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

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# Convictions and prison sentences for people who took part in demonstrations in Turkey undermined their right to freedom of assembly

In today's **Chamber** judgments[1] in the cases of **Bakır and Others v. Turkey** (application no. 46713/10) and **İmret v. Turkey (no. 2)** (no. 57316/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly)** of the European Convention on Human Rights in both cases.

The cases concerned complaints brought by 13 Turkish nationals about their criminal convictions for participating in demonstrations in 2005/2006. Five of the applicants were convicted of membership of illegal armed organisations, while the other eight were convicted of disseminating terrorist propaganda. They all served prison sentences, ranging between one year and eight months and seven years.

As concerned the five applicants who had been convicted of membership of illegal armed organisations, the Court found in particular that Article 220 § 7 of the Criminal Code, used as the basis for their convictions, had not provided the applicants with legal protection against arbitrary interference with their right to freedom of assembly. The Court found that neither the wording of Article 220 § 7 nor the domestic courts' judicial interpretation of it appeared to be clear enough. The Court also found that the courts had extensively interpreted the criteria for a conviction of membership in an illegal organisation, to the applicants' detriment. Indeed, they had made no distinction between the applicants, a politician and peaceful demonstrators, and individuals who had actually committed offences within an illegal organisation. The Court pointed out that when demonstrators, such as the applicants, faced the risk of a sentence of between five and ten years in prison for membership in an illegal organisation, a sanction grossly disproportionate to their conduct, this inevitably had a strong deterrent effect on the exercise of their right to freedom of expression and assembly.

As concerned the remaining eight applicants, the Court did not examine the law on which their convictions had been based as it found that the national courts had in any case not sufficiently justified why the applicants' conduct had constituted propaganda in favour of an illegal organisation or had warranted such lengthy prison sentences.

## Principal facts

The applicants in the first case are 12 Turkish nationals born between 1954 and 1987. Ten of the applicants live in Turkey, one lives in France, and one lives in Switzerland. The applicant in the second case, Abdulcelil İmret, is also a Turkish national. He was born in 1958 and lives in Batman (Turkey).

Four of the applicants in the first case and the applicant in the second case were convicted, under Article 220 § 7 and Article 314 of the Criminal Code, of membership of an illegal armed organisation.

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.

Following their participation in various demonstrations, they were found to have "knowingly and willingly" aided, respectively, the MLKP (Marxist-Leninist Communist party) and the PKK (Kurdish Workers' Party).

The other eight applicants in the first case were convicted under another law, namely section 7(2) of the Prevention of Terrorism Act (Law no. 3713), of disseminating propaganda in favour of the MLKP.

In convicting the 12 applicants in the first case in 2008, the courts concluded that they had participated in demonstrations in 2005 and 2006 which, although authorised by the authorities, were used as a front by legal civil society organisations such as the ESP (the Socialist Platform of the Oppressed) and the SGD (Socialist Youth Association) for promoting the MLKP. The courts found in particular that, during the demonstrations, the applicants had carried banners and pennants for the ESP and/or the SGD, worn clothes with "ESP" written on them and had red ribbons pinned on their arms. They had also chanted slogans.

Mr İmret, on the other hand, was convicted in 2006 of attending ten public meetings over the preceding year which the courts considered illegal because they had been organised by the People's Democratic Party (DEHAP) in line with the PKK's instructions. The courts found that Mr İmret, at the time leader of the Batman branch of DEHAP, was therefore responsible for the illegal demonstrations and that he had also made speeches praising PKK leader, Abdullah Öcalan. They rejected his argument that he had attended the meetings in his role as a local political leader to prevent clashes, specifically at the request of the security forces.

The Court of Cassation upheld the judgments in both cases.

Between 2009 and 2012 all the applicants in the first case, except one, served prison sentences ranging from one year and eight months (for the propaganda offence) and between six and seven years (for the offence of being a member of an illegal organisation). Mr İmret, the applicant in the second case, served a sentence of five years, two months and 15 days.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) and Article 11, all the applicants complained that their criminal convictions and sentences for attending demonstrations had constituted an unjustified interference with their right to freedom of expression and to freedom of assembly. In particular, the applicants in the first case alleged that they had had no way of knowing that participating in lawful and peaceful demonstrations would lead to their prosecution, while the applicant in the second case alleged that his conviction and lengthy sentence had been part of Government policy to put pressure on his political party.

