



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

SECOND SECTION

**CASE OF EĞİTİM VE BİLİM EMEKÇİLERİ SENDİKASI v.
TURKEY**

(Application no. 20641/05)

JUDGMENT
[Extracts]

STRASBOURG

25 September 2012

FINAL

25/12/2012

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Eğitim ve Bilim Emekçileri Sendikası v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Isabelle Berro-Lefèvre,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

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

Having deliberated in private on 28 August 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 20641/05) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a trade union formed under Turkish law, Eğitim ve Bilim Emekçileri Sendikası, also known as “Eğitim-Sen” (“the applicant union”), on 3 June 2005.

2. The applicant union was represented by Mr A. Sayılır, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant union complained of a violation of Articles 6, 10 and 11 of the Convention.

4. On 6 November 2009 notice of the application was given to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Eğitim-Sen, the Education and Science Workers’ Union (“the union”) was formed in Ankara on 13 January 1995. According to the information it has provided, the union has 167,000 members with 90 branches and is present in 430 towns and cities. It is affiliated to the KESK (Kamu

Emekçileri Sendikaları Konfederasyonu – the Confederation of Public Sector Workers’ Union), which is a member of Education International.

6. On 15 September 2001 the union amended Article 2 (b) of its constitution to read as follows:

“[Eğitim-Sen] defends the right of all individuals in society to receive, with equality and freedom, a democratic, secular, scientific and cost-free education in their mother tongue.”

A. First dissolution proceedings

7. On 15 February 2002 the Governor of Ankara requested the applicant union to delete the words “their mother tongue” from its constitution on the ground that they were in breach of Articles 3 and 42 of the Constitution and of sections 1 and 20 of Law no. 4688 on public servants’ unions.

8. The applicant union informed the Governor that it was too busy but that it undertook to amend its constitution by 30 June 2002.

9. On 29 March 2002, under section 37 of Law no. 4688, the Governor of Ankara requested the public prosecutor of Ankara to bring an action for dissolution against the applicant union on the ground that it had not carried out the requisite amendment of Article 2 (b) of its constitution.

10. On 3 July 2002 the applicant union amended Article 2 (b) of its constitution to read as follows:

“[Eğitim-Sen] defends the right of all individuals in society to receive education in their mother tongue and to benefit from the development of their culture.”

11. On 16 July 2002 the public prosecutor gave a decision discontinuing the dissolution proceedings initiated by the Governor, on grounds of insufficient evidence and incriminating factors. In his decision the public prosecutor indicated, firstly, that the applicant union had amended Article 2 (b) of its constitution, which now provided that individuals should “receive education in their mother tongue”; he further stated that the matter was being discussed in some depth both publicly and in political parties and that it would be tabled for debate in Parliament. He concluded that, in those circumstances, it was not appropriate to bring dissolution proceedings against the applicant union or criminal proceedings against the members of its board.

12. On 15 October 2002 the Ministry of Labour and Social Security (“the Ministry”) informed the applicant union that, following the examination of its constitution, as amended on 3 July 2002 to comply with the relevant provisions of Law no. 4688, it had been concluded that the impugned Article was no longer in breach of the law.

B. Second dissolution proceedings

13. On 27 June 2003 the Office of the Chief of Staff of the armed forces requested the Ministry to take the necessary measures against the applicant union on the ground that Article 2 (b) of its constitution, as amended on 3 July 2002, was in breach of Articles 3 and 42 of the Constitution.

14. On 15 July 2003 the Ministry requested the Governor of Ankara to examine the provisions of Article 2 (b) of the applicant union's constitution in the light of section 6 of Law no. 4688.

15. On 28 October 2003 the Governor of Ankara requested the applicant union to delete the words "receive education in their mother tongue" from Article 2 (b) of its constitution.

16. On 12 April 2004 the Governor of Ankara, referring to the provisions of Article 2 (b) of the applicant union's constitution and summing up the first set of proceedings against it, applied to the public prosecutor of Ankara to initiate fresh dissolution proceedings. The Governor explained that, even though Law no. 2923 of 14 October 1983 provided for the teaching of a number of languages and dialects, Article 2 of the applicant union's constitution, in so far as it provided for education in a language other than Turkish, was in breach of that Law.

