



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

SECOND SECTION

CASE OF NURETTİN ALDEMİR AND OTHERS v. TURKEY

*(Applications nos. 32124/02, 32126/02, 32129/02, 32132/02,
32133/02, 32137/02 and 32138/02)*

JUDGMENT

STRASBOURG

18 December 2007

FINAL

02/06/2008

*This judgment will become final in the circumstances set out in Article 44
§ 2 of the Convention. It may be subject to editorial revision.*

In the case of Nurettin Aldemir and others v. Turkey,

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

Mrs F. TULKENS, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 20 November 2007,

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

PROCEDURE

1. The case originated in seven applications (nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02) against the Republic of Turkey lodged on 12 April 2002 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by eight Turkish nationals, Mr Nurettin Aldemir, Mrs Arzu Dođan, Mrs Şehrinaz Artar, Mr Ömer Buzludađ, Mr Sami Evren, Mr Ali Rıza Özer, Mr Tacettin Yađdıran and Mrs Elif Akgöl (“the applicants”). The applicants were born in 1958, 1964, 1958, 1961, 1958, 1958, 1964 and 1968 respectively, and Mr Aldemir, Mrs Artar, Mr Buzludađ, Mr Yađdıran and Mrs Akgöl live in Ankara, while Mrs Dođan, Mr Evren and Mr Özer live in Istanbul.

2. The applicants were represented by Mr F. Gümüş, Mr M. Ayhan and Mr A. Sayılır, lawyers practising in Ankara. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicants complained, in particular, that they had been subjected to ill-treatment and that their right to freedom of assembly had been breached by police officers from the Ankara Security Directorate. They alleged a violation of Articles 1, 3, 5, 6, 7, 10, 11, 13, 14 and 17 of the Convention.

4. On 31 May 2006 the Court decided to give notice of the applications to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are members of “EĞİTİM-SEN” (*Eğitim ve Bilim Emekçileri Sendikası* – The Education Workers’ Trade Union), a trade union which is a member of “KESK” (*Kamu Emekçileri Sendikaları Konfederasyonu* – The Confederation of Public Employees’ Trade Unions).

6. In 2001 the Turkish Parliament prepared a draft bill to amend the Act on Trade Unions. While this bill was being discussed in the Parliament, “KESK” decided to organise meetings in Ankara to protest the bill. The aim was to draw public attention to and achieve the withdrawal of this bill, which in their view did not meet international standards.

7. In the meantime, on 18 December 2000, the Governorship of Ankara had issued a circular, providing guidelines on meetings and demonstrations organised in the city of Ankara, in accordance with the Law on Meetings and Demonstration Marches (Law no. 2911). According to this circular, the meeting place chosen by KESK was not among the permitted areas.

8. On 7 June 2001 Nurettin Aldemir, Şehrinaz Artar, Ömer Buzludağ, Sami Evren and Ali Rıza Özer, and on 25 June 2001 Arzu Doğan, Tacettin Yağdıran and Elif Akgül, gathered in Kızılay together with other persons.

9. On both occasions, while the president of “KESK” was reading out press statements, police officers warned the demonstrators that their action was contrary to the law and that they had to disperse. The demonstrators blocked the main street of the Kızılay district (Atatürk Avenue) and attempted to march towards the Prime Minister’s Office. The police officers then intervened and used truncheons, sticks and tear gas with a view to dispersing the crowds. Some of the demonstrators attacked the security forces using pavement stones and sticks which caused the injury of seven police officers and the destruction of a police vehicle. The applicants were also wounded during the incidents.

10. On 7 June 2001 Şehrinaz Artar and Ömer Buzludağ were examined by a doctor from the Hacettepe University Hospital. The doctor noted an ecchymosis of 2x2 cm on the left eyebrow of Şehrinaz Artar. As regards Ömer Buzludağ, he noted an abrasion of 3 cm on his right eyebrow. Nurettin Aldemir, Sami Evren and Ali Rıza Özer did not submit any medical evidence to the Court in support of their subsequent allegations of ill-treatment.

11. On 25 June 2001 Arzu Doğan was examined by a forensic medical expert from the Ankara Forensic Medicine Institute who observed an ecchymosis on her lip, a hyperaemic graze on her left wrist and superficial abrasions on her right wrist and arm. The expert concluded that the injuries rendered Arzu Doğan unfit for work for one day.

