

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

SECOND SECTION

CASE OF KORKUT v. TÜRKİYE

(Application no. 3344/21)

JUDGMENT

STRASBOURG

24 September 2024

This judgment is final but it may be subject to editorial revision.



In the case of Korkut v. Türkiye,

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

Jovan Ilievski*, President*,
Diana Sârcu,
Gediminas Sagatys*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 3344/21) 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 4 January 2021 by a Turkish national, Mr Süleyman Korkut ("the applicant"), who was born in 1996, lives in Batman and was represented by Mr M.S. Özer, a lawyer practising in Batman;

the decision to give notice of the complaints concerning Articles 6, 10 and 11 of the Convention 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 inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 3 September 2024,

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

SUBJECT MATTER OF THE CASE

1. The present application concerns the criminal conviction of the applicant, and the prison sentence imposed on him, combined with a measure of suspension of the pronouncement of the judgment. The applicant complained of a violation of his rights under Articles 6, 10 and 11 of the Convention.

2. In an indictment dated 28 May 2018, the Batman Public Prosecutor charged the applicant with disseminating propaganda in favour of a terrorist organisation, on account of his attendance at the funeral of a PKK member, where, as part of a group, he chanted slogans such as "Murderer Erdoğan; Kurdistan will be a grave for fascists; Martyrs don't die; the PKK is society - society is the PKK; long live the Cizre resistance".

3. On 12 March 2019 the Batman Third Assize Court convicted the applicant of disseminating propaganda in favour of a terrorist organisation, in accordance with Article 7(2) of Law no. 3713, for shouting slogans which incited violence, armed resistance and hatred as part of a group, while attending the funeral of a member of a terrorist organisation (PKK) and sentenced him to ten months' imprisonment. The Third Assize Court decided

to suspend the pronouncement of the judgment, pursuant to Article 231 § 5 of the Code of Criminal Procedure (see for the text of this provision *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, § 23, 3 October 2023), and to subject the applicant to a five-year supervision period.

4. The applicant lodged an appeal against this decision. The Batman First Assize Court, which examined the appeal, dismissed it, finding that the judgment with suspension of pronouncement was in accordance with both the procedural and substantive law.

5. The applicant lodged an individual appeal before the Constitutional Court, invoking Articles 6, 10 and 11 of the Convention. He claimed, in particular, that the suspension of the pronouncement of the judgment had rendered the proceedings against him, resulting in his conviction, unfair. In its decision, the Constitutional Court declared the applicant's claims under Articles 6 and 10 of the Convention inadmissible, as manifestly ill-founded.

6. The applicant complained, under Articles 10 and 11 of the Convention, that he had been convicted for shouting slogans as part of a group while attending a funeral. He further complained under Article 6 of the Convention about the evaluation of the evidence and the allegedly insufficient reasoning in the judgment of the Third Assize Court.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

7. As the master of the characterisation to be given in law to the facts of the case, the Court will examine the applicant's complaints under Articles 10 and 11 of the Convention about his conviction for chanting slogans as part of a group solely under Article 10 of the Convention (compare also *Belge v. Turkey*, no. 50171/09, § 21, 6 December 2016; and *Sarıgül v. Turkey*, no. 28691/05, § 33, 23 May 2017).

A. Admissibility

8. The Government raised several preliminary objections. They first alleged that the applicant's impugned actions incited violence and supported terrorist activities. They therefore considered that the action at issue ran counter to the text and spirit of the Convention for the purposes of Article 17, thus depriving the applicant of the protection guaranteed under Article 10 of the Convention. For this reason, they argued that the applications were incompatible *ratione materiae* with the provisions of the Convention.

9. The Government also claimed a lack of significant disadvantage, asserting that the suspension of the pronouncement of the judgment had not entailed any obligations or restrictions. They argued that once the supervision

period had expired, the conviction, and any associated consequences, would be removed.

10. The Government further argued that the applicant had had an opportunity to raise his complaints at national level; in their submissions, the domestic courts had duly examined his complaints, in compliance with the procedural rules and the principle of subsidiarity. They urged the Court to declare the application inadmissible, asserting that the applicant's complaints were manifestly ill-founded.