17. On 10 July 2004 the public prosecutor of Ankara brought proceedings against the seven members of the executive board of Eğitim-Sen. In the context of that action, the prosecutor further requested the dissolution of the applicant union under section 37 of Law no. 4688 on the ground that the union had not deleted the impugned wording from its constitution.

18. The Ankara Employment Tribunal assumed jurisdiction to rule on the application for the dissolution of the applicant union pursuant to Law no. 4688.

19. On 13 July 2004 the Ankara Employment Tribunal, applying section 6 of Law no. 4688, granted the applicant union a period of sixty days to amend the impugned provisions of its constitution.

20. In a judgment of 15 September 2004, the Ankara Employment Tribunal dismissed the application for dissolution. In its reasoning it indicated in particular that the relevant Articles of Eğitim-Sen's constitution did not jeopardise (*tehlike*) territorial, national or State unity or the existing borders of the Republic of Turkey. It did not find that the union had committed any unlawful action capable of suggesting that the provisions of the impugned Article of Eğitim-Sen's constitution would be used by those opposed to the unity of the Republic of Turkey. Based on Article 90 of the Constitution and Articles 10 and 11 of the Convention, the tribunal also gave its own interpretation of Articles 10 and 11. It explained in this connection that freedom of expression constituted the basis of a democratic and pluralistic society, and that such freedom was a necessary condition for

the progression of democratic societies and the personal development of each individual. It emphasised that, without such freedom, there was no democracy. It concluded that the provisions of Article 2 (b) of Eğitim-Sen's constitution were not in breach of Articles 10 and 11 of the Convention. It further indicated that section 6(8) of Law no. 4688 – which granted sixty days to a union to comply with the law – should be interpreted in the light of the purpose of that Law. According to the tribunal, even if the union had not complied with the law within the time allowed, it was still for the tribunal to examine whether the application was well-founded and to rule on the merits of the case.

21. On 29 September 2004 the public prosecutor appealed on points of law.

22. In a judgment of 3 November 2004, the Court of Cassation overturned the judgment of 15 September 2004 on the ground that the Ankara Employment Tribunal had not correctly applied section 6(8) of Law no. 4688. It took the view that this section did not allow for any latitude of interpretation and that the dissolution of the union was mandatory where it had not complied with the provisions of the Law within a period of sixty days. It therefore concluded that Eğitim-Sen had to be dissolved, as it had not complied with the law within the time allowed to it by the Governor and the tribunal.

23. In a judgment of 21 February 2005, the Ankara Employment Tribunal, contrary to the Court of Cassation's judgment of 3 November 2004, reiterated its original findings. It referred back to the legal reasoning used in its judgment of 15 September 2004 and invoked the Strasbourg case-law on the dissolution of political parties, in particular the cases concerning the United Communist Party of Turkey and the Freedom and Democracy Party (ÖZDEP). It further observed that the official language of the Republic of Turkey was Turkish and that, according to Article 66 of the Constitution, any individual attached to the Republic by citizenship was Turkish. In its view, the fact of learning a language other than the official language did not constitute an action or conduct in breach of the law, but such conduct was proof of an attachment to the State of Turkey. Whilst agreeing that the official language was Turkish and that there could not be any other official language, it found that there should not be any particular impediment to the learning of other languages. Referring to its previous reasoning, based on Articles 10 and 11 of the Convention, the tribunal found that there were two main grounds for the dissolution of a union, an association or a political party, namely "an imminent threat" and "the criterion of violence". It observed that the union whose dissolution was sought defended in its constitution the principle of education in one's own mother tongue and the development of culture. It emphasised that, even supposing that the wording in question was illegal, the content and weight of the terms did not constitute an imminent threat or an incitement to

violence and their inclusion in the union's constitution did not jeopardise territorial, national or State unity or the existing borders of the Republic of Turkey. It found, on the contrary, that the decision not to dissolve the union would have the effect of calming the social tension, disorder and antagonism that were prevalent in society, and of restoring social peace.

