of the ineffectiveness of the investigation into the allegations of ill-treatment.

Lastly, it considered that no separate issue arose concerning the alleged sexual assault on Azime Arzu Torun and Mürüvet Küçük, there being no conclusive medical evidence.

Article 41 (just satisfaction)

The Court held unanimously that Veli Saçılık's claims for pecuniary and non-pecuniary damage were premature, as the compensation proceedings he had brought were still pending. His claims were therefore reserved for decision at a later date. It further held by five votes to two that Turkey was to pay each of the other 24 applicants 20,000 euros (EUR) in respect of non-pecuniary damage. EUR 21,000 was awarded in total for costs and expenses.

Separate opinion

Judges Popović and Sajó expressed a joint concurring opinion which is annexed to the judgment.

The judgment is available only in English.

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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.