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

SECOND SECTION

DECISION

Application no. 32985/12
Hüseyin Hayrettin ERDOĞAN and Faik ERDOĞAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 December 2017 as a Committee composed of:
Nebojša Vučinić, *President,*
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*
Having regard to the above application lodged on 27 March 2012,
Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Hüseyin Hayrettin Erdoğan and Mr Faik Erdoğan, are Turkish nationals who were born in 1967 and 1930 respectively and live in Ankara.

A. The circumstances of the case

1. The facts of the case, as submitted by the applicants, may be summarised as follows.
2. The applicants are attorneys who are affiliated with the Ankara Bar Association ("the Ankara Bar").
3. During the ordinary general assembly meeting of the Ankara Bar, which took place on 10 October 2010, an election was held to determine the Bar's new president and board of directors.
4. The applicants did not participate in the general assembly meeting and therefore did not vote in the election.

5. By a letter dated 14 March 2011, the Ankara Bar informed the applicants that the electoral board in the district of Altındağ, in Ankara, had imposed on each of them a fine of 110 Turkish liras (TRY – equivalent to approximately 55 euros (EUR) at the time in question), pursuant to section 86 of the Attorneys Act, for their failure to participate and vote in the Bar election without any valid excuse, despite their being included in the list of voters.

6. The Ankara Bar asked the applicants to pay the said sum within fifteen days of their receipt of the letter, adding that it (that is to say the Ankara Bar) was subject to inspections undertaken by the Ministry of Justice and that it had already received a warning about the need to collect any fines imposed.

7. On 29 March 2011 the applicants lodged an objection with the disciplinary committee of the Ankara Bar ("the Ankara Bar Disciplinary Committee") challenging the imposition of the fine. They argued that compulsory voting (and a fine for those failing to vote) was not compatible with either freedom of thought and conscience or the prohibition on discrimination provided in the Constitution of Turkey and by the Convention. They also complained about the non-existence before the national courts of any remedy.

8. The Ankara Bar Disciplinary Committee dismissed the applicants' objections on 25 May 2011 and 21 March 2012 respectively. In both decisions, it held that the excuse offered by the applicants in their letter to the Ankara Bar had not been valid and that therefore the objection had to be rejected, in accordance with sections 64 and 86 of the Attorneys Act. It also specified that the decision was final, pursuant to section 64 § 3 of the Attorneys Act.

9. The Ankara Bar Disciplinary Committee's decisions were served on the applicants on 5 January and 23 March 2012 respectively.

B. Relevant domestic law

10. The relevant provisions of the Attorneys Act read as follows:

Section 64

"(...) An appeal to the disciplinary committee of a bar against a fine is possible within fifteen days of [receiving notice thereof]. The decision of the disciplinary committee is final (...)"

Section 86

"An attorney inscribed in the register of a bar association has an obligation to participate and vote in ordinary and extraordinary general assemblies. The president of the electoral board shall impose on those who fail to participate or vote in those meetings without a valid excuse a fine equivalent to one-third of the annual

membership fee paid by the attorneys affiliated with that bar association. These fines are collected by the relevant bar association and registered as revenue.

Paragraphs three and four of section 64 also apply to fines imposed pursuant to this section.*"*

Section 134

*"*The disciplinary sanctions stipulated in the present law will be imposed on those who act against the honour, order, traditions, and professional rules of attorneys, and on those who neglect their duties in professional practice or fail to maintain the personal integrity required by their duties.*"*

Section 135

"Disciplinary sanctions are as follows:

1. Warning: informing an attorney of the necessity for [him/her] to exercise greater care in the practice of [his/her] profession.

2. Reprimand: notifying the lawyer of culpable conduct on his/her part while undertaking his/her professional duties.

3. Fine: from ten thousand to one hundred and fifty thousand Turkish liras.

4. Dismissal: Prohibition of an attorney or an attorney partnership from professional practice for not less than three months and not more than three years.

