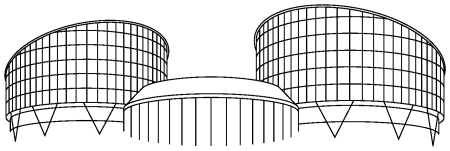

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF YILMAZ YILDIZ AND OTHERS v. TURKEY

(Application no. 4524/06)

JUDGMENT

STRASBOURG

14 October 2014

FINAL

14/01/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yılmaz Yıldız and Others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having deliberated in private on 23 September 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 4524/06) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Turkish nationals, Mr Yılmaz Yıldız, Mr Kamiran Yıldırım and Mr Mehmet Metin Çılgın ("the applicants"), on 3 January 2006.

2. The applicants were represented by Mr Ö. Türkdoğan, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged that there had been an interference with their right to freedom of assembly and their right to freedom of expression.

4. On 14 January 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are Turkish nationals who were born in 1972, 1965 and 1961 respectively. Mr Yılmaz Yıldız lives in Niğde and the others live in Mardin.

6. The first applicant, Yılmaz Yıldız, is a health officer and the branch chairman of the Health and Social Services Workers' Union (*Sağlık ve Sosyal Hizmet Emekçileri Sendikası* – "the SES") in Niğde. The second

applicant, Kamiran Yıldırım, is a doctor and the branch chairman of the SES in Mardin. The third applicant, Mehmet Metin Çılgın, is a doctor and also a member of the SES in Mardin.

7. On 4 February 2005 several members of the union gathered in front of the Niğde Social Security Institution (*Sosyal Sigortalar Kurumu* – "the SSK") Hospital. Subsequently the first applicant read out the SES's press statement drawing attention to the problems that could arise as a consequence of the transfer of hospitals incorporated in the SSK to the Ministry of Health.

8. The statement read as follows:

> "For the attention of the press and the public:
>
> Hospitals incorporated in the SSK have been transferred to the Ministry of Health pursuant to Law no. 5283. Following that structural change patients were unable to take their medication for a long time and hospital staff have been working in a tense atmosphere.
>
> Before the structural changes our union warned the Government and the public. The probable administrative and bureaucratic problems were pointed out: SSK was going to be under a huge economic burden, people would have to pay for health care services and an additional tax was going to be imposed on workers.
>
> Our union maintains that the Government should allocate more funds from the budget to the health care services to redress the structural problems.
>
> Our union states that all citizens should be provided with equal, accessible, sufficient and free health care services."

9. On 25 February 2005 the second and third applicants together with another thirty persons gathered in the Mardin Yenişehir SSK Hospital yard. Subsequently, the second applicant read out the press statement in his capacity as chairman of the Mardin branch of the union.

10. The police did not prevent anyone from entering the yard during either gathering. Nor did they interfere with the demonstrations or the reading out of the press statements.

11. According to the police reports of 4 February 2005 in Niğde and 25 February 2005 in Mardin, the two groups of demonstrators had been warned verbally that their gatherings were illegal and ordered to disband for the protection of public order and safety.

12. The Niğde and Mardin public prosecutors filed indictments charging the applicants with intentionally disobeying orders issued by the authorities aimed at protecting public order and safety, pursuant to section 32 of the Misdemeanours Act, Law No. 5326 (see paragraph 17 below).

13. On 8 June and 14 July 2005 the Mardin Magistrates' Court and the Niğde Magistrates' Court, respectively, convicted the applicants as charged and imposed on them administrative fines of 100 Turkish liras (TRY) (approximately 62 euros (EUR)).

14. The applicants appealed against the courts' decisions.

15. On 20 June 2005 and 26 July 2005 the Mardin Assize Court and the Niğde Assize Court, respectively, dismissed the applicants' appeals. These decisions were notified to the applicants respectively on 15 July 2005 and 3 August 2005.

16. On 23 August 2005 and 11 October 2005 the applicants paid the fines to the relevant tax departments.

II. RELEVANT DOMESTIC LAW

17. Section 32 of the Misdemeanours Act (Law No. 5326) reads as follows:

> "Persons acting contrary to orders given by the competent authorities ... for the protection of public safety, public order and public health shall receive an administrative fine of 100 Turkish liras."

18. Section 9/ç of the Provincial Administration Act (Law No. 5442) reads as follows:

> "Governors may issue and announce general orders to exercise the authority conferred on them by, and perform duties in connection with, laws, by-laws, regulations and government decrees.''

19. Section 11/C of the Provincial Administration Act (Law No. 5442) reads as follows:

> "Governors shall have the duty, *inter alia*, to secure peace and security, physical integrity, safety of private property and public well-being, and the authority to exercise preventive law enforcement.''

20. According to Ministry of the Interior Circular no. 2004/100, authorised governors, having assessed safety needs, may prohibit the making of press statements close to critical institutions.

21. Under section 66 of the Provincial Administration Act (Law No. 5442), the local civil administration and local governors may impose penalties, under section 32 of the Misdemeanours Act, on those who do not comply with decisions and measures taken in accordance with the applicable rules.

22. Section 6 of the Meetings and Demonstrations Act (Law No. 2911) empowers the most senior local governors to make and announce necessary regulations regarding demonstrations.

23. The Press Bulletin of the Governorship of Mardin dated 20 July 2004 declared unlawful the making of press statements, *inter alia*, within 100 metres of hospitals. Furthermore, the Press Bulletin of the Niğde Governorship dated 5 August 2004 declared a prohibition on public statements made in front of any State institution or organisations and their outbuildings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

24. The applicants complained that the administrative fines imposed on them for attending meetings and reading out press statements constituted an interference with their rights to freedom of assembly and freedom of expression within the meaning of Articles 10 and 11.

