



Dissolution of a foundation on account of its insufficient financial resources did not breach the Convention

In today's **Chamber** judgment¹ in the case of **MİHR Foundation v. Turkey** (application no. 10814/07) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the dissolution of the MİHR Foundation (*Medeniyet, İrfan, Hayır, Refah Vakfı* – foundation of civilisation, knowledge, welfare and prosperity) on the ground that its financial resources were insufficient to cover its expenses and to fulfil its registered aims.

The Court found in particular that the fact of requiring the applicant foundation to satisfy minimum financial criteria stemmed from the need to preserve the efficiency and credibility of the system of public-interest foundations in Turkey. It took the view that the reasons given by the national courts – in finding that the applicant foundation had been dissolved on account of financial difficulties – were relevant and sufficient, that this measure had met a pressing social need, was proportionate to the legitimate aims pursued and, therefore, was necessary in a democratic society.

In addition, the Court did not note any lack of fairness in the domestic proceedings. It rejected the part of the application concerning Article 6 (right to a fair hearing), finding it manifestly ill-founded.

Principal facts

The applicant is a foundation known by the acronym MİHR (*Medeniyet, İrfan, Hayır, Refah Vakfı* – foundation of civilisation, knowledge, welfare and prosperity). It was registered as a Turkish foundation in 1989 with the main purposes of providing assistance to the needy in the areas of Islam, modern technologies and nuclear physics, and of organising classes, setting up universities or joining existing universities.

In 2005 the Ankara District Court ordered the dissolution of the MİHR foundation on the ground that its resources were insufficient to cover its expenses and that it was no longer capable of fulfilling its registered purposes. Its financial assets were transferred to another foundation pursuing similar aims. The judgment was upheld by the Court of Cassation in 2006.

In 2014 the foundation's request for re-registration was rejected by the domestic courts. An individual appeal has been pending since January 2018 before the Turkish Constitutional Court.

Complaints, procedure and composition of the Court

Relying in particular on Articles 6 (right to a fair hearing) and 11 (freedom of assembly and association), the applicant foundation complained about its dissolution.

The application was lodged with the European Court of Human Rights on 26 February 2007.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,
Paul Lemmens (Belgium),
Işıl Karakaş (Turkey),
Julia Laffranque (Estonia),
Stéphanie Mourou-Vikström (Monaco),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),

and also Hasan Bakırcı, *Deputy Section Registrar*.

Decision of the Court

Article 11 (freedom of assembly and association)

The Court first observed that the MİHR foundation had not been dissolved on account of its constitution or any incompatible activities, but had simply been declared dissolved because it could no longer afford to carry out its activities in order to fulfil its registered aims. The domestic civil courts had found that it was no longer doing anything to fulfil its aims, because it no longer had any assets except for two buildings which generated its sole revenue from small rents, any donations it received were minimal, the income indicated in its balance sheet both before and after the dissolution procedure had been insignificant, and its publication or radio broadcasting activities had been restricted, mainly for economic reasons.

The Court further noted that the aims of the applicant foundation, which had been expressly set out in its constitution, namely “research, advice and publications in the field of the main natural or social sciences, establishment of universities or faculties with the aim of pursuing such research, economic and commercial activities, various types of social assistance, etc.”, corresponded to aims of public utility or general interest. It took the view that to expect from the applicant foundation that it should meet minimum financial criteria was justified by the need to preserve the efficiency and credibility of the system of public-interest foundations in Turkey.

Consequently the Court concluded – without prejudice to the question of the re-establishment of the applicant foundation, which was still pending in the national courts –, that the reasons given to find that the applicant foundation had been dissolved for financial difficulties were “relevant and sufficient”. This measure had met a pressing social need, was proportionate to the legitimate aims pursued and was therefore necessary in a democratic society. There had not therefore been a violation of Article 11 of the Convention.

Article 6 (right to a fair hearing)

The Court found that the Ankara District Court had carefully examined, in accordance with the requirements of adversarial proceedings, the findings of experts at the request of the parties, including that of the foundation, and had taken them into account in its assessment of evidence as set out in its sufficiently reasoned judgment. Having regard to all the information before it, the Court concluded that the choice of experts and the assessment of their reports did not show any lack of fairness in the domestic proceedings. Accordingly, this part of the application was manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.