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

FOURTH SECTION

CASE OF KARADEMİRCİ AND OTHERS v. TURKEY

(Applications nos. 37096/97 and 37101/97)

JUDGMENT

STRASBOURG

25 January 2005

In the case of Karademirci and Others v. Turkey,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 4 January 2005,

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

PROCEDURE

1. The case originated in two applications (nos. 37096/97 and 37101/97) 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 six Turkish nationals, Mr İsmail Karademirci, Mr Mehmet Zencir, Ms Şennur Yılmaz, Ms Ayla Bilir, Ms Ayfer Aydoğdu and Ms S.T. ("the applicants"), on 8 April and 12 May 1997 respectively.

2. The first five applicants were represented by Mr M. Ufacik, and the sixth applicant by Mr A.A. Alkan. Both representatives are members of the İzmir Bar. The Turkish Government ("the Government") did not appoint a representative for the proceedings before the Court.

3. The applicants alleged violations of Articles 10 and 11 of the Convention and of Article 9 (in application no. 37101/97).

4. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 21 September 1999 the Chamber decided to join the applications (Rule 42 § 1) and to communicate them to the Government.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). The applications were assigned to the newly composed Fourth Section (Rule 52 § 1).

8. By a decision of 3 September 2002, the Chamber declared the applications partly admissible.

9. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

10. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicants were born in 1961, 1964, 1966, 1966, 1961 and 1972 respectively and live in İzmir.

12. On 30 June 1995 twenty-five people, including the applicants, gathered outside the Yenişehir Meslek Lisesi secondary school. The first applicant, İsmail Karademirci, who was the president of the Health Workers' Union (Tüm Sağlık Sen), read out a statement signed by the İzmir branches of that union and of the Education Union (Eğitim Sen) denouncing the ill-treatment of pupils from the İzmir Atatürk Sağlık Meslek Lisesi secondary school. The group remained outside the school for twenty-five minutes before dispersing.

13. The statement reads as follows:

> "To the press and the general public
>
> The pressure put on pupils by the authorities at the İzmir Atatürk Sağlık Lisesi secondary school has resulted in Vesile Bayram receiving a beating. The pupils reacted by protesting against the school authorities because of the pressure they were under. In an initial attempt to calm down the pupils, whose reaction was justified, the authorities held a meeting with them. However, they reneged on a promise to open an inquiry into the actions of one of the teachers, E.S., who, moreover, was provided with a forensic report.
>
> The pressure continues in the form of a lengthy (one year) suspension of nine pupils, and the deduction of eight marks from their marks for behaviour.
>
> Although officially pupils in the school are not subjected to beatings or academic pressure, the administrators are despots.
>
> We strongly condemn the administrators and teachers, who are responsible for such pressure.
>
> We call for the withdrawal of the penalties imposed on the nine pupils.

We call for an investigation into the conduct of the teacher who administered the beating.

We will not be intimidated by pressure.

We reject reactionary and oppressive education.

The pupils are not alone.

Society should not remain silent."

14. By an indictment submitted on 23 October 1995, the public prosecutor instituted criminal proceedings against twenty-five leaders and members of the Health Workers' Union and the Education Union for making a "statement to the press" (*basın açıklaması*) without complying with the statutory requirement to obtain a receipt from the public prosecutor's office confirming that they had filed a copy of the statement with it. The public prosecutor relied in particular on sections 44 and 82 of the Associations Act (Law no. 2908 of 6 October 1983).

15. In a judgment of 13 February 1996, the İzmir Criminal Court found the applicants and nine other co-defendants guilty as charged and sentenced them to three months' imprisonment under the provisions relied on by the public prosecutor. The prison sentence was commuted to a suspended fine of 450,000 Turkish liras (7 United States dollars).

16. The Criminal Court held that the constitutive elements of the offence had been made out in that, firstly, the trade unions had not passed a resolution authorising a statement to be made to the press and, secondly, the accused were present when the statement was read out in public. The other co-defendants were acquitted on the ground that they were not present when the statement was read out.

17. The applicants appealed to the Court of Cassation against that judgment. In their written submissions, they alleged that their convictions violated their right to freedom of expression and, in particular, that "a statement to the press" could not be classified as a "leaflet" or "written statement" within the meaning of section 44 of the Associations Act.

18. In a judgment of 11 October 1996, the Court of Cassation upheld the judgment at first instance, holding that it complied with the law and the rules of procedure. The applicants did not receive a full copy of the judgment.