12. On the same day, Tacettin Yağdıran was examined by a forensic medical expert from the Ankara Forensic Medicine Institute. The doctor observed a sutured injury on the occipital lobe of his head and a haematoma under the injury, and considered that his injuries rendered the applicant unfit for work for seven days.

13. Also on the same day, Elif Akgül was examined by a doctor from the Ankara Forensic Medicine Institute. The doctor observed abrasions on the skin on the left scapula and on the back, and a haematoma of 2x2 cm on the right frontal lobe. He concluded that the injuries rendered Elif Akgül unfit for work for five days.

14. On an unspecified date, the applicants filed a complaint with the Ankara public prosecutor's office against the Ankara Governor, the director of the Ankara Security Directorate, the director of the Rapid Intervention Force branch of the Ankara Security Directorate and the police officers who were involved in the incidents.

15. In the meantime, on 26 June 2001 the Ankara public prosecutor brought charges against twenty-seven demonstrators, including Arzu Doğan and Sami Evren, for violation of the Law on Meetings and Demonstration Marches.

16. On 23 July 2001, pursuant to Law no. 4483 on the prosecution of civil servants, the Ankara public prosecutor transferred the file to the Ministry of Interior seeking an authorisation to initiate criminal proceedings.

17. On 9 October 2001 the Ministry of the Interior, relying on Article 4 of Law no. 4483, decided not to take an action against the officials and officers accused by the applicants as it found that the allegations were of an "abstract nature". The Ministry considered that the force used by the police was lawful and justified in the circumstances of the case and that the officers had been under an obligation to disperse the demonstrators who had organised an illegal meeting. This decision was sent to the Ankara public prosecutor's office on 19 December 2001.

18. In a decision of 14 November 2001 the Ankara Criminal Court acquitted the applicants Arzu Doğan and Sami Evren, as well as other demonstrators, of the charges. The court decided that the demonstrators enjoyed a right to hold unarmed and peaceful meetings and demonstrations without prior permission.

19. On 29 January 2002 the Ankara public prosecutor issued a decision of non-prosecution as regards the applicants' complaints.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional guarantees

20. Article 34 of the Constitution provides:

“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. ...

The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.”

B. The Meetings and Demonstration Marches Act

21. At the material time section 10 of the Meetings and Demonstration Marches Act (Law no. 2911) was worded as follows:

“In order for a meeting to take place, the governor’s office or authorities of the district in which the demonstration is planned must be informed, during opening hours and at least seventy-two hours prior to the meeting, by a notice containing the signature of all the members of the organising board...”

22. Section 22 of the same Act prohibited demonstrations and processions on public streets, in parks, places of worship and buildings in which public services were based. Demonstrations organised in public squares had to comply with security instructions and not disrupt individuals’ movement or public transport. Finally, section 24 provided that demonstrations and processions which did not comply with the provisions of this law would be dispersed by force on the order of the governor’s office and after the demonstrators had been warned.

According to a circular issued by the Governorship of Ankara on 18 December 2000, which provides guidelines on meetings and demonstrations, Kızılay avenue is not among the permitted areas for demonstrations.

C. Law no. 2559 on the Duties and Powers of the Police

Article 16

“The police may use firearms in the event of:

(a) self defence, ...

(h) if a person or a group resists the police and prevents them from carrying out their duties or if there is an attack against the police.”

Additional Article 6 (dated 16 June 1985)

“In cases of resistance by persons whose arrest is necessary or by groups whose dispersal is necessary or of their threatening to attack or carrying out an attack, the police may use violence to subdue these actions.

Use of violence refers to the use of bodily force, physical force and all types of weapons specified in the law and it gradually increases according to the nature and level of resistance and attack in such a way as to restore calm.

In cases of intervention by group forces, the extent of the use of force and the equipment and instruments to be used are determined by the commander of the intervening force.”

D. Code on Criminal Procedure

23. According to Article 165 of the now defunct Code on Criminal Procedure, a complainant may file an appeal against the decision of a public prosecutor not to institute criminal proceedings. This appeal must be lodged, within fifteen days from the day of notification of the decision to the complainant, with the president of the assize court in whose jurisdiction the public prosecutor works.

THE LAW**I. JOINDER OF THE APPLICATIONS**

24. In view of the similarity of the three applications, the Court finds it appropriate to join them.

II. ALLEGED VIOLATION OF ARTICLES 7, 10 AND 11 OF THE CONVENTION

25. The applicants alleged that the police interference in the meetings constituted a breach of their rights guaranteed by Articles 7, 10 and 11 of the Convention.

26. The Court considers that the applicants' complaints should be examined from the standpoint of Article 11 alone, which reads insofar as relevant 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 ... public safety [or] for the prevention of disorder...”

A. Admissibility

27. The Government maintained that the applicants did not have requisite victim status within the meaning of Article 34 of the Convention. They argued that the applicants Arzu Doğan and Sami Evren had been acquitted of the charges by the Ankara Criminal Court and that no proceedings had been brought against the other five applicants for participating in the demonstrations.

28. The applicants disputed the Government’s contention.

29. The Court considers that the Government’s objection concerning the victim status of the applicants raises a question which is closely linked to the merits of the complaint. It therefore joins the preliminary objection of the Government to the merits (*Bączkowski and Others v. Poland*, no. 1543/06, §§ 45-48, 3 May 2007).

30. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Existence of any interference with the applicants’ rights

31. The Government contended that there had been no interference with the exercise of the applicants’ right to freedom of assembly. They noted that the security forces had forcibly dispersed the demonstrators since the latter had not abided by the warning given to them about the location of the demonstration and had carried on their illegal march.

32. The applicants claimed that the security forces had unlawfully interfered with the exercise of their right to peaceful assembly.

33. The Court reiterates that the word “victim” of a breach of rights or freedoms denotes the person directly affected by the act or omission which is in issue (see *Bączkowski and Others*, cited above, § 65; *Doğan and Others v. Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 93, ECHR 2004-VI (extracts)).

34. The Court notes that the applicants took part in demonstrations with a view to protesting a draft bill proposed in the Turkish Parliament which would amend the Act on Trade Unions. Their aim was to draw public attention to and achieve the withdrawal of this bill, which in their view did

not meet international standards. However, their meetings were forcibly ended by the security forces on the ground that the location was not permitted by law. Although two applicants were acquitted of charges and no proceedings were brought against the others, the interference in the meetings and the force used by the police to disperse the participants, as well as the subsequent prosecution, could have had a chilling effect and discouraged the applicants from taking part in similar meetings (see *Bączkowski and Others*, cited above, § 67-68).

35. Against this background, the Court considers that the applicants were negatively affected by the police intervention and that there has therefore been an interference with the exercise of their right to freedom of peaceful assembly.

2. Justification for the interference

36. The Government contended that the interference in question was prescribed by law, namely Law no. 2911, and that it had pursued the legitimate aims of preventing disorder and protecting public safety. They further claimed that the measure imposed by the security forces should be regarded as answering a pressing social need and was proportionate to the legitimate aims pursued.

37. The applicants alleged that the interference in question was disproportionate.

38. The Court reiterates that an interference will constitute a breach of Article 11 unless it is “prescribed by law”, pursues one or more legitimate aims under paragraph 2 and is “necessary in a democratic society” for the achievement of those aims.

39. In this connection, the Court observes that the interference in the present case had a legal basis, namely section 22 of Law no. 2911 (the Meetings and Demonstration Marches Act), and was thus “prescribed by law” within the meaning of Article 11 § 2 of the Convention. As concerns legitimate aims, the Government submitted that the interference pursued the legitimate aims of preventing disorder and protecting public safety, and the Court finds no reason to differ.

40. Turning to the question of whether the interference was “necessary in a democratic society”, the Court refers in the first place to the fundamental principles underlying its judgments relating to Article 11 (see *Djavit An v. Turkey*, no. 20652/92, §§ 56-57, ECHR 2003-III; *Piermont v. France*, judgment of 27 April 1995, Series A no. 314, §§ 76-77; and *Plattform “Ärzte für das Leben” v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, § 32). It is clear from this case-law that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens (see *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-...).

41. The Court also notes that States must not only safeguard freedom of peaceful assembly, but must also refrain from applying unreasonable indirect restrictions upon that right. Finally, it considers that, although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities in the exercise of the rights protected, there may also be positive obligations to secure their effective enjoyment (see *Djavit An*, cited above, § 57; *Oya Ataman*, cited above, § 36).

42. The Court considers that these principles are also applicable with regard to demonstrations and processions organised in public areas. It notes, however, that it is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorisation and regulates the activities of associations (see *Djavit An*, cited above, §§ 66-67).

43. Having regard to the domestic legislation, the Court observes that at the material time no authorisation was required for the holding of public demonstrations; however, notification was required seventy-two hours prior to the event. In principle, regulations of this nature should not represent a hidden obstacle to the freedom of peaceful assembly as protected by the Convention. It goes without saying that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility. This being so, it is important that associations and others organising demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force (see *Oya Ataman*, cited above, § 38).

44. In the instant case, it appears that KESK organised two demonstrations, on 7 and 25 June 2001 respectively. On both occasions, while the president of KESK was making press statements, police officers intervened in the demonstrations and asked the participants to disperse (see paragraph 9 above). Since the applicants and other demonstrators did not comply with these orders and attempted to force their way through, the police officers used truncheons and tear gas to disperse the crowd. Some demonstrators responded violently and turmoil ensued, resulting in the injury of five of the applicants, together with a number of police officers and other demonstrators (see paragraphs 9-13 above).

45. The Court observes that there is no evidence to suggest that the group in question initially presented a serious danger to public order. Nevertheless, it is likely that they would have caused some disruption in a particularly busy square in central Ankara. It transpires that the demonstrators, including the applicants, wished to draw attention to a sensitive bill proposed in the Parliament and that their rally was initially peaceful. However, the authorities' intervened swiftly with considerable force in order to disperse them, thereby causing tensions to rise, followed by clashes.

46. In the Court's view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.

47. Accordingly, the Court considers that in the instant case the forceful intervention of the police officers was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

48. In view of the above, the Court therefore dismisses the Government's preliminary objection regarding the applicants' alleged lack of victim status and concludes that there has been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 3, 6 AND 13 OF THE CONVENTION

49. The applicants complained that the force used against them during their demonstrations on 7 and 25 June 2001 was disproportionate and amounted to ill-treatment within the meaning of Article 3 of the Convention. They further alleged that they had been denied an effective remedy in respect of their complaint of ill treatment.

Articles 3 reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 provides, in so far as relevant:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13 reads:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

50. The Government submitted that the applicants had not exhausted domestic remedies since they had not filed an objection against the Ankara public prosecutor's decision dated 29 January 2002 before the nearest assize court, as required by Article 165 of the now defunct Code of Criminal Procedure. Relying on the Court's jurisprudence in similar cases (see, among others, *Selal Saraç v. Turkey*, no. 35841/97, 2 September 2004, *Ete v. Turkey*, no. 29315/02, 13 June 2006 and *Uçma v. Turkey*, no. 15071/03, 3 October 2006), the Government claimed that the remedy contained in Article 165 was an effective one and that it had provided a prospect of success.

51. The applicants did not respond to the Government's plea on non-exhaustion.

52. The Court recalls that it has already found in a number of Turkish cases that an appeal against decisions of public prosecutors not to prosecute constitutes, in principle, an effective and accessible remedy within the meaning of Article 35 § 1 of the Convention (see, in particular, *Pad and others v. Turkey*, no. 60167/00, 28 June 2007, § 67; *Hıdır Durmaz v. Turkey*, no. 55913/00, 5 December 2006, § 29; *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002).

53. This being so, the Court observes that the applicants did not avail themselves of this remedy by lodging an appeal against the Ankara public prosecutor's decision of 29 January 2002. Furthermore, the applicants did not indicate any circumstances which would dispense them from the obligation to object to the public prosecutor's decision of non-prosecution in order to exhaust domestic remedies (see, *Hıdır Durmaz*, cited above, §§ 29-31).

54. Against this background, the Court upholds the Government's objection that the applicants have failed to exhaust domestic remedies in respect of their grievances under Articles 3, 6 and 13 of the Convention.

55. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. The applicants further complained that the police intervention in the demonstration had also breached their rights guaranteed by Articles 1, 5, 14 and 17 of the Convention.

57. However, the Court finds nothing in the case file which might disclose any appearance of a violation of these provisions. It follows that this part of the application is manifestly-ill founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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.”

59. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT

1. *Joins* unanimously the applications;
2. *Joins* to the merits unanimously the Government’s objection concerning the alleged lack of the applicants’ victim status and dismisses it;
3. *Declares* unanimously the complaint concerning the alleged violation of the applicants’ right to freedom of assembly admissible and the remainder of the applications inadmissible;
4. *Holds* by 5 votes to 2 that there has been a violation of Article 11 of the Convention.

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Türmen and Mrs Mularoni is annexed to this judgment.

F.T.
S.D.

JOINT DISSENTING OPINION OF JUDGES TÜRMESEN AND MULARONI

We regret that we are unable to share the majority's opinion that there has been a violation of Article 11.

The case is about a demonstration organised by KESK (the Confederation of Public Employees' Trade Unions) in Kızılay Square to protest against a draft bill which was before Parliament in 2001.

Law no. 2911 requires prior notification to organise demonstrations in public places and prohibits demonstrations in certain locations. We also learn from the facts of the case that the Governorship of Ankara issued a circular on 18 December 2000 providing guidelines on meetings and demonstrations to be held in Ankara. According to this circular, it was not permitted to hold demonstrations in Kızılay Square. However, the case file does not contain the text of the circular which constitutes the legal basis for the interference by the security forces. In our opinion, it would have been more prudent to obtain the text of the circular before taking a decision.

The majority accept that the interference in the present case had a legal basis and pursued the legitimate aims of preventing disorder and protecting public safety (paragraph 39 of the judgment). Furthermore, they note, in compliance with the Court's case-law (see, for example *Oya Ataman v. Turkey*, no. 74552/01, ECHR 2006- ...), that it is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorisation (paragraph 42 of the judgment). They add that in view of the fact that any demonstration in a public place may cause a certain level of disruption to ordinary life, it is important that associations and other entities organising demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force (paragraph 43 of the judgment). We agree with such statements. We add that, as the majority recognise, at the material time no authorisation was required in the respondent State for the holding of public demonstrations. Only seventy-two hours' prior notification was necessary (*ibid.*).

Having said the above, the majority fail, rendering prior notification meaningless, to provide any guidelines as to the circumstances under which non-compliance with the regulations may justify intervention by the security forces.

The majority assert that there is no evidence that the demonstrators initially presented a danger to public order, apart from possibly blocking a particularly busy square in central Ankara (paragraph 45 of the judgment).

Kızılay Square is the heart of Ankara, the capital of Turkey. Blocking the square means blocking the traffic along the four main arteries of the city,

leading to and from Ulus, Çankaya, Maltepe and Dikimevi. It also blocks the traffic to the Prime Minister's office, the General Staff and Ministry of Defence and other ministries. Moreover, owing to the failure of the applicants to give prior notification, the authorities were deprived of the possibility of taking any measures that would minimise the disruption to public order and that would be required for the protection of the rights and freedoms of others, as provided for in Article 11 § 2 of the Convention.

The majority also assert that the demonstrators did not engage in acts of violence and that the forceful intervention of the security forces was therefore disproportionate. The facts of the case hardly justify such a conclusion. According to the facts of the case, the police officers warned the demonstrators that their action was contrary to the law and that they had to disperse. The demonstrators did not comply with the warning. They blocked the main street and tried to march to the Prime Minister's office. The police officers were then compelled to use force, whereupon "the demonstrators attacked the security forces using pavement stones and sticks which caused the injury of seven police officers and the destruction of a police vehicle" (paragraph 9 of the judgment).

Furthermore, we observe that the applicants' complaint concerning the disproportionate use of force used against them is dismissed by the Court for non-exhaustion of domestic remedies (see paragraphs 49 to 55 of the judgment).

Under such circumstances, where both sides resort to violence, it is impossible to assess whether the force used was proportionate or not.

In view of all these considerations, we cannot come to the conclusion that there was a violation of Article 11 of the Convention.