



## The dissolution of the association for mutual aid and solidarity with the families of prisoners and convicts in Adana breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [Adana TAYAD v. Turkey](#) (application no. 59835/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the dissolution of the applicant association, known as Adana TAYAD, ordered by the District Court on the grounds of illegal activities of certain members of the association's board of directors, while the judgments handed down in the proceedings relating to those offences were not yet final.

The Court reiterated that the outright dissolution of an association was a very harsh measure entailing significant consequences for its members, and could be taken only in the most serious cases. Under Article 11, States had a heightened duty to provide reasons justifying such a measure.

The Court found, in particular, that as they had not established the existence of compelling reasons for the dissolution order, the national authorities had not discharged their duty to justify the measure, which impaired the very essence of the right to freedom of association. Accordingly, the Court held that the interference had not been shown to be "necessary in a democratic society".

### Principal facts

The applicant, the Association for Mutual Aid and Solidarity with the Families of Prisoners and Convicts in Adana (*Adana Tutuklu ve Hükümlü Aileleriyle Yardımlaşma ve Dayanışma Derneği* – commonly known as "Adana TAYAD"), is an association under Turkish law. The declared aim of the association's founders was to provide help and support to the families of prisoners and convicts.

On 18 January 2008 the Adana Provincial Security Directorate received confidential information that, for three or four days, signatures had been collected in support of Abdullah Öcalan in a district of the city and that the petitions containing these signatures had been handed over to the Adana TAYAD association. In order to verify this information, the authorities carried out a search of the association's premises.

From 21 April to 13 May 2008 a commission set up on 31 January 2008 with the agreement of the governor of Adana carried out an inspection of the association. It emerged that the association was unable to produce the original or a copy of a document concerning its income and that a comparison of the list of participants at the general meeting of 24 December 2006 with the list of participants at the general meeting of 8 July 2007 revealed differences in signatures.

Previously, on 7 April 2006, criminal proceedings for a breach of the Associations Act had been brought against the directors of the association before the Adana Criminal Court. On 10 April 2006

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](http://www.coe.int/t/dghl/monitoring/execution).

the Criminal Court had sentenced the accused to six months' imprisonment, a sentence subsequently converted into a fine. The Court of Cassation upheld this judgment on 27 March 2012.

As a result of the search, criminal proceedings were initiated before the Adana Assize Court against some of the association's directors for disseminating propaganda in favour of a terrorist organisation. On 31 March 2009 the Assize Court sentenced them to two years' imprisonment.

On 19 November 2012 the Court of Cassation overturned the decision, remitting it to the Assize Court for a fresh assessment. It noted that the offence in question fell under Law no. 6352, which had entered into force on 5 July 2012, according to which "at the investigation stage, prosecution is suspended". On 24 October 2013 the Assize Court took back the case then complied with the ruling of the Court of Cassation by suspending the criminal proceedings.

On 12 August 2008 the Adana public prosecutor's office filed an indictment in civil proceedings with the Adana District Court and sought the dissolution of the association.

On 17 September 2009 the court granted the request of the public prosecutor's office and ordered the dissolution of the association. It observed that the association was engaged in activities that no longer corresponded to the purpose defined in its constitution, that it was disseminating propaganda in favour of an illegal terrorist organisation, and that, as a result, its purpose "had become incompatible with the law and with morals" and its object had become illegal under Article 89 of the Civil Code. On 7 October 2009 the applicant association appealed to the Court of Cassation. On 3 December 2009 that court upheld the judgment, which became final.

## Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the applicant association complained of its dissolution by the authorities.

The application was lodged with the European Court of Human Rights on 20 September 2010.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Marko **Bošnjak** (Slovenia),  
Valeriu **Grițco** (the Republic of Moldova),  
Egidijus **Kūris** (Lithuania),  
Arnfinn **Bårdsen** (Norway),  
Darian **Pavli** (Albania),  
Saadet **Yüksel** (Turkey),

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

## Decision of the Court

### Article 11

The Court noted at the outset that the domestic courts had ordered the dissolution of the applicant association and ended its very existence, preventing it from carrying out any activities as an association. That measure amounted to interference with the exercise of its right to freedom of association under Article 11 of the Convention. The interference had been "prescribed by law", namely by Article 89 of the Civil Code, and had been aimed at the prevention of disorder. It remained for the Court to determine whether the interference had been "necessary in a democratic society".

The proceedings for the dissolution of the association had been commenced at the request of the Adana public prosecutor's office. The Adana District Court had granted the request and ordered the dissolution of the association.

The Court observed that the District Court had based its judgment on the Adana Assize Court's judgment of 31 March 2009, which had not yet been final, and that in making the dissolution order it had referred mainly to the information in the case file and to the judgment of the Adana Criminal Court sentencing some of the association's directors to payment of a fine.

The Court acknowledged that the charges brought by the Adana public prosecutor against several members and directors of the applicant association had been serious. Nevertheless, in the Court's view, the civil courts should have carried out an independent assessment that did not simply reproduce the criminal courts' findings against the individual members of the defendant association, especially since their convictions had not been final.

The Court reiterated that the outright dissolution of an association was a very harsh measure entailing significant consequences for its members, and could be taken only in the most serious cases. Under Article 11, States had a heightened duty to provide reasons justifying such a measure.

In the Court's view, some of the facts on which the District Court had based its findings could not of themselves constitute incitement to terrorism. The only act in the present case capable of amounting to a form of propaganda had been the distribution of the newspaper *Sope Roje*; however, the judgment did not explain convincingly how the content of that newspaper constituted incitement to terrorism.

The Court therefore found that the District Court had not based the dissolution order on acceptable and convincing reasons. This was liable to have a chilling effect on the applicant association and its individual members, but also on human rights organisations generally.

Lastly, even assuming that the allegations had been proven, the Court observed that the domestic courts had not considered less stringent measures, and the Government had not provided sufficient evidence that the dissolution of the association had been the only option capable of achieving the authorities' aims.

As they had not established the existence of compelling reasons for the dissolution order, the national authorities had not discharged their heightened duty to justify the measure, which impaired the very essence of the right to freedom of association. Accordingly, the Court held that the interference had not been shown to be "necessary in a democratic society". There had therefore been a violation of Article 11 of the Convention in the particular circumstances of the case.

*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.