19. On 12 November 1996 the judgment of 11 October 1996 was placed in the file of the İzmir Criminal Court. The sixth applicant, Ms S.T., obtained a copy of it on 25 December 1996.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Associations Act (Law no. 2908 of 6 October 1983)

20. The relevant provisions of the Associations Act, which was published in the Official Gazette on 7 October 1983, are as follows:

Section 44
(as in force at the material time)

"(1) Associations shall not publish or distribute leaflets [*bildiri*], written statements [*beyanname*] or similar publications [*benzeri yayın*] without a prior resolution by their executive board. The leaflets, written statements and similar publications shall contain the forenames, surnames and signatures of the president and members of the executive board which passed the resolution.

(2) A copy of the resolution by the association's executive board to publish and of the leaflet, written statement or similar publication shall be filed for information purposes with the head of the local authority and the public prosecutor's office for the area. The latter shall deliver, in exchange, a receipt recording the time and date the documents were filed. No leaflet, written statement or similar publication may be distributed or communicated to the press until twenty-four hours after it has been filed."

Section 82
(as in force at the material time)

"Anyone failing to comply with the procedure set out in section 44(1) and (2) shall be liable on conviction to between three and six months' imprisonment."

B. Domestic practice

21. At the material time trade unions representing public servants were formed without any specific statutory basis. Associations and trade unions were governed by two pieces of legislation: the Associations Act and the Trade Unions Act (Law no. 2821 of 5 May 1983). Although there are no restrictions in the Trade Unions Act on written statements by trade unions, section 63 refers to the Associations Act and lays down that the provisions of that Act shall apply where the Trade Unions Act is silent.

C. The decisions of the Turkish courts in similar cases

22. The first five applicants produced various judgments that had been delivered by the İzmir Criminal Court in cases concerning the activities of public-sector trade unions. These included a judgment of 1 July 1996

(no. 1996/669), from which it emerged that the first five applicants had ultimately been acquitted in another case in which they had been charged with an offence under sections 44 and 82 of the Associations Act after reading out a statement to the press and distributing it to members of the press. In that case, the Criminal Court had followed a judgment of the Court of Cassation (without giving the reference) in finding that a statement read out to the press drafted by the Health Workers' Union could not be classified as a "written statement" or "similar publication" within the meaning of section 44 of the Associations Act.

D. Decisions of the Court of Cassation after the events in the present case

23. On 2 May 2000 and 4 June 2002 the Court of Cassation, sitting as a full court, delivered two judgments in which it clarified the issue of whether it was foreseeable that section 44(1) and (2) of the Associations Act applied to written statements read out to the press by members of an association's executive board. In its view, those subsections applied to texts which had previously been adopted and prepared for publication and dissemination. However, a statement read out to the press by an association on a particular subject was not a text that was drafted with a view to publication and dissemination, but a series of verbal comments. "Dissemination", "publication" and similar terms could not possibly cover the situation in which the content of a speech due to be made orally was distributed among members of the press as an aid to understanding. The effect of holding otherwise – by a broad interpretation of the law, one which, in other words, included oral statements within the scope of section 44 – would be that members of an association's executive board would be liable to penalties for any replies or explanations given in response to questions from journalists; such a state of affairs would introduce an unlawful restriction on freedoms. In addition, the legislature had unambiguously laid down in that section that a text drafted with a view to publication could be published only once the executive board of the association had so resolved and the relevant documents had been filed with the competent authority.

E. New legislation on associations

24. Law no. 5231, which Parliament passed on 17 July 2004, amends the Associations Act, repealing sections 44 and 82. On 2 August 2004 the President of the Republic returned the legislation to Parliament for a fresh debate on sections 10 and 21, which relate to the financing of associations.

THE LAW

I. COMPLAINTS

25. Relying on Articles 10 and 11 of the Convention and on Article 9 (in application no. 37101/97), the applicants complained of a violation of their rights to freedom of thought, conscience and religion, to freedom of expression and to freedom of peaceful assembly and association.

26. The Court considers that the matters relied on by the applicants fall within the scope of Article 10 of the Convention in particular. For this reason, it will examine the complaints solely under this provision.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

27. The applicants complained that their conviction and sentence under section 44 of the Associations Act had infringed Article 10 of the Convention, which provides:

> "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 ..."

A. Whether there was an interference

28. The Government denied that there had been interference, arguing that the applicants had not been convicted for making a statement to the press but for failing to comply with a "formal procedure".

29. The applicants rejected that argument and contended that their conviction constituted interference with their right to freedom of expression within the meaning of Article 10 of the Convention.