11. The Court dismisses the preliminary objection regarding the Court's jurisdiction *ratione materiae*. It considers that the applicant's attendance at the funeral and his participation in the group's chanting of slogans (for the content of the slogans, see paragraph 2 above) – facts that the applicant contests – do not reveal an intent to undermine Convention rights. It considers that despite the controversial nature of these actions, they do not appear to incite to destroy the Convention rights and freedoms (see *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, §§ 46-47, 3 October 2023). The Court concludes that the application does not represent an abuse of rights under Article 17 of the Convention and that the applicant is entitled to the protection of Article 10 of the Convention. This preliminary objection is therefore dismissed.

12. As for the objection alleging a lack of significant disadvantage, the Court considers that the applicant's complaints under Article 10 of the Convention raise a question of principle that is of general importance, namely whether it is consistent with the spirit of the Convention to impose a criminal penalty on a person attending a funeral and joining a group in shouting slogans, even if the pronouncement of the judgment is suspended. It notes, furthermore, that the suspension of the pronouncement of the judgment was not such as to prevent or remedy the consequences of the criminal proceedings and the damage directly suffered by the persons concerned as a result of the infringement of their freedom of expression, caused by those proceedings (see, *mutatis mutandis*, *Durukan and Birol*, cited above, § 44). It therefore dismisses this objection.

13. As to the objection that the application is manifestly ill-founded, the Court considers that the arguments put forward by the Government in this connection raise issues which require an examination of the merits of the complaint under Article 10 of the Convention, rather than an examination of its admissibility (see *Durukan and Birol*, cited above, § 45, and *Vedat Şorli v. Turkey*, no. 42048/19, § 30, 19 October 2021).

14. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

15. The applicant alleged that the fact of shouting slogans with other people while attending a funeral had not involved any element of a crime, in that there was no call to violence and that his participation fell within his Convention rights. He also complained that the suspension of the pronouncement of the judgment deprived him of a fair trial.

16. The Government claimed that there had been no interference with the applicant's freedom of expression, emphasising that, given the suspension of the pronouncement of the judgment, no conviction was added to his criminal record. Thus, they argued that there were no negative legal consequences or deterrent effects caused by the criminal proceedings and his conviction. If the Court were to find that there had been interference, the Government submitted that the interference in question had been provided for by Article 7(2) of Law no. 3713 in a manner that corresponded to the criteria of clarity, accessibility and foreseeability.

2. The Court's assessment

17. The Court considers that, in view of the deterrent effect that the conviction with suspension of the pronouncement of the judgment, which subjected the applicant to a five-year supervision period, may have had, it constitutes an interference with the exercise of the applicant's right to freedom of expression (see *Durukan and Birol*, cited above, § 56; *Vedat Şorli*, cited above, § 41; and *Üçdağ v. Turkey*, no. 23314/19, § 75, 31 August 2021).

18. In the present case, the Court notes, firstly, that it is undisputed between the parties that the applicant's criminal conviction had a legal basis, namely, Article 7(2) of Law no. 3713. It also observes that the legal basis for the suspension of the pronouncement of the judgment against the applicant, which constituted an interference in the present case, was Article 231 of the Code of Criminal Procedure (see paragraph 3 above).

19. In the case of *Durukan and Birol,* cited above, the Court already held that Article 231 of the Code of Criminal Procedure, which provides for the suspension of the pronouncement of the judgment, does not offer the required protection against arbitrary infringement of the rights guaranteed by the Convention by public authorities (see *Durukan and Birol*, cited above, §§ 63-69).

20. The Court perceives no grounds to depart from this conclusion in the present case. The interference with the applicant's right to freedom of expression by the suspension of the pronouncement of his judgment was thus not "prescribed by law" for the purposes of Article 10 § 2 of the Convention.

21. There has accordingly been a violation of Article 10 of the Convention.

II. OTHER COMPLAINTS

22. The applicant also complained under Article 6 of the Convention, alleging insufficient reasoning in the judgment of the Third Assize Court, and contested its evaluation of the evidence indicating that he had been present at the event in question. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

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23. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,171 in respect of the costs and expenses incurred before the domestic courts and those incurred before the Court. He submitted an invoice drawn up by his lawyer, covering the representation fees before the Constitutional Court and before this Court, for a total amount of EUR 4,171.

24. The Government contested the applicant's claims as being unsubstantiated and excessive.

25. The Court awards the applicant EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable (see *Durukan and Birol v. Türkiye*, cited above, § 73). It also awards EUR 1,000, plus any tax that may be chargeable to the applicant in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention admissible;

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

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 September 2024 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President