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

SECOND SECTION

DECISION

Application no. 52051/17
Sabri Alparslan ATEŞ against Türkiye
and 2 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 28 February 2023 as a Committee composed of:

Egidijus Kūris*, President*,
Pauliine Koskelo,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications 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") by the applicants listed in the appended table ("the applicants"), on the date indicated therein;

the decision to give notice of the complaint under Article 11 of the Convention to the Turkish Government ("the Government"), represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Human Rights Department of the Ministry of Justice, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applications concern the dismissal of the applicants allegedly for protesting against the lack of a meaningful right to organise and join the trade union of their choice and against the pressure they had received from the employer in that regard and the rejection of their claim for reinstatement in their original employment and compensation by the national courts.

2. The applicants worked as workers in a factory and were members of a metal trade union, *Türk Metal iş Sendikası*. Between 25 May 2015 and 1 June 2015 several members, including the applicants, left the trade union.

3. According to the applicants, after leaving the trade union, they and their colleagues were subjected to pressure from the trade union and their employer. On the morning of 2 July 2015, several workers who worked the morning shift, including the applicants, asked the factory managers to put an end to the pressure they were being subjected to by the trade union, to close the offices of the union and to improve working conditions. In the absence of a favourable response from management, they decided to stop working and waited for their demands to be granted while occupying the factory.

4. The next day, management told the employees occupying the factory that they would be dismissed if they did not leave the establishment. On 3 July 2015, the management sent notices of dismissal to the applicants Hasan Uzun and Murat Tıngöz. Besides, other colleagues occupying the factory were also dismissed and they were told that it had been decided to suspend production for one day.

5. On 4 July 2015 production was suspended for another day and the occupants were notified that they would not be fired if they resumed work on 6 July 2015. On 5 July 2015, the police evacuated the occupants without resorting to force. The action had thus continued for 3 days, and the production activity was hampered by the absenteeism of the workers, including the applicants. The management informed the employees that the factory would be closed again on 6 July 2015. On that day the management definitively dismissed the employees who had been in and in front of the factory from 2 July to 5 July 2015, including the applicants.

6. As for the reasons given for the dismissal of Sabri Ateş, the employer argued, in general, that the applicant had encouraged and provoked employees to continue the occupation, had chanted slogans that damaged the reputation of the company, and continued these acts despite all the efforts made and warnings issued by the company. As regards the other two applicants, the employer argued that they had not returned to work and had continued their illegal acts despite the written announcements and verbal warnings requesting them to return to work and end the illegal occupation they had participated in.

7. The applicants thereupon brought an action for reinstatement with the labour court, also asking it to declare that the dismissals had been carried out because of their trade union activities and that their employment contract had been terminated without good cause. The labour court ordered the reinstatement of the applicants, considering that the factory's production had been suspended directly by the decision of the employer but not by the employees. It found, however, that there was nothing to indicate that the applicants had been dismissed because of their trade union activities.

8. Following an appeal by the parties, on 29 June 2016 the Court of Cassation overturned the decision of the labour court. It considered that the impugned action of the workers had not been proportionate given the time chosen, the duration and the large number of workers involved in it. Moreover, it emphasised that freedom of assembly and the right to strike were recognised by the Constitution and international treaties ratified by Türkiye. It considered, however, that this freedom could not be exercised with the aim of harming the employer's activities. It also emphasised that the applicants' action was not directed against the employer but rather against the trade union they had left as the applicants opposed the collective agreement signed by that trade union. Finally, it mentioned that demands such as the exclusion of union representatives and the recognition of other representatives are not possible in a workplace where a collective bargaining agreement is in force and where the union in question is authorised to carry out trade union activities. It was not possible for the representatives of a group that does not have legal personality and does not have a basis in law to be recognised as workers' representatives by the employer.

9. It follows from the documents submitted to the case-file that before the domestic courts the applicants only complained about the alleged violation of their right to freedom of association.

10. On 23 November 2016 the Constitutional Court dismissed the applicants' individual complaints, in which the applicants had alleged a breach of their rights to a fair trial and to freedom of association as well as a breach of the prohibition of discrimination, as manifestly ill-founded.

11. Invoking Article 11 of the Convention, the applicants complained of an infringement of their right to freedom of association and to freedom of peaceful assembly. They allege that they were dismissed for protesting against the lack of a meaningful right to organise and to join the trade union of their choice and against the pressure they had received from the employer in that regard.

THE COURT'S ASSESSMENT

12. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

13. The applicants complain of an infringement of their right to freedom of association and their right to freedom of peaceful assembly within the meaning of Article 11 of the Convention on account of their dismissals allegedly for protesting against the lack of a meaningful right to organise and join the trade union of their choice and against the pressure they had received from the employer in that regard. The Court considers that the complaints which have been brought by the applicant before this Court fall to be examined under the aspect of the applicant's right to freedom of association alone (see paragraph 9 above).

14. It follows from the facts as established by the domestic courts that the applicants were dismissed because of a strike action. The Court reiterates its findings in the *Barış and Others v. Turkey* decision (no. 66828/16, 14 December 2021) that strike action is, in principle, protected by Article 11 only in so far as it is initiated by trade-union organisations and considered as being effectively – and not merely presumed to be – part of trade-union activity. The Court has never accepted that a strike that was not called by a trade union but rather by that trade union's members, or even non-members, was also entitled to the protection of Article 11 (*ibid.*, § 45). The Court would also note in this context that, according to the practice of the European Committee on Social Rights, the fact of reserving the right to strike to trade unions was compatible with Article 6 § 4 of the European Social Charter, provided that setting up a trade union was not subject to excessive formalities (compare also *ibid.*, § 46).

15. The Court observes, on the basis of the material in the file, that the applicants in the present case were not dismissed for having participated in a demonstration organised by a trade union – which they had left prior to their action – or for having claimed professional rights in the context of the trade union's activities. Furthermore, according to the material submitted to it, the Court finds that the applicants were also not dismissed for having left a specific trade union or for having decided not to join a specific trade union or owing to any pressure of the employer in that regard. They cannot therefore rely on the right to form and join trade unions protected by Article 11 (compare also *Barış and Others v. Turkey,* §§ 53-54, cited above).

16. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 23 March 2023.

Dorothee von Arnim Deputy Registrar	Egidijus Kūris President

APPENDIX

List of cases:

No	Application No	Introduced on	Petitioner Date of birth Place of residence	Represented by
1.	52051/17	10/05/2017	**Sabri Alparslan ATEŞ** 22/03/1979 Kocaeli	Meryem ASIL
2.	52053/17	10/05/2017	**Hasan UZUN** 05/05/1984 Kocaeli	Meryem ASIL
3.	52054/17	10/05/2017	**Murat TINGÖZ** 10/10/1981 Kocaeli	Meryem ASIL