25. The applicants in the present case were sentenced to administrative fines essentially on the ground that they had disobeyed police officers' orders to leave the demonstration area. The Court will therefore examine this part of the application under Article 11 alone. It notes, however, that the issue of freedom of expression cannot in the present case be entirely separated from that of freedom of assembly. Notwithstanding its autonomous role and particular sphere of application, Article 11 must therefore also be considered in the light of Article 10 (see *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202).

26. Article 11 of the Convention reads as follows:

Article 11

Freedom of assembly and association

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

A. Admissibility

27. The Government argued that the present application should be dismissed under Article 35 § 3 (b) of the Convention because the applicants had not suffered any significant disadvantage, in view of the small fines imposed on them.

28. The Court notes that the Government have merely referred to the level of the fines imposed on the applicants, without explaining why they consider that the applicants have suffered no "significant disadvantage" (see *Berladir and Others v. Russia*, no. 34202/06, §§ 34-35, 10 July 2012, and also *Giuran v. Romania*, no. 24360/04, §§ 21-23, ECHR 2011 (extracts)

and *Van Velden v. the Netherlands*, no. 30666/08, §§ 37-39, 19 July 2011). Furthermore, no submissions have been made on two "safeguard clauses" contained in Article 35 § 3 (b). Noting the nature of the issues raised in the present case, which also arguably concerns an important matter of principle, as well as the scope of the limitations, the Court does not find it appropriate to dismiss the present application with reference to Article 35 § 3 (b) of the Convention.

29. The Court also considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

30. The applicants submitted that the administrative fines imposed on them for attending meetings and reading out press statements constituted an interference with their right to peaceful assembly and freedom of expression. The applicants also maintained that they had not disturbed public order, nor had the statements violated the rights of others.

31. As to the substance of the complaint, the Government submitted that the Press Bulletin of the Governorships of Mardin and Niğde had declared a prohibition on the making of press statements in front of State institutions, including hospitals, and their outbuildings.

32. The Government noted that in accordance with the case-law of the Court in the case of *Oya Ataman v. Turkey*, (no. 74552/01, § 35, ECHR 2006-XIII), local authorities have a duty to take appropriate measures with respect to lawful demonstrations in order to ensure their peaceful conduct and public safety.

2. The Court's assessment

(a) Whether there was an interference with the right to freedom of peaceful assembly

33. The Court notes in the first place that all the applicants participated in the meetings and two of the three applicants read out the press statements. It also notes that by participating in those meetings the applicants aimed to draw attention to the transfer of the SSK hospitals to the Ministry of Health, which was a topical issue at the time. In the Court's view, the prosecution and conviction of the applicants could have had a chilling effect and discouraged them from taking part in other similar meetings (see *Bączkowski and Others v. Poland*, no. 1543/06, § 67-68, 3 May 2007).

34. In view of the above, the Court considers that the applicants the imposition of fines on the applicants constituted an interference with their right to freedom of peaceful assembly.

(b) Whether the interference was justified

35. Such an interference gives rise to a breach of Article 11 unless it can be shown that it was ‘‘prescribed by law’’, pursued one or more legitimate aims as defined in paragraph 2 of that Article, and was ‘‘necessary in a democratic society’’.

(i) Prescribed by law

36. The applicants submitted that the public had not been acquainted with the Ministry of the Interior circulars, which had not been published in the Official Gazette.

37. The Government submitted that the Niğde and Mardin Governorships had published press bulletins in the Official Gazette based on Circular no. 2004/100 of the Ministry of the Interior, sections 9/ç, 11/c and 66 of the Special Provincial Administration Act (Law No. 5442) and section 6 of the Meetings and Demonstrations Act (Law No. 2911). The Government further maintained that the demonstrations and the reading out of the press statements had not been interfered with, but that the administrative fines had subsequently been imposed on the applicants under section 32 of the Misdemeanours Act (Law No. 5326) for the offence of making press statements in prohibited places. In this regard, the Government submitted that the interferences had thus been “prescribed by law”.

38. The Court points out that the expression “prescribed by law” requires firstly that the impugned measure should have some basis in domestic law; however, it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences, and that it should be compatible with the rule of law (see *Kruslin v. France*, 24 April 1990, Series A no. 176-A, § 27).

39. The Court notes that in the present case administrative fines were imposed on the applicants under section 32 of the Misdemeanours Act (Law No. 5326). The law must thus be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. For domestic law to meet these requirements, it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise (see *Malone v. the United Kingdom*, 2 August 1984, §§ 66-68, Series A no. 82, *Rotaru v. Romania* [GC], no. 28341/95, § 55, ECHR 2000-V). However, in the light of its examination of these

matters below from the point of view of the "necessity" of the measure (see paragraphs 43-49), the Court considers that it is not required to reach a final conclusion on the lawfulness issue (see *Association Ekin c. France*, n° 39288/98, § 46, CEDH 2001-VIII, and *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 116, 14 September 2010).

(ii) Legitimate aim

40. As concerns the issue of whether the impugned measure had a legitimate aim, the Government submitted that the interference pursued the legitimate aim of maintaining public order, public safety and public health. The applicants maintained their allegations. The Court accepts that the measure pursued the legitimate aims cited by the Government.

(iii) Necessity in a democratic society

(c) Relevant general principles

41. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively. As such, this right covers both private meetings and meetings in public thoroughfares, as well as static meetings and public processions; in addition, