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

SECOND SECTION

DECISION

Application no. 39365/18
Mümün AĞCAKAYA
against Türkiye

The European Court of Human Rights (Second Section), sitting on 13 September 2022 as a Committee composed of:

Egidijus Kūris*, President,*
Pauliine Koskelo*,*
Gilberto Felici*, judges,*

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 39365/18) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 August 2018 by a Turkish national, Mr Mümün Ağcakaya ("the applicant"), who was born in 1958 and lives in Diyarbakır, and was represented by Ms F. Daniş, a lawyer practising in Diyarbakır;

the decision to give notice of the complaint concerning an alleged breach of the right of access to a court to the Turkish Government ("the Government"), represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present application concerns an alleged breach of the applicant's right of access to a court under Article 6 § 1 of the Convention for the purpose of challenging an administrative fine imposed on him for acting in breach of Law no. 2860 on the collection of aid.

2. At the time of the events giving rise to the present application, the applicant was a board member of the "Western Rojava Aid and Solidarity Association" (*Batı Rojava Yardımlaşma ve Dayanışma Derneği*).

3. On 23 January 2017 the Diyarbakır Governor's office imposed an administrative fine of 1,170 Turkish liras (approximately 290 euros (EUR) on the basis of the exchange rate at the time) on seven board members of the association, including the applicant, on the grounds that they had collected donations without permission, in breach of Law no. 2860.

4. On 21 February 2017 the Diyarbakır Magistrate's Court dismissed an objection by the applicant against the fine, holding that he had no standing to lodge the objection, as the fine had been imposed on the association and not on him.

5. The applicant appealed against that decision, asserting that he had standing to challenge the fine, which had been imposed on him in his capacity as a board member, and that the first-instance court had rejected his case on account of an error of fact. On 10 March 2017 the Diyarbakır 2nd Magistrate's Court rejected the applicant's appeal.

6. On 14 May 2018 the Constitutional Court, examining the case from the standpoint of the right of access to a court, found an individual application by the applicant inadmissible for lack of constitutional and personal significance on the basis of the fact that the applicant had not demonstrated that the amount of the administrative fine had had a significant impact on him. In its decision, the Constitutional Court further noted that it had already dealt with numerous cases regarding the right of access to a court, in respect of which it had a settled body of case-law.

THE COURT'S ASSESSMENT

7. The Government raised several preliminary objections, submitting that the application should be declared inadmissible on one of the following grounds: (i) Article 6 was not applicable to the proceedings in the present case; (ii) the application was manifestly ill-founded; and (iii) the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

8. The applicant complained under Article 6 of the Convention that he had not had an opportunity to challenge the administrative fine before the domestic courts and submitted that the Constitutional Court's approach *vis-à-vis* the admissibility criterion of constitutional and personal significance should be rejected.

9. In view of the circumstances of the present case, the Court finds it appropriate to examine whether the applicant's complaint complies with the admissibility requirement under Article 35 § 3 (b) of the Convention, namely the "significant disadvantage" criterion.

10. Article 35 § 3 (b) of the Convention, as amended by Article 5 of Protocol No. 15 to the Convention[1], provides:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> ...
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits."

11. The Court reiterates that the third element of the "significant disadvantage" criterion, namely that no case may be rejected on this ground which has not been duly considered by a domestic tribunal, was repealed by Protocol No. 15 to the Convention, which entered into force on 1 August 2021. Accordingly, the Court is also no longer required to examine whether this element was met and the fact that the Constitutional Court did not examine it when declaring the applicant's application inadmissible has no bearing (see *Bartolo v. Malta* (dec.), no. 40761/19, § 22 *in* fine, 7 September 2021) on the Court's assessment. The Court is therefore called upon to examine the following two questions: (i) whether the applicant suffered a significant disadvantage as a result of the alleged breach of his right of access to a court under Article 6 § 1 of the Convention; and (ii) whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the complaint on the merits.

12. Inspired by the principle *de minimis non curat praetor*, the admissibility criterion contained in Article 35 § 3 (b) of the Convention hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of the alleged violation should be assessed, taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010). The Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives (ibid.; see also *Rinck v. France* (dec.), no. 18774/09, 19 October 2010).

13. As regards the first element, the Court notes that the applicant was subjected to an administrative fine of approximately EUR 290, which corresponded to approximately 83% of the net monthly minimum wage at the material time in Türkiye. However, when declaring the applicant's individual application inadmissible for lack of constitutional and personal significance,

1. See Article 8 § 4 of Protocol No. 15 and paragraph 24 of the Explanatory Report to Protocol No. 15.

the Constitutional Court found that the applicant had not explained what impact, if any, the fine in question had had on him. The Government's position before the Court was also essentially based on that point. Be that as it may, the applicant did not explain to the Court whether, and if so, to what extent, the proceedings and the administrative fine in question had caused hardship for him. Similarly, the applicant did not put forward any argument to show that his financial situation was such that the outcome of the proceedings had had a significant impact on him (see *Piętka v. Poland*, no. 34216/07, § 39, 16 October 2012 where the amount at stake corresponded to approximately 120% of the applicant's monthly income; *Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011 where the financial stakes of the dispute were EUR 504 and nothing indicated the outcome of the dispute would have had a significant impact on her personal life, and *Burov v. Moldova* (dec.), no. 38875/03, § 27, 14 June 2011 where the amount at stake was equivalent to EUR 228). Neither did the applicant argue that the proceedings forming the basis of his complaint concerned an important question of principle for him (see *Giuran v. Romania*, no. 24360/04, § 22, ECHR 2011 (extracts)). Accordingly, the Court concludes that the applicant failed to provide any information capable of leading it to call into question the findings of the Constitutional Court.

14. Furthermore, even though the applicant asserted that the administrative fines had been entered in the criminal records, the Criminal Records Act shows that this was not the case (see *Sancaklı v. Turkey*, no. 1385/07, § 49, 15 May 2018). The applicant therefore also failed to explain whether the fine in question had had any further negative impact on him other than pecuniary damage (see *Burov*, cited above, § 30, and *Rinck*, cited above). In view of the above, the Court cannot conclude that the applicant has shown that he has suffered a significant disadvantage as a result of the alleged violation of the Convention.

15. As regards the second element, the Court reiterates that it has already examined on numerous occasions complaints concerning alleged breaches of the right of access to a court under Article 6 § 1 of the Convention (see among many other authorities, *Guérin v. France*, 29 July 1998, *Reports of Judgments and Decisions* 1998-V; *Eşim v. Turkey*, no. 59601/09, 17 September 2013; and *Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey*, no. 20577/05, 22 October 2013). Having regard to the clear and extensive case-law on the topic and the absence of any other element requiring it to carry out an examination of the present application on its merits, the Court takes the view that respect for human rights does not require an examination of this case.

16. In the light of the foregoing, the Court concludes that the requisite conditions for the application of Article 35 § 3 (b) of the Convention have been satisfied. It follows that the application should be declared inadmissible pursuant to Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 October 2022.

Dorothee von Arnim Deputy Registrar	Egidijus Kūris President