

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

SECOND SECTION

DECISION

Application no. 41831/10
Ayhan DEMİRKOL and Others against Turkey
and 18 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 14 June 2016 as a Committee composed of:

Paul Lemmens, *President*,

Ksenija Turković,

Jon Fridrik Kjølbro, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*.

Having regard to the above applications lodged on the dates indicated in the appendix,

Having regard to the déclaration submitted by the respondent Government on 14 December 2015 requesting the Court to strike the applications out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. A list of the three hundred and eighteen applicants is set out in the appendix. The applicants are Turkish nationals. They were all represented by Mr M. N. Eldem, a lawyer practising in Ankara.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants, public agents, complained that the disciplinary sanction of warning imposed on them for taking part in a demonstration infringed their right to freedom of association. They further complained

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

regarding the absence of a domestic remedy to challenge these disciplinary sanctions. They relied on Articles 6 § 1, 11 and 13 of the Convention.

4. The applications were communicated to the Government on 14 October 2013.

THE LAW

5. Given that the applications at hand concern similar facts and complaints and raise identical issues under the Convention, the Court decides to join them in accordance with Rule 42 § 1 of the Rules of the Court.

6. Relying on Articles 6 § 1, 11 and 13 of the Convention, the applicants complained that disciplinary sanctions were imposed upon them for participating in a demonstration and alleged further a lack of domestic remedy to challenge the impugned disciplinary measures.

7. After attempts failed to reach a friendly settlement, by a letter of 14 December 2015, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

8. The declaration provided as follows:

"The Government hereby wish to express by way of unilateral declaration their acknowledgment that in the light of the *Karaçay v. Turkey* judgment (no. 6615/03, §§ 39 and 45, 27 March 2007), the disciplinary sanctions imposed on the applicants in the present cases constitute an infringement of their right to freedom of association and their right to an effective remedy. In this connection, the Government point out that, in order to provide an effective remedy against disciplinary sanctions through judicial review, Article 129 of the Constitution and section 135 of Law no. 657 on civil servants were amended on 12 September 2010 and 13 February 2011 respectively.

Consequently, the Government offers to pay to each of the three hundred and eighteen applicants EUR 400 (four hundred euros) to cover any and all non-pecuniary damages and a total of EUR 13,500 (thirteen thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants.

These sums will be converted into national currency at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Government therefore invites the Court to strike the present cases out of the list of cases. They suggest that the present declaration might be accepted by the Court as

“any other reason” justifying the striking out of the case of the Court’s list of cases, as referred to in Article 37 § 1 (c) of the Convention.”

9. By a letter of 10 February 2016, the applicants indicated that they were not satisfied with the terms of the unilateral declaration.

10. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the applications”.

11. It also reiterates that in certain circumstances, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the cases to be continued.

12. To this end, the Court has examined the declaration carefully in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA SP. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

13. The Court has established in its judgment *Karaçay v. Turkey* (no. 6615/03, §§ 18-45, 27 March 2007) the violation of Articles 11 and 13 of the Convention with regard to the disciplinary sanction imposed on the applicant for his union-related activities. The Court also considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

14. Having regard to the nature of the admissions contained in the Government’s declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c)).

15. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

16. The Court considers that the amounts proposed by the Government should be converted into the national currency of the respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court’s decision issued in accordance with Article 37 § 1 of the Convention. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate

equal to the marginal lending rate of the European Central Bank plus three percentage points.

17. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the applications could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

18. In view of the above, it is appropriate to strike the cases out of the list.

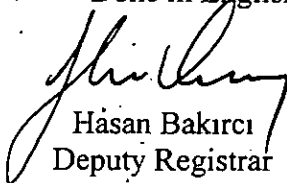
For these reasons, the Court, unanimously,

Decides to join the applications;

Takes note of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 7 July 2016.


Hasan Bakırcı
Deputy Registrar


Paul Lemmens
President