24. In a judgment of 22 May 2005, the combined divisions of the Court of Cassation (*Yargıtay Hukuk Genel Kurulu*) quashed by a majority the judgment of the court below. In its reasoning the court indicated that Articles 10 and 11 of the Convention provided for statutory limitations to the exercise of the freedoms of expression, assembly and association and that they notably stipulated that such restrictions had to be necessary in a democratic society. It was therefore the court's task to verify whether the restrictions imposed by domestic law on fundamental rights and freedoms were consistent with Turkey's international commitments. The court took the view that the union's call for education in a mother tongue other than Turkish was in breach of Articles 3 and 42 of the Constitution and that it ran counter to the acceptance of a unitary State and to the existing legal system. In the court's opinion, the right to form a union could thus be limited and such restrictions were necessary in a democratic society. The combined divisions of the Court of Cassation concluded that the defence of education in a mother tongue other than Turkish could not rely on Articles 10 and 11 of the Convention.

25. In their dissenting opinion, some of the members of the combined divisions of the Court of Cassation, relying on section 6 of Law no. 4688, observed that, according to the conclusion of the court below, the impugned provisions of the union's constitution were compliant with the law. The dissenting judges were of the view that, as a result, there had been no legal basis on which to order the union to amend its constitution within sixty days. They stated that the judgment had to be quashed to enable the court below to comply with section 6 of Law no. 4688 and not for the purpose of having the union dissolved.

26. On 3 July 2005 the applicant union amended the offending part of Article 2 (b) of its constitution to read as follows:

“[Eğitim-Sen] defends, in the context of human rights and fundamental freedoms, the right of all individuals in society to receive a democratic, secular, scientific and cost-free education.”

27. In a judgment of 27 October 2005, the Ankara Employment Tribunal, taking note of the amendment to the union's constitution, found that there was no longer any reason to rule on the dissolution of the union, since the material elements that had given rise to the action no longer existed.

II. RELEVANT DOMESTIC LAW

A. Constitution

28. The relevant provisions of the Turkish Constitution, as in force at the material time, read as follows.

Article 3

“1. The State of Turkey constitutes, with its territory and nation, an indivisible whole. The official language is Turkish. ...”

Article 13

“Fundamental rights and freedoms may be restricted only by law and on the grounds set out in special provisions of the Constitution, provided always that the essence of such rights and freedoms remain intact. Any such restriction must not conflict with the letter or spirit of the Constitution or the requirements of a democratic, secular social order and must comply with the principle of proportionality.”

Article 25

“Everyone has the right to freedom of thought and opinion.

No one may be compelled to reveal his thoughts and opinions or be reprimanded or incriminated on account of his thoughts or opinions for any reason and for any purpose whatsoever.”

Article 26

“Everyone has the right to express, individually or collectively, his thoughts and opinions and to disseminate them orally, in writing, in image or by any other means. This right includes the freedom to receive or impart information and ideas without interference by public authority. The present paragraph shall not preclude the imposition of rules concerning the licensing of broadcasting, television, cinema or other similar enterprises.

The exercise of these freedoms may be restricted in the interests of national security, public order and public safety, for the preservation of the fundamental characteristics of the Republic, to protect the indivisible integrity of the State in terms of its territory and nation, to prevent crime, to punish offenders, to prevent the disclosure of information covered by State secrecy, to protect the honour, rights and private and family life of others, together with professional secrecy as provided for by law, and to ensure the fulfilment of the judicial function in accordance with its purpose.

Rules governing the use of any means of conveying information and ideas are not to be regarded as restricting freedom of expression or freedom to impart ideas, provided they do not prevent such information or ideas from being conveyed.

Any formalities, conditions and procedures concerning the exercise of freedom of expression and the conveying of ideas shall be regulated by law.”

Article 42

“No one may be deprived of the right to education. ...

Citizens are not absolved from the duty to remain loyal to the Constitution by the freedom of education.

...

