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

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CHAMBER JUDGMENT
ENERJI YAPI-YOL SEN v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Enerji Yapi-Yol Sen v. Turkey*** (application no. 68959/01), concerning a ban preventing public-sector employees from taking part in a one-day national strike in support of the right to a collective-bargaining agreement.
(The judgment is available only in French.)

The Court unanimously found a **violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights. In application of Article 41 (just satisfaction) of the Convention, it awarded the applicant union 1,500 euros (EUR) for costs and expenses.

1. Principal facts

Enerji Yapı-Yol Sen is a union of civil servants which was founded in 1992 and is active in the fields of land registration, energy, infrastructure services and motorway construction. It is based in Ankara and is a member of the Federation of Public-Sector Trade Unions.

On 13 April 1996 the Prime Minister's Public-Service Staff Directorate published circular no. 1996/21, which, *inter alia*, prohibited public-sector employees from taking part in a national one-day strike organised in connection with events planned by the Federation of Public-Sector Trade Unions to secure the right to a collective-bargaining agreement.

On 18 April 1996 some of the trade union's board members took part in the strike and received disciplinary sanctions as a result.

Appeals lodged by Enerji Yapı-Yol Sen were dismissed, the Turkish courts considering in particular that the aim of the impugned circular was to remind public servants of the legislative provisions governing the conduct expected of them.

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[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2. Procedure and composition of the Court

The application was lodged with the Court on 1 September 2000 and declared partly admissible on 31 January 2008.

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

Josep **Casadevall** (Andorra), ***President***,
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Ineta **Ziemele** (Latvia),
Işıl **Karakaş** (Turkey), ***judges***,

and also Santiago **Quesada**, ***Section Registrar***.

3. Summary of the judgment[2]

Complaint

Relying on Article 11, Enerji Yapı-Yol Sen alleged that the Turkish authorities had breached its right to trade-union freedom.

Decision of the Court

Concerning the general principles relating to the obligations incumbent on the States under Article 11, the Court referred to its case-law set out in its Grand Chamber judgment in the case of *Demir and Baykara v. Turkey* (12 November 2008, application no. 34503/97). It pointed out, *inter alia*, that the impugned circular had been adopted five days before the action planned by the Federation of Public-Sector Trade Unions, at a time when work was under way to bring Turkey's legislation into line with international conventions on the trade-union rights of State employees and the legal situation of public servants was unclear.

The Court acknowledged that the right to strike was not absolute and could be subject to certain conditions and restrictions. However, while certain categories of civil servants could be prohibited from taking strike action, the ban did not extend to all public servants or to employees of State-run commercial or industrial concerns. In this particular case the circular had been drafted in general terms, completely depriving all public servants of the right to take strike action.

Furthermore, there was no evidence that the national action day on 18 April 1996 had been prohibited. In joining in the action the members of the applicant trade union had simply been making use of their freedom of peaceful assembly. In the Court's view the disciplinary action taken against them on the strength of the circular was capable of discouraging trade-union members and others from exercising their legitimate right to take part in such one-day strikes or other actions aimed at defending their members' interests. Furthermore, the Turkish

[2] This summary by the Registry does not bind the Court.

Government had failed to justify the need for the impugned restriction in a democratic society.

The Court found that the adoption and application of the circular did not answer a "pressing social need" and that there had been disproportionate interference with the applicant union's rights. There had therefore been a violation of Article 11.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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