5. Disbarment: Withdrawal of an attorney's license, striking off [that attorney from] the register of a bar association and revocation of the title of attorney (...)"

Section 136

"Those who fail to comply with the provisions of part six of this law, which governs the rights and duties of attorneys, will be punished first by a reprimand, and upon recurrence, depending on the severity of the offence, (...) by a fine or dismissal or disbarment (...)"

COMPLAINTS

11. The applicants complain under Article 6 § 1 of the Convention that the Ankara Bar Disciplinary Committee did not provide relevant reasons when dismissing their objections. Under the same provision, the applicants also argue that the Ankara Bar Disciplinary Committee lacked independence and impartiality as the Ankara Bar acted under instructions from the Ministry of Justice.

12. The applicants furthermore complain under Article 9 of the Convention that compulsory voting in the Ankara Bar election was contrary to freedom of thought and conscience.

13. The applicants also complain under Article 13 of the Convention of the lack of an effective remedy against the decision of the Ankara Bar Disciplinary Committee before the national courts.

14. Lastly, the applicants complain under Article 1 of Protocol No. 1 that they had to pay a fine of TRY 110.

THE LAW

A. Article 6 § 1 of the Convention

15. In respect of their complaints concerning the alleged unfairness of the proceedings relating to the fine that they received because of their absence from the Bar elections, the applicants relied on Article 6 § 1 of the Convention, which provides, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair (...) hearing (...)"

16. It must first be determined whether the impugned proceedings attract the guarantees of Article 6 § 1 under its criminal or civil limb.

1. Criminal head

17. According to the Court's well-established case-law, regard must be had to three criteria in order to ascertain whether there was a "criminal charge": the legal classification of the measure in question in national law, the very nature of the measure, and the nature and degree of severity of the "penalty" (see, *inter alia, Escoubet v. Belgium* [GC], no. 26780/95, § 32, ECHR 1999-VII).

18. As regards the first criterion, the Court notes that there is no doubt that the failure to participate and vote in a bar election is not a criminal offence under Turkish law. The obligation only figures in the Attorneys Act, which sets out rules that are only binding upon attorneys who are affiliated with a bar association. Moreover, the fine that can be levied on those who fail to participate and vote without a valid excuse is only provided in the Attorneys Act. It follows that the proceedings clearly did not fall within the ambit of criminal law.

19. As regards the second criterion, the wording of section 86 of the Attorneys Act suggests that the fine is intended to encourage participation and to increase turnout at general assembly meetings and elections held by bar associations rather than to punish non-participation. The Court also notes that the scope of the application of the fine in question is very limited, as the obligation to participate and vote in a bar election is only incumbent on attorneys who are members of a certain bar association (contrast *Öztürk v. Germany*, 21 February 1984, § 53, Series A no. 73).

20. As regards the final criterion, section 86 of the Attorneys Act provides that the amount of the fine shall be equivalent to one-third of the annual membership fee payable to the bar association in question for that particular year. In the present case, the applicants had to pay the sum of TRY 110. The Court considers that, taking into account the average annual income of an attorney in Turkey, the amount of the fine levied on the applicants was very small.

21. In conclusion, none of these aspects, taken separately or cumulatively, is sufficient to categorise the fine imposed on the applicants for not participating in the Ankara Bar election as a "criminal charge", within the meaning of Article 6 of the Convention.

2. Civil head

22. After determining that Article 6 cannot be applied under its criminal head, the Court considers it appropriate to examine the question of whether the impugned proceedings fell within the scope of Article 6 under its civil head.