No language other than Turkish may be taught to Turkish citizens as their mother tongue or be used for the purposes of teaching in educational institutions. The law lays down the rules concerning the teaching of foreign languages in educational institutions and those that must be complied with by schools where education is provided in a foreign language. The provisions of international conventions are reserved.”

Article 51

“Employees and employers shall have the right to form trade unions and federations of unions, without prior permission, in order to safeguard and develop the economic and social rights and interests of their members in the context of their labour relations, and to join or withdraw from such entities of their own free will. No one shall be compelled to join or resign from a trade union.

The right to form a union may only be limited as prescribed by law in the interests of national security or public order, for the prevention of crime, for the protection of public health or morals or for the protection of the rights and freedoms of others.

The formalities, conditions and procedures applicable to the right to form a trade union shall be prescribed by law.

Membership of more than one trade union within the same sector of activity shall be prohibited.

The scope of the rights, in this sphere, of public officials other than those who have the status of ordinary contractual employee, and the exceptions and limitations applicable to them, shall be prescribed by law in a manner appropriate to the nature of the services they provide.

The constitution, administration and functioning of trade unions and federations of unions shall not be inconsistent with the fundamental characteristics of the Republic or with democratic principles.”

Article 66

“Any individual who is connected to the Turkish State by nationality shall be Turkish. ...”

Article 90

“... ”

In the event of conflict as to the scope of fundamental rights and freedoms between an international agreement duly in force and a domestic statute, the provisions of the international agreement shall prevail.”

B. Civil Servants’ Trade Union Act (Law no. 4688 of 25 June 2001)

29. The relevant provisions of Law no. 4688 read as follows.

Section 6

“(1) Trade unions and confederations may be formed freely and without prior authorisation. ...

(7) ... In the event of failure to remedy [the breaches observed, the Governor] shall apply to the court for the termination of the activities of the trade union or confederation. ...

(8) The court shall allow a time-limit not exceeding sixty days [for the trade union or confederation] to comply with the law or remedy the breaches observed. If, at the end of the said period, the constitution or the documents in question are not compliant with the law, the court may order the dissolution of the union or confederation. ...”

Section 20(1)

“The administration and functioning of trade unions and confederations formed hereunder shall not be incompatible with the democratic qualities and principles of the Republic as defined in the Constitution. ...”

Section 37(1)

“Any trade union or confederation which engages in activities that are incompatible with the qualities and principles of the Republic as defined in the Constitution shall be dissolved by decision of the court which has jurisdiction to hear labour disputes, on an application by the public prosecutor for the district where the registered office [of the union or confederation] is situated. ...”

C. Law no. 4771 of 3 August 2002 amending Law no. 2923 of 14 October 1983 on foreign-language education and the learning of various languages and dialects by Turkish citizens

30. Section 2(a) of Law no. 2923 provides that no language other than Turkish may be taught to Turkish citizens in educational establishments. However, it is permitted to make available to Turkish citizens private classes for the teaching of languages and dialects that they use traditionally in their daily lives, in accordance with a regulation adopted by the Minister for National Education. The teaching of such classes must not undermine the unity of the State and the nation or the indivisibility of national territory.

III. COUNCIL OF EUROPE TEXTS

31. In its latest report on Turkey (paragraphs 60, 61, 62, 63, 70 and 71), adopted on 10 December 2010 and published on 8 February 2011, the European Commission against Racism and Intolerance (ECRI) reported as follows.

“Teaching in and of languages other than Turkish to persons belonging to minority groups other than those recognised under the Treaty of Lausanne

...

60. Law no. 4771, enacted in August 2002 and which amended Law no. 2923 on foreign-language education and teaching and the learning of different languages and dialects by Turkish citizens, paved the way for opening private schools to teach ‘languages and dialects traditionally used by Turkish citizens in their daily lives’. In accordance with the Regulation on learning of different languages and dialects traditionally used by Turkish citizens in their daily lives, which came into effect on 5 December 2003, Kurdish language courses opened in seven towns between December 2003 and October 2004. However, all have since closed, and other attempts to open a Circassian language school in Ankara did not come to fruition as the relevant administrative requirements could not be met. The authorities have indicated that applications to open Adyghe and Abkhazian private courses are still being examined by the relevant Governorships in accordance with the above Regulation. At present, there are thus no private language schools open in Turkey for the teaching of the languages spoken by minority groups. ...

