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

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Convention violation on account of administrative fine imposed on the chair of Amnesty International Türkiye

In today's **Chamber** judgment[1] in the case of Korkut and Amnesty International Türkiye v. Türkiye (application no. 61177/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 (right to a fair trial/lack of reasoning) of the European Convention on Human Rights, and

a violation of Article 11 (freedom of assembly and association)

The case concerned the administrative fine which the chair of the Turkish section of Amnesty International was ordered to pay for failing to comply with a statutory provision requiring associations to declare funds received from abroad to the authorities before making use of them.

With regard to Article 6 of the Convention the Court held that, by relying solely on the findings of the inspection report prepared by the authorities and by not replying to the arguments raised by the applicants, the domestic courts had not given sufficient reasons for their decisions.

Regarding Article 11 of the Convention, the Court held that the applicants, who had declared to the local authorities the financial contributions which the applicant association had received from its international headquarters to cover current expenditure, had been unable to foresee at the relevant time whether those declarations would be regarded as out of time and result in an administrative fine. The requirement of foreseeability of domestic law under Article 11 of the Convention had thus not been satisfied and, accordingly, the interference with the applicants' right to freedom of association had not been prescribed by law at the relevant time.

Principal facts

The case was brought by two applicants: Amnesty International Türkiye, an association under Turkish law established in 2002, which is the Turkish section of the London-based organisation Amnesty International, and Mr Yakup Levent Korkut, a Turkish national who was the chair of the applicant association at the relevant time.

In October 2007 the Governor of Istanbul ordered an inspection of the applicant association. The inspection report noted some irregularities in the association's activities. It stated in particular that in 2006 and 2007 the applicant association had on 16 occasions delayed in complying with the requirement to declare funds from a foreign source to the Governor's office prior to their use, in breach of section 21 of the Associations Act. The report recommended that the chair of the association be ordered to pay an administrative fine under section 32 of the Act in respect of each of the breaches found.

The Associations Act, which entered into force in 2004, provided that an association could receive financial contributions from a foreign source provided, firstly, that they were channelled through the

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.

banking network and, secondly, that the amount of any such funds was declared to the authorities before they were used (section 21). It also provided that failure to comply with those requirements could result in an administrative sanction (section 32).

In January 2008 the Governor of Istanbul ordered Mr Korkut, as chair of the applicant association, to pay an administrative fine of approximately 5,283 euros (EUR). Mr Korkut challenged that decision, without success.

Mr Korkut subsequently appealed to the domestic courts, complaining of the manner in which the administrative fine had been imposed and arguing that the legislation was not applicable to transfers from the applicant association's international headquarters to cover certain items of current expenditure. The payments had come from Amnesty International's headquarters (ten payments, all declared less than three months after being made, with the exception of one for which the procedure had not yet been completed at the time of the inspection), from Amnesty International Norway (four payments, of which only one remained to be declared at the time of the inspection, the other three having been declared less than one month after being made) and from individuals resident abroad (two payments declared less than one month after being made). Before the Assize Court, Mr Korkut submitted a letter signed by the Directorate of Associations of the Istanbul Governor's office explaining that funds transferred from an organisation's international headquarters to the organisation's Turkish branch and used to cover current expenditure were not normally subject to the declaration requirement under section 21 of Law no. 5253. The domestic courts nevertheless dismissed Mr Korkut's claims.

The final domestic decision in the case was given in 2009 by the Assize Court, which upheld the lower court's judgment without ruling on the arguments put forward by Mr Korkut, who in the meantime, in February 2008, had paid the fine in full.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicants complained, in particular, of a lack of reasons for the judicial decisions given in the present case.

Under Article 11 (freedom of assembly and association), they complained about the order for the chair of the Turkish section of Amnesty International to pay an administrative fine.

The application was lodged with the European Court of Human Rights on 12 November 2009.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Article 6

Before the District Court and the Assize Court, the applicants had based their appeals on several serious arguments.

