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

SECOND SECTION

DECISION

Application no. 80669/12
Osman GÖNEN and Others
against Türkiye

The European Court of Human Rights (Second Section), sitting on 16 April 2024 as a Committee composed of:

Frédéric Krenc*, President*,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 80669/12) 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 12 October 2012 by the five Turkish nationals listed in the appended table ("the applicants"), who were represented by Mr M.A. Pesok, a lawyer practising in Istanbul;

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 the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicants' dismissal, allegedly in violation of the terms of a collective agreement that had been entered into by their trade union.

2. The applicants were employed by the airline Türk Hava Yolları Anonim Ortaklığı (Turkish Airlines – "the company"), a privately owned company, and were assigned to the ground services department at Yeşilköy Airport.

3. They were members of the trade union Hava İş and were bound, accordingly, by the terms of the collective agreement signed with the company in question. Section 8 of the agreement stated that in the event of the closure or sale of certain departments, the employees of those departments were to be transferred by the employer to another appropriate department, with the termination of their contracts being a last resort. An employee who did not accept such a transfer was entitled to compensation equivalent to six months' pay.

4. In 2010, the company decided to sell the ground services of six airports, including the one mentioned above, to another private company. As a result, the applicants' employment contracts were terminated owing to the reorganisation of Turkish Airlines. The applicants were informed by a letter of 17 August 2010 from Turkish Airlines that there was no possibility of transferring them to another department because of a surplus number of workers, and that their contracts were therefore terminated. However, the applicants were paid their wages for the notice period and severance pay.

5. The applicants brought an action seeking their reinstatement. The Labour Court heard witnesses, conducted an on-site investigation, and commissioned an expert report prepared by professional business managers, a professor of labour law and an accountant. The authors of the report concluded that there was no evidence that the sale of the department in question had been an arrangement designed to circumvent the terms of the collective agreement; that the company's decision about the impossibility of transferring the applicants to another department had been rational, and that ultimately no new employees had been hired. Relying on the expert report, the court held that the applicants' dismissal had been lawful. The applicants appealed against that decision, but the Court of Cassation confirmed the findings of the Labour Court.

6. The applicants complained under Article 11 of the Convention that the interpretation given by the courts of the above-mentioned collective agreement had violated their trade-union rights.

THE COURT'S ASSESSMENT

7. The Court reiterates that, according to its case-law, Article 11 of the Convention presents trade-union freedom as a special aspect of freedom of association and that, although the essential object of that Article is to protect the individual against arbitrary interference by public authorities with the exercise of the rights it protects, there may in addition be positive obligations on the State to secure the effective enjoyment of such rights (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 109 and 110, ECHR 2008). The Court has previously noted that the boundaries between the State's positive and negative obligations under Article 11 of the Convention did not lend themselves to precise definition. The applicable principles are nonetheless

similar. Whether a case is analysed in terms of a positive duty of the State or in terms of interference by the public authorities which needs to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole (see *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 132, ECHR 2013 (extracts), and *Tek Gıda İş Sendikası v. Turkey*, no. 35009/05, § 50, 4 April 2017).

8. The Court further reiterates that there is a positive obligation on the authorities to provide protection against dismissal by private employers where the dismissal is motivated solely by the fact that an employee belongs to a particular association, or at least to provide the means whereby there can be an independent evaluation of the proportionality of such a dismissal in the light of all the circumstances of a given case (see, *mutatis mutandis*, *Redfearn v. the United Kingdom*, no. 47335/06, § 43, 6 November 2012, concerning membership of a political party).

9. In the present case, the Court observes that the applicants had the benefit of the collective agreement entered into by the trade union to which they were affiliated. The applicants essentially challenged the interpretation given to the collective agreement by the judicial authorities.

10. Examining the proceedings relating to the termination of the applicants' employment contracts, the Court notes that the domestic courts heard witnesses, carried out a visit to the premises and commissioned an expert report to be drawn up by a committee of labour-law professionals.

11. The Court notes that there are no factors which would allow it to find that the conclusions of the national authorities were arbitrary or were delivered as a result of proceedings which were not suitable for making a proper evaluation of the relevant provision of the collective agreement relied on by the applicants. There is also no evidence in the case file indicating that the applicants were dismissed due to their membership of the trade union Hava İş which continued to operate within Turkish Airlines and remained a party to the collective agreement.

12. In the light of the foregoing, the Court concludes that there are no elements disclosing a breach by the State of its positive obligation to secure the applicants' trade-union freedom as protected by Article 11 of the Convention.

13. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 May 2024.

Dorothee von Arnim Deputy Registrar	Frédéric Krenc President

Appendix

List of applicants:

No.	Applicant's name	Year of birth	Place of residence
1.	Osman GÖNEN	1963	Istanbul
2.	Nihat AKYASAN	1958	Sakarya
3.	Adnan SARIASLAN	1964	Istanbul
4.	Metin SERBEST	1964	Tekirdağ
5.	Rıfat YURTSEVER	1958	Istanbul