61. ... ECRI welcomes the decision taken by the Turkish authorities in October 2009 to open a Living Languages Institute at Mardin’s Artuklu University, at which Kurdish could be taught; courses in Syriac, Farsi and Arabic were also reportedly to be offered at the institute’s opening in February 2010. ... At the same time, ECRI notes with regret that in September 2009, the Council rejected a similar application to open a department of Kurdish studies and Kurdish language and literature at the University of Diyarbakır, on the grounds that the application – introduced by the local Bar Association – had been made by a body that supported terrorism.

62. ECRI recommends that the Turkish authorities revise the wording of Article 42 of the Constitution, which prohibits the teaching of non-Turkish mother tongues in

schools except in accordance with provisions of international treaties. ECRI again emphasises that it should be possible for such tuition to be provided alongside tuition in the official language.

63. In addition, ECRI strongly recommends that the Turkish authorities pursue their efforts in favour of tuition in languages and dialects traditionally used in Turkey. It recommends that full effect be given to the existing possibility of opening private courses, particularly by removing all undue administrative obstacles.

...

Schooling provided in Turkish to children whose mother tongue is not Turkish

...

70. ECRI again recommends that the Turkish authorities look into the situation of children of non-Turkish mother tongue and ensure that every effort is made to enable them to learn Turkish, the language of instruction, properly, for example through the provision of additional courses or methods for teaching Turkish as a second language. More broadly, ECRI recommends that the authorities conduct research into the overall situation within the education system of children belonging to minority groups, in order to allow targeted measures to be taken to remedy any inequalities in this field.

71. ECRI recommends that the Turkish authorities engage in dialogue with minority groups on the manner in which the concept of citizenship of the Turkish State is taught in schools, in order to ensure that the desired message of inclusiveness is imparted without leading to a sense that diversity is unwanted.”

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

41. The applicant union alleged that the obligation to amend its constitution in order to prevent its dissolution constituted an interference with its right to freedom of association as provided for by Article 11 of the Convention. This provision reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of

national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

42. The Government did not comment on this complaint.

A. Whether there was an interference

43. In the applicant union’s submission – not disputed by the Government – the proceedings brought against it constituted an interference by the national authorities in the exercise of its right to freedom of association, and that interference deprived it of the possibility of pursuing collectively or individually the aims that it had laid down in its constitution. This is also the view of the Court.

B. Whether the interference was justified

44. The Court reiterates that such interference breaches Article 11 of the Convention unless it is “prescribed by law”, pursues one or more of the legitimate aims under paragraph 2 of that provision, and is “necessary in a democratic society” in order to fulfil those aims.

1. “Prescribed by law”

45. In the present case, the Court notes that it has not been disputed by the parties that the interference in question was “prescribed by law” and that it was based, in particular, on Articles 3 and 42 of the Constitution (see paragraph 28 above).

2. Legitimate aim

46. In the Court’s opinion, the impugned interference pursued a number of legitimate aims, namely the prevention of disorder or the protection of national security, which includes the protection of the State’s territorial integrity. This has not been disputed by the parties.

3. “Necessary in a democratic society”

(a) Relevant general principles

47. Whilst referring to the general principles that are enshrined in its relevant case-law in matters of freedom of association (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 88-93, ECHR 2004-I, and the references cited therein, and *Association Rhino and Others v. Switzerland*, no. 48848/07, § 61, 11 October 2011), the Court reiterates that the right

enshrined in Article 11 includes the right to form an association. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning (see *Sidiropoulos and Others v. Greece*, 10 July 1998, § 40, *Reports of Judgments and Decisions* 1998-IV).

48. The Court further reiterates that the way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. It can be seen from the Court's case-law that it has repeatedly referred to the direct relationship that exists between democracy, pluralism and freedom of association, and it has established the principle that only convincing and compelling reasons can justify restrictions on freedom of association. All such restrictions are subject to rigorous supervision (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, §§ 42-45, *Reports* 1998-I; *Socialist Party and Others v. Turkey*, 25 May 1998, §§ 41-45, *Reports* 1998-III; and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II).

