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

SECOND SECTION

DECISION

Application no. 59496/10
Neslihan ÇOBAN and Behiye AVCI
against Turkey

The European Court of Human Rights (Second Section), sitting on 8 November 2016 as a Committee composed of:

Nebojša Vučinić, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 August 2010,

Having regard to the declaration submitted by the respondent Government on 23 May 2016 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicants, Ms Neslihan Çoban and Ms Behiye Avcı, are Turkish nationals, who were born in 1981 and 1935 respectively and live in Kahta and Şanlıurfa. They were represented before the Court by Ms A. Arıcı, a lawyer practising in Şanlıurfa.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants complained under Article 6 of the Convention about the infringement of their right of access to a court. They further complained under Article 10 of the Convention that their conviction for having used the word "Sayın," which is a term of courtesy in their view, violates their right to freedom of expression.

4. The application had been communicated to the Government on 24 March 2014.

THE LAW

5. The applicants complained about the infringement of their right of access to a court. They further complained that their conviction for having used the word "Sayın ," which is a term of courtesy in their view, violates their right to freedom of expression. They relied on Articles 6 and 10 of the Convention.

6. After the failure of attempts to reach a friendly settlement, by a letter of 23 May 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

7. The declaration provided as follows:

> "The Government hereby wish to express by way of unilateral declaration its acknowledgement that the applicants, whose names appear in the appended list, were denied the right of access to a court within the meaning of Article 6 § 1 of the European Convention on Human Rights (hereinafter referred to as 'the Convention'). The Government would like to acknowledge also that the applicants' right to freedom of expression did not meet the standards enshrined in Article 10 § 1 of the Convention.
>
> Consequently, the Government are prepared to pay each applicant 2,500 (two thousand and five hundred) Euros. This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses (inclusive of value-added taxes paid on lawyers' fees), will be converted into the national currency at the rate applicable on the date of payment, and will be free of any further taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month-period, the Government undertake to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.
>
> The Government therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention. "

8. By a letter of 22 July 2016, the applicants indicated that they were not satisfied with the terms of the unilateral declaration.

9. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

10. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

11. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

12. The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the violation of the right to freedom of expression (see, for example, *Yalçınkaya and Others v. Turkey*, nos. 25764/09 and 18 others,§§ 26-38, 1 October 2013).

13. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

14. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

15. The Court considers that this amount should be converted into the national currency of the Respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

16. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

17. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Articles 6 and 10 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 1 December 2016.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President