23. The Court recalls that Article 6 applies only to proceedings concerning the "determination" of a "civil right or an obligation". The outcome of the proceedings must be directly decisive for the right in question – mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, for instance, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 71, ECHR 2016 (extracts)). In the context of proceedings before professional disciplinary bodies, the Court has consistently held that disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to "contestations" (disputes) over civil rights and obligations (see *Gautrin and Others v. France*, 20 May 1998, § 33, *Reports of Judgments and Decisions* 1998-III, and *Marušić v. Croatia* (dec.), no. 79821/12, § 71, 23 May 2017). According to the Court's case-law, the applicability of Article 6 to disciplinary proceedings is not determined only by the sanctions that are actually imposed by the professional disciplinary bodies. What is important in this assessment is the sanctions which an individual risked incurring in such disciplinary proceedings (see *W.R. v Austria*, no. 26602/95, §§ 29-30, 21 December 1999, and *Marušić,* § 72, cited above). These principles have been applied with regard to several cases concerning proceedings before bar associations (see *A. v. Finland* (dec.), no. 44998/98, 8 January 2004, and *Müller-Hartburg v. Austria*, no. 47195/06, 19 February 2013).

24. The Court must therefore determine whether the applicants' right to exercise a profession was at stake in the impugned proceedings.

25. In that connection, the Court notes that section 134 of the Attorneys Act sets out in general terms what is meant by disciplinary misconduct. As

can be seen from that section, conduct that is incompatible with the integrity of the profession and the duties exercised by lawyers in their professional practice shall be subject to disciplinary sanctions. However, section 136 of the Attorneys Act specifies that disciplinary sanctions can only be imposed in the event of non-fulfilment of the obligations that are listed in part six of the Attorneys Act. In that connection, it should be noted that the provisions concerning the obligation to participate and vote in bar elections are set out in part eight of the Attorneys Act; they are therefore categorically separate from the disciplinary obligations of lawyers, as set out in the relevant sections of the Attorneys Act.

26. Moreover, pursuant to section 86 of the Attorneys Act, any fine shall be imposed by an electoral board (which, under the Attorneys Act, is in charge of overseeing bar elections) and not by the bar association in question. As a result, the disciplinary procedure applicable to allegations of disciplinary misconduct is not set in motion during proceedings before the disciplinary committee concerning non-participation in bar elections. The disciplinary committee is only (pursuant to sections 64 and 86 of the Attorneys Act) vested with the authority to decide during an appeal hearing whether there were any grounds justifying absence from a bar election. Proceedings before a disciplinary committee are therefore not about whether there has been a violation of disciplinary rules but whether the excuse presented for not participating and voting in a bar election is valid.

27. These aspects of the impugned proceedings are sufficient for the Court to conclude that failure to participate and vote in a bar election constitutes neither disciplinary misconduct nor a violation of a professional obligation (unlike, for example, an instance of malpractice or neglect of professional duties), within the meaning of the Attorneys Act. As a result, it cannot trigger any of the disciplinary sanctions listed under section 135, which would render possible the prospect of dismissal or disbarment. It follows that at no time during the impugned proceedings did the applicants run the risk of incurring any disciplinary sanction that could have put at risk their ability to practice their profession.

28. Lastly, even if the applicants were to again not participate or vote in subsequent general assembly meetings or elections, they would not suffer any consequence other than the imposition of the same monetary fine, pursuant to section 86 of the Attorneys Act; this is distinguishable from the fine provided as a disciplinary sanction by section 135 of the Attorneys Act.

29. In the light of the explanations above, the Court observes that the applicants' failure to participate and vote in the Ankara Bar election would, under no circumstances, have had any impact on their right to freely exercise their profession as attorneys. It follows that the applicants' right to continue practising their profession was not at stake in the impugned proceedings (unlike in the case of *A.,* cited above).

30. In these circumstances, the Court holds that Article 6 is not applicable to the impugned proceedings either under its criminal or civil head.

31. It follows that the applicants' complaints are incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and should be rejected, in accordance with Article 35 § 4 of the Convention.

B. Other Complaints

32. The applicants also complained that the imposition of fine gave rise to a violation of Article 9 and 13 of the Convention and Article 1 of Protocol No.1.

33. Having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2018.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President