



European Court's decision on the request for interim measures by two Turkish former civil servants on hunger strike to protest against their dismissal

The first applicant Semih Özakça (**Özakça v. Turkey** – application no. 45940/17) is a class teacher. The second applicant Nuriye Gülmen (**Gülmen v. Turkey** – application no. 46171/17) is a research assistant. They have been on hunger strike since 9 March 2017 to protest against their dismissal. They have also been detained on remand since 23 May 2017.

On 29 June 2017 Semih Özakça and Nuriye Gülmen requested the Court to indicate to the Government of Turkey, under Rule 39 of the Rules of Court (interim measures), to release them.

The European Court of Human Rights has today (2 August 2017) decided to reject their request for interim measures.

Following receipt on 29 June 2017 of the applicants' requests under Rule 39 of the Rules of Court, the Court (the duty Judge) decided, on 30 June 2017, to suspend the examination of the requests and requested the Government to have the applicants medically examined, in the presence of a doctor of their own choosing, with a view to deciding whether the applicants' detention was compatible with their state of health and whether their continued detention would amount to ill-treatment under Article 3 of the European Convention on Human Rights and, subsequently, whether they could benefit from the procedure provided for in Law no. 5275 concerning release. It also requested the applicants to call off their hunger strike and urged them to cooperate immediately and fully with the medical authorities.

As a result of that request, the applicants were examined on 14 July 2017 at the State Hospital located at the Ankara Penitentiary Institution's Sincan Campus by a number of specialist doctors and in the presence of a doctor of their own choosing. The doctors who carried out that examination observed that the applicants were on the 131st day of their hunger strike and that their health had deteriorated and concluded that "this situation could cause permanent and irreversible health problems". As there was no Health Board (*Sağlık Kurulu*) at that hospital, the doctors recommended that the applicants be examined at the Ankara Numune Research Hospital with a view to deciding whether they could continue to be detained in prison.

The applicants considered that the medical report issued at the Sincan Hospital was sufficient to examine their requests under Rule 39 and further medical examinations were unnecessary. They also argued that due to their frailty, undergoing more medical examinations would subject them to undue hardship and put their lives at risk. However, at the request of the Court of 21 July 2017 they reconsidered their decision and accepted to be examined at the Numune Hospital.

On 25 July 2017 the applicants were examined at the Ankara Numune Research Hospital by specialist doctors and in the presence of a doctor of their own choosing. When the applicants refused to go back to the Numune Hospital for additional medical examinations which were scheduled for 27 July 2017, the doctors from the Numune Hospital went to the applicants' prison with a view to examining them there. The applicants refused to be examined.

On 28 July 2017 the Numune Hospital issued medical reports pertaining to the medical examination of the applicants. According to the reports, the applicants' situation was life-threatening and they could not continue to live unaided. The reports concluded as follows: "Nevertheless, these findings do not necessitate the postponement of [their] detention on remand. [Their] situation can be monitored and [they] can be treated in prisons which have medical facilities comparable to those of a hospital or in zones of official medical establishments reserved for convicts".

In the evening of 28 July 2017, after receipt of the Numune Hospital's above-mentioned reports, the prison authorities informed the applicants that the decision had been taken to admit them to the Ankara Penitentiary Institution's Sincan Campus. Although the applicants refused to be admitted to hospital, the prison authorities transferred them to the hospital that same evening. They are currently staying in that hospital and, according to the information received from the Government, their situation is being monitored by the doctors working at that hospital.

In its decision of 2 August 2017, the Court reiterated that it applies Rule 39 only where an applicant faces an imminent risk of serious and irreparable damage to life and limb. It examined the applicants' requests in the light of the medical reports and developments detailed above and it found that the applicants' detention at the Sincan Hospital did not pose a real and imminent risk of irreparable harm to the life or limb of the applicants. It therefore rejected the applicants' request that the Court order the Government to release them.

The Court informed the parties that it expected the Government to take all necessary measures to ensure that the applicants' rights under Articles 2 and 3 of the Convention are respected. In this connection the Court observed that, according to the Numune Hospital's report of 28 July 2017, the applicants cannot continue to live unaided. It therefore requested the Government to ensure that adequate arrangements be put in place to assist the applicants in their day-to-day needs.

It also requested the Government to allow the applicants to consult doctors of their own choosing in the prison hospital, should they so request, with a view to making a decision as to whether or not to call off their hunger strike.

In addition, the Court requested the Government to keep it informed of any developments.

The Court also reiterated its request to the applicants to call off their hunger strike. In this connection the Court reminded the applicants that it had decided to give priority to the examination of their applications under Rule 41 of the Rules of Court.

Finally the Court requested the applicants to inform the Court of any application that they might make to the national courts for their release.

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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.