49. Consequently, in determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts.

50. Moreover, the Court reiterates that when it carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others*, cited above, §§ 46-47; *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 51, ECHR 2002-II; and *Sidiropoulos and Others*, cited above, § 40).

(b) Application of the above-mentioned principles to the present case

51. In the present case, the Court notes that two sets of dissolution proceedings were brought against Eğitim-Sen on the ground that, under

Article 2 (b) of its constitution, the union was defending the idea of education in a person's "mother tongue". As regards the first set of proceedings, the public prosecutor decided to discontinue them on the ground that the objectives mentioned in the impugned Article were not in breach of the law. Subsequently, at the request of the Chief of Staff of the armed forces, a second set of dissolution proceedings was initiated on the same ground against Eğitim-Sen. Following those proceedings and the judgment of the Court of Cassation, Eğitim-Sen amended Article 2 (b) of its constitution by removing the impugned wording in order to avoid its dissolution by the national courts.

52. It is now for the Court to assess whether that second set of proceedings for the dissolution of Eğitim-Sen met a "pressing social need" and was "necessary in a democratic society" to fulfil the "legitimate aims pursued".

53. The Court notes that the Employment Tribunal and the combined divisions of the Court of Cassation did not approach and interpret Articles 10 and 11 of the Convention in the same manner. For the Employment Tribunal, the rights and freedoms enshrined in those Articles were fundamental in a democratic society, with the particular exception of incitement to violence, which was not constituted, in the tribunal's view, by Article 2 (b) of Eğitim-Sen's constitution. By contrast, the combined divisions of the Court of Cassation emphasised the exceptions provided for by paragraph 2 of Article 11 of the Convention. They took the view that Eğitim-Sen's wish to defend education in a mother tongue other than Turkish ran counter to Articles 3 and 42 of the Constitution and the principle of the unitary State.

54. The Court must therefore ascertain whether the findings of the combined divisions of the Court of Cassation can be founded on an acceptable assessment of the relevant facts. It first notes that the wording of Article 2 (b) of Eğitim-Sen's constitution did not contain any incitement to use violence in order to fulfil the aims pursued. Moreover, the Court of Cassation found that Eğitim-Sen had not encouraged the use of unlawful means for the fulfilment of its objective of enabling Turkish citizens to receive education in a mother tongue other than Turkish.

55. In the Court's view, the principle defended by Eğitim-Sen, according to which individuals making up Turkish society could receive education in a mother tongue other than Turkish, is not incompatible with the fundamental principles of democracy. It notes that nothing in the impugned Article of Eğitim-Sen's constitution can be regarded as a call to violence, uprising or any other form of rejection of democratic principles, this being an essential factor to be taken into consideration (see *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 40, ECHR 1999-VIII). It is sufficient to read the content of Article 2 (b) of Eğitim-Sen's constitution, seen in the context of the public debate at the material time. In this

connection, the Court agrees with the reasoning of the public prosecutor, who decided to discontinue the first dissolution proceedings against Eğitim-Sen. At that time, the question of receiving education in one's mother tongue was being debated publicly and in political parties and was tabled for debate in Parliament (see paragraphs 11 and 30-31 above).

56. The Court recognises that such a proposal may have run counter to majority beliefs in public opinion, certain institutions or certain State organisations, or even to government policy. That being said, the Court reiterates that it is necessary for the proper functioning of democracy that the various associations or political groups are able to take part in public debates in order to help find solutions to general questions concerning political and public stakeholders of all persuasions (see *Vogt v. Germany*, 26 September 1995, § 52, Series A no. 323, and *United Communist Party of Turkey and Others*, cited above, § 57).