The Court considered that the arguments raised by the applicants could not be regarded as insignificant or as being incapable of influencing the outcome of the proceedings. However, the Court did not find any detailed examination of those arguments in the domestic courts' decisions. The District Court judgment of 5 December 2008 had been based solely on the documents submitted by the Governor's office. The Assize Court, for its part, had upheld that decision in a summary judgment, without ruling on any of the grounds of appeal submitted to it by the applicants. It could not be overlooked, however, that the applicant association had provided evidence in support of its claim that it had declared the funds it had received, as the Turkish section of Amnesty International, from the organisation's international headquarters and from its national sections in other countries, albeit that two of the declarations had been submitted late.

The Court emphasised that it was crucial for the courts to give due consideration to the question whether such funds, originating from the headquarters of the "parent" organisation, fell within the scope of section 21 of the Act. It also noted that the District Court had delivered its judgment on 5 December 2008, just after receiving on 20 November 2008 the documents relating to the inspection of the applicant association and other documents concerning the case. By thus depriving the applicants of the opportunity to put forward their arguments and to submit supporting documents at a hearing or in the form of written observations, the District Court did not appear to have followed the procedural rules set out in section 28 of Law no. 5326.

The Court held that, by relying exclusively on the findings of the inspection report prepared by the authorities and by failing to reply to the applicants' arguments, the domestic courts had not given sufficient reasons for their decisions. **There had therefore been a violation of Article 6 § 1 of the Convention.**

Article 11

The Court considered that the administrative fine imposed on Mr Korkut amounted to interference with the exercise of the right to freedom of association of both applicants. Formally speaking, the interference had had a basis in domestic law, namely sections 21 and 32 of the Associations Act. However, at the relevant time there had been no specific and clear provisions governing the receipt by an association comprising the national branch of an international organisation of funds originating from the organisation's headquarters or from national branches of the organisation located in other countries. That legal vacuum had only been filled in 2020 by the addition of a new paragraph to Article 18 of the Regulations on Associations. Furthermore, the present case was the only example of an administrative fine being imposed on the national branch of an international organisation for failure to comply with the requirement laid down in section 21 of the Associations Act in respect of foreign funds coming from the headquarters or from other national branches of the same organisation.

The Court acknowledged that it was neither possible nor desirable for the framing of laws to be absolutely precise or rigid and that many of them were inevitably couched in terms which, to a greater or lesser extent, were general. The role of adjudication vested in the national courts was precisely to dissipate such interpretational doubts as might remain. However, the Government had not demonstrated the existence of settled case-law to the effect that failure to comply with the requirements of section 21 of the Associations Act in circumstances similar to those of the present case could give rise to an administrative sanction under section 32 of the Administrative Offences Act.

The Court referred to its finding under Article 6 of the Convention and observed that the ambiguities identified above could have been resolved if the domestic courts had conducted a thorough judicial review. However, there was nothing to show that the judges dealing with the individual applicant's appeals had sought to weigh up the various interests at stake by assessing, in particular, the necessity of the measure complained of. It was therefore clear that the courts' review had not

provided adequate and effective safeguards against the arbitrary and discriminatory exercise of the wide discretion left to the executive.

The Court had previously held that in order to comply with the "lawfulness" requirement under Article 11 of the Convention, the law had to be formulated with sufficient precision to enable individuals to foresee, to a reasonable degree, the consequences which a given act might entail and to regulate their conduct accordingly. In the present case, however, the applicants, who had declared to the local authorities the financial contributions which the applicant association had received from its international headquarters to cover current expenditure, had been unable to foresee at the relevant time whether those declarations would be regarded as out of time and result in an administrative fine.

The Court held that the requirement of foreseeability under Article 11 had not been satisfied in the present case and that, accordingly, the interference in question had not been prescribed by law at the relevant time. **There had therefore been a violation of Article 11 of the Convention.**

Just satisfaction (Article 41)

The Court held that Türkiye was to pay the applicants jointly 5,283 euros (EUR) in respect of pecuniary damage, EUR 2,000 in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in French.

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