The applicants also made complaints under Article 6 (right to a fair trial), Article 5 (right to liberty and security) and Article 7 (no punishment without law).

The applications were lodged with the European Court of Human Rights on 23 June 2010 and 7 September 2010, respectively.

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

Robert **Spano** (Iceland), *President*,
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Stanley **Naismith**, *Section Registrar.*

## Decision of the Court

In both cases the Court decided to examine the applicants' complaints from the standpoint of Article 11, considered in the light of Article 10.

First, the Court found that all 13 applicants' convictions had constituted an interference with their right to freedom of assembly.

Next, as concerned four of the applicants in the first case and Mr İmret in the second case, it went on to examine the law, namely Article 220 § 7 and Article 314 of the Criminal Code, used as a basis for their convictions.

It found that, although accessible to the applicants, Article 220 § 7 had not been clear enough. In particular, its wording was not formulated in such a way as to clearly define the meaning of "aiding knowingly and willingly" in the context of demonstrations. Nor did the Government refer to any examples of judicial practice which defined the meaning and scope of Article 220 § 7 in the context of demonstrations. Thus, there had been no way for the applicants to know whether their actions could have led to their criminal prosecution.

More importantly, as those applicants' cases showed, the array of acts that potentially constituted evidence for a sentence of imprisonment under Article 220 § 7 was so vast that there had been no protection against arbitrary interference by the authorities.

In particular, the four applicants in the first case had been convicted simply because of the clothes they had worn, the banners and pennants they had carried and the slogans they had chanted at what had been legally organised demonstrations. The courts considered that such conduct had amounted to aiding the MLKP and that the applicants could therefore be punished as actual MLKP members.

Similarly, Mr İmret had been punished as an actual PKK member for merely having been present at ten demonstrations, allegedly organised on PKK instructions, and for expressing opinions which the domestic courts considered had been in favour of that illegal organisation.

Indeed, the Court found that Article 220 § 7 in connection with Article 314 § 2 of the Criminal Code had been extensively applied to the detriment of all five of those applicants, without any distinction having been made between them and those who had actually committed offences within either the MLKP or the PKK.

The Court noted that the applicants had served sentences and that, as demonstrators facing charges of membership of an illegal organisation, had even run the risk of an additional five to ten years in prison, a strikingly severe and grossly disproportionate sanction as compared to their conduct. The application of Article 220 § 7 in connection with Article 314 § 2 was, moreover, likely to deter both the applicants as well as the general public from participating in demonstrations and in open political debate in the future.

The Court therefore concluded that Article 220 § 7 of the Criminal Code had not been "foreseeable" in its application since it had not provided those five applicants with legal protection against arbitrary interference with their rights under Article 11 of the Convention. Accordingly, the interference with their freedom of assembly, resulting from the application of Article 220 § 7, had not been prescribed by law, in violation of Article 11 of the Convention."

On the other hand, the Court did not consider it necessary to examine the lawfulness of section 7(2) of Law no. 3713 which had been the basis for the convictions of the remaining eight applicants in the first case.

It found instead that the domestic courts had not sufficiently justified why the slogans the applicants had allegedly chanted had constituted propaganda in favour of the MLKP and thus incitement to violence or terrorism. On the contrary, the Court considered that the applicants shouting slogans and wearing clothes and carrying banners with "ESP" and "SGD" on them had not advocated violent acts. Nor had the courts examined whether the applicants' conduct had had any impact on public order. In fact, they had not taken account at all of the context in which the demonstrations had been held or the conduct of the demonstrators, and in particular that of the applicants. Last but not least, the applicants' acts had not by any means been so serious as to justify imposing such lengthy prison sentences. The Court therefore concluded that those eight applicants' criminal convictions had not been "necessary in a democratic society", in further violation of Article 11.

Finally, the Court held that there was no need to give a separate ruling on the applicants' other complaints.

## Just satisfaction (Article 41)

The Court held that Turkey was to pay each applicant in the first case between 3,000 and 7,500 euros (EUR) in respect of non-pecuniary damage, and jointly EUR 3,500 in respect of costs and expenses. Mr İmret was awarded EUR 7,500 in respect of non-pecuniary damage and EUR 2,424 in respect of costs and expenses.

*The judgment is available only in English.*

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