30. The Court notes that this case differs from a number of other cases concerning freedom of expression against Turkey that have come before it. In the instant case, the applicants were convicted of making "a statement to the press", within the meaning of sections 44 and 82 of the Associations Act. Although section 44 of that Act does not place any direct restriction on freedom of expression, but subjects associations to "a formality or a condition" within the meaning of Article 10 § 2 of the Convention before they publish or distribute leaflets, written statements or similar publications,

the Court considers that this condition (see, *mutatis mutandis*, *Bowman v. the United Kingdom*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 186, § 33) and the applicants' conviction and sentence (see *H.N. v. Italy*, no. 18902/91, Commission decision of 27 October 1998, Decisions on Reports 94-A, p. 21) are equivalent to an interference with their freedom of expression. In order to be compatible with Article 10, such interference must satisfy three conditions: it must be "prescribed by law", pursue one or more legitimate aims under the aforementioned paragraph 2 and be "necessary in a democratic society" to achieve the aim or aims.

B. Whether the interference was "prescribed by law"

1. The parties' submissions

31. The applicants argued that a statement read out to the press could not be classified as a "written statement" or "similar publication" within the meaning of section 44 of the Associations Act. In their submission, that section could not be considered a basis in law for their conviction and sentence. They pointed out that on 1 July 1996 they had been tried and acquitted on similar charges by the İzmir Criminal Court, which had followed a decision of the Court of Cassation (see paragraph 22 above).

32. The Government contended that the measure in issue was "prescribed by law". In their submission, as a result of the cross-reference in section 63 of the Trade Unions Act (Law no. 2821), section 44 of the Associations Act laid down a formal procedure to be followed by associations (trade unions in this instance) wishing to publish or distribute leaflets, statements or similar publications. As to the applicants' acquittal on similar charges by the İzmir Criminal Court, the Government pointed out that the two judgments were quite different.

2. The Court's assessment

33. The Court reiterates its settled case-law according to which the expression "prescribed by law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see, among many other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V; *Gawęda v. Poland*, no. 26229/95, § 39, ECHR 2002-II; and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I).

34. In the instant case, the Court notes that the legal provisions which served as the basis for the penalty that was imposed on the applicants were

sections 44 and 82 of the Associations Act (see paragraph 15 above). It therefore concludes that there was a basis for the measure in domestic law.

35. The Court must now examine whether, in the light of the particular circumstances of the case, those provisions had the requisite quality to constitute law. It must therefore verify whether they were accessible and foreseeable.

36. As regards accessibility, the Court notes that sections 44 and 82 of the Associations Act satisfied that condition, as the Act was published in the Official Gazette of 7 October 1983 (see paragraph 20 above). It therefore finds that the Act satisfied the requirement of accessibility.

37. On the issue of foreseeability, the Court must verify whether the domestic legislation indicated with sufficient accuracy the procedure which trade union leaders were required to follow when organising press conferences and distributing written statements to the press (see, *mutatis mutandis*, *Maestri*, cited above, § 34).

38. The applicants argued that, even assuming that section 44 constituted the statutory basis, it regulated the publication and distribution of leaflets, written statements and similar publications (see paragraph 20 above), not the reading out in public and dissemination of a "statement to the press".

39. The Court accepts that the wording of section 44, in particular the expression "similar publications", was vague and imprecise and gave the courts a wide discretion (see *Barthold v. Germany*, judgment of 25 March 1985, Series A no. 90, p. 22, § 47). However, it has stated in previous cases that it may be difficult to frame laws with absolute precision and that a certain degree of flexibility may be called for to enable the national courts to determine the scope of a "formal procedure", such as that referred to in section 44.

However clearly drafted a legal provision may be, there will inevitably be a need for interpretation by the courts. There will always be a need to elucidate doubtful points and to adapt to changing circumstances (see *E.K. v. Turkey*, no. 28496/95, § 52, 7 February 2002).

40. It is quite clear that the exercise of freedom of expression may be made subject to compliance with certain formalities. Furthermore, Article 10 of the Convention does not in terms prohibit the imposition of prior restraints on a particular form of communication. However, in the Court's view, if, as in the present case, a failure to comply with a formal procedure constitutes a criminal offence, the law must clearly define the circumstances in which it will apply (see, *mutatis mutandis*, Observer *and* Guardian *v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, p. 30, § 60). This principle also means that the scope of a restriction must not be extended to an accused's detriment, for instance by analogy (see, *mutatis mutandis*, *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 36, ECHR 1999-IV). This requirement will be satisfied if the individual is able to establish from the wording of the

relevant provision, and if need be with the assistance of the courts' interpretation of it, the acts and omissions which will make him criminally liable.

41. The Court notes that in the present case the applicants are leaders of the Health Workers' Union. Similar charges had been brought against them in the past, but they were acquitted as a result of the domestic courts' interpretation of section 44 (see paragraph 31 above). However, in convicting the applicants, the Criminal Court appears to have interpreted the relevant provision differently, holding that organising a press conference and reading a text out in public were subject to the same procedure as that applicable to "leaflets", "written statements" and "similar publications" within the meaning of section 44.

42. In the Court's view, the issue is whether, for the purposes of determining the foreseeability of the "law", the reading out of a statement in public and its dissemination at a press conference can be considered to constitute "publication" in the same way as "leaflets", "written statements" and "similar publications".

The Court considers that, as the Court of Cassation in plenary session found (see paragraph 23 above), a statement to the press cannot be classified as a "leaflet", "written statement" or "similar publication", as such documents are intrinsically different from the reading out of a statement to the press in public. The aforementioned documents are prepared with a view to publication or distribution and require greater consideration and preparation, whereas statements to the press are intended instead to inform members of the press of the content of a speech that has just been, or is about to be, delivered orally.

In the Court's view, the Criminal Court's interpretation of the relevant law when it convicted the applicants, which interpretation was approved by the Court of Cassation, extended the scope of section 44 beyond what had reasonably been foreseeable in the circumstances of the case. The applicants could not, therefore, reasonably have foreseen that the reading out of a statement to the press in public and its dissemination would be considered to be within the scope of section 44 of the Associations Act. By sentencing them to three months' imprisonment, and notwithstanding the fact that the sentence was subsequently commuted to a suspended fine, the domestic courts extended the scope of a criminal statute by applying it by analogy (see, *mutatis mutandis*, *Ecer and Zeyrek v. Turkey*, nos. 29295/95 and 29363/95, § 33, ECHR 2001-II).

43. The Court therefore finds that the manner in which section 44 of the Associations Act was applied in the present case did not satisfy the requirements of foreseeability. Consequently, there has been a violation of Article 10 of the Convention.

C. Compliance with the other conditions set out in paragraph 2 of Article 10 of the Convention

44. In view of its conclusion that the interference was not prescribed by law, the Court does not consider it necessary to examine whether the other conditions set out in paragraph 2 of Article 10 – namely, whether the interference pursued a legitimate aim and was necessary in a democratic society – were complied with in the instant case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

46. Mr Karademirci, Mr Zencir, Ms Yılmaz, Ms Bilir and Ms Aydoğdu alleged that they had sustained pecuniary damage which they put at 9,190 euros (EUR). This was the amount of the lawyer's fees in the domestic proceedings, according to the rates set by the İzmir Bar. Ms S.T. alleged that she had suffered pecuniary damage which she estimated at EUR 5,000.

47. The applicants claimed EUR 120,000 in respect of non-pecuniary damage.

48. The Government disputed the claims.

49. With regard to the alleged pecuniary damage, the Court considers that the evidence that has been adduced does not allow it to assess the loss the applicants sustained as a result of the violation of Article 10 of the Convention. It therefore dismisses that claim.

50. As to non-pecuniary damage, the Court finds that the applicants may be taken to have suffered some anxiety in the circumstances of the case. Ruling on an equitable basis as required by Article 41 of the Convention, the Court awards each of the applicants EUR 1,000 under this head.

B. Costs and expenses

51. Mr Karademirci, Mr Zencir, Ms Yılmaz, Ms Bilir and Ms Aydoğdu claimed EUR 16,878 for the costs and expenses incurred in the domestic proceedings and in the proceedings before the Commission and the Court. They produced as evidence an agreement on fees that referred to the rates

applicable to the İzmir Bar and receipts for translation costs in an amount approximately equivalent to EUR 150.

Ms S.T. claimed EUR 2,650 for the costs and expenses incurred before the domestic courts, the Commission and the Court. She did not produce any evidence.

52. The Government disputed the claims.

53. Having regard to the evidence before it and its own case-law in this sphere, the Court considers it reasonable to make an overall award to Mr Karademirci, Mr Zencir, Ms Yılmaz, Ms Bilir and Ms Aydoğdu of EUR 1,500 for all their costs.

As regards Ms S.T.'s claim, the Court considers it reasonable to award her EUR 1,500 for all her costs, less the sum of EUR 625.04 which she has received by way of legal aid from the Council of Europe.

C. Default interest

54. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;

2. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros) to each of the six applicants in respect of non-pecuniary damage;

(ii) for costs and expenses,

EUR 1,500 (one thousand five hundred euros) to İsmail Karademirci, Mehmet Zencir, Şennur Yılmaz, Ayla Bilir and Ayfer Aydoğdu jointly;

EUR 1,500 (one thousand five hundred euros) to Ms S.T., less

EUR 625.04 (six hundred and twenty-five euros four cents) received by way of legal aid from the Council of Europe;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 25 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President