57. The Court further notes that it can be seen from the latest European Commission against Racism and Intolerance (ECRI) report on Turkey (see paragraph 31 above) that, in addition to children belonging to the minorities covered by the Lausanne Treaty – that is to say, non-Muslim minorities – receiving education in Turkish, there were other children of Turkish nationality whose mother tongue was not Turkish but Adyghe, Abkhazian or Kurdish. In this connection it should be pointed out that Law no. 4771, enacted on 3 August 2002 and amending Law no. 2923 on foreign-language education and the learning of various languages and dialects by Turkish citizens, paved the way for the opening of private schools to teach “languages and dialects [other than Turkish] traditionally used by Turkish citizens in their daily lives”. The Court observes that this willingness on the part of the legislature to open private courses for the teaching of languages and dialects other than Turkish contrasts with the position of the national authorities in finding that Article 2 (b) of Eğitim-Sen's constitution breached Articles 3 and 42 of the Constitution.

58. The Court is not convinced by the reasoning of the combined divisions of the Court of Cassation, because it was not indicated in the judgment that Eğitim-Sen had carried out illegal activities capable of undermining the unity of the Republic of Turkey. Neither did they indicate that Eğitim-Sen pursued aims that were incompatible with democratic principles or engaged in activities that were in breach of those stipulated in its constitution. The Court notes with interest that the Employment Tribunal, for its part, dismissed the second dissolution application on the ground that a decision not to dissolve the union would have the effect of calming the social tension, disorder and antagonism that were prevalent in society, and of restoring social peace (see paragraph 23 above).

59. For that reason the Court is of the opinion that the mere presence in the union's constitution of the term “to receive education in their mother tongue”, without any other element that would indicate or prove that the real

aim was different from that stated in the impugned Article of the constitution, cannot be incompatible with the principles of democracy. It notes that Eğitim-Sen's constitution, in its earlier version, indicated that the union defended the right of all individuals of society "to receive, with equality and freedom, a democratic, secular, scientific and cost-free education in their mother tongue". In the Court's view, such an objective, with the aim of developing the culture of nationals having a mother tongue other than Turkish by providing education in that mother tongue, is not in itself incompatible with national security and does not represent a threat to public order. Even supposing that the competent national authorities could have taken the view that education in one's own mother tongue favoured the culture of a minority, the Court observes that, as it has previously found, the existence of minorities and different cultures in a country is a historical fact that a democratic society must tolerate, or even protect and support, in accordance with the principles of international law (see *Tourkiki Enosi Xanthis and Others v. Greece*, no. 26698/05, § 51, 27 March 2008).

60. In the light of the foregoing, the Court takes the view that the reasons indicated by the combined divisions of the Court of Cassation were not relevant or sufficient, and that they were not proportionate to the legitimate aims pursued. It follows that the dissolution proceedings brought against the applicant union, which had the result of obliging it to amend Article 2 (b) of its constitution by deleting the term "to receive education in their mother tongue", cannot reasonably be regarded as meeting a "pressing social need".

61. Accordingly, there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

62. The applicant union alleged that the obligation imposed on it to amend its constitution to prevent its dissolution constituted an interference with its right to freedom of expression under Article 10 of the Convention. The relevant part of that provision reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

63. The Government made no comment.

A. Admissibility

64. The Court notes that this complaint is related to that examined above and must also therefore be declared admissible.

B. Merits

65. In the present case, it is not disputed by the parties that the second set of dissolution proceedings brought against the applicant union can be seen as an interference by the national authorities in the exercise of its right to freedom of expression. That interference was prescribed by law, namely by Articles 3 and 42 of the Constitution, and pursued one or more of the legitimate aims foreseen in Article 10 § 2 of the Convention, namely the prevention of disorder or the protection of national security, which includes the protection of the State's territorial integrity. It thus remains to be examined whether the impugned interference was "necessary in a democratic society" to fulfil the legitimate aims pursued.

1. Relevant general principles

66. The Court reiterates that the fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention (see *United Communist Party of Turkey and Others*, cited above, §§ 42-43, and *Yazar and Others*, cited above, § 46).

67. It further reiterates that freedom of expression constitutes one of the essential foundations of a democratic society. Subject to paragraph 2 of Article 10, freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (see, among many other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298; and *Yazar and Others*, cited above, § 46). As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

68. The Court further reiterates that the adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it,

even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10 (see *Karataş v. Turkey* [GC], no. 23168/94, § 48, ECHR 1999-IV).

69. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in the area of political speech or debate – where freedom of expression is of the utmost importance (see *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006) – or in matters of public interest (see, among other authorities, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV; *Lindon, Otchakovsky-Laurens and July*, cited above, § 46; *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports* 1996-V; and *Faruk Temel v. Turkey*, no. 16853/05, § 55, 1 February 2011).

70. The Court lastly observes that, in a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right to freedom of association (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 97, ECHR 2001-IX). This is required by the values inherent in a democratic system, such as pluralism, tolerance and social cohesion (see *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 42, ECHR 2005-X, and *Tourkiki Enosi Xanthis and Others*, cited above, § 56).

2. Application of those principles in the present case

71. The Court has paid particular attention to the wording used in Article 2 (b) of the applicant union’s constitution and to the context in which that provision was drafted. In this connection, it takes the view that Article 10 encompasses the freedom to receive and impart information and ideas in any language which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds (see, *mutatis mutandis*, *Karataş*, cited above, § 49). It has also taken into account the circumstances surrounding the case before it, in particular the difficulties related to the fight against terrorism (see *İbrahim Aksoy v. Turkey*, nos. 28635/95, 30171/96 and 34535/97, § 60, 10 October 2000; *Zana v. Turkey*, 25 November 1997, § 55, *Reports* 1997-VII; *Incal v. Turkey*, 9 June 1998, § 58, *Reports* 1998-IV; and *Savgın v. Turkey*, no. 13304/03, § 44, 2 February 2010).

72. Article 2 (b) of the applicant union’s constitution defends the idea of education in one’s own “mother tongue”. In the context of Turkey and in the primary sense of that term, the provision can be construed as defending education in mother-tongue Turkish. That being said, having regard to the historical and social situation of Turkey, the term mother tongue may also refer to the language of Turkish nationals who have a mother tongue other

than Turkish. In its latest report on Turkey, ECRI mentioned Adyghe, Abkhazian and Kurdish as other such mother tongues (see paragraph 31 above).

73. In this connection it must be remembered that Article 10 protects not only the substance of the ideas and information expressed but also the form of expression, regardless of the medium or language in which they are conveyed (*ibid.*, § 32).

74. In the present case, even supposing that the aim of the applicant union had been to promote the development of education only in the Kurdish language, as a mother tongue in addition to the Turkish language, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in matters of public interest. It takes account of the circumstances surrounding the case before it. It notes that at the material time a public debate on this subject had resulted in an amendment to the law allowing education, at least on a private basis, in mother tongues used by Turkish citizens other than the Turkish language.

75. In this connection, the Court observes that the impugned Article of the applicant union's constitution was not calling for the use of violence, armed resistance or uprising, nor was it inciting hatred, this being an essential element for the Court to take into consideration. Neither was the Article capable of fostering violence by instilling a deep-seated and irrational hatred against certain individuals (contrast *Süreç*, cited above, § 62). As to the argument of the domestic courts based on an alleged risk to the integrity of national territory (see paragraph 24 above), the Court notes that Eğitim-Sen's programme defends the principle of education in the mother tongue, other than the Turkish language, of individuals making up Turkish society. However, the Court observes that since the Government did not refer to any concrete acts by Eğitim-Sen that might suggest a hidden agenda, no doubts can be cast on the genuineness of its programme (see *Freedom and Democracy Party (ÖZDEP)*, cited above, § 42). The Court thus concludes that there was no clear or imminent threat to the State's territorial integrity.

76. In conclusion, the Court finds that the proceedings initiated for the dissolution of the applicant union – forcing it to delete the impugned wording from its constitution – were disproportionate to the aims pursued and were not therefore “necessary in a democratic society”.

77. Accordingly, there has been a violation of Article 10 of the Convention.

...

FOR THESE REASONS, THE COURT

...

2. *Holds* unanimously that there has been a violation of Article 11 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 10 of the Convention;

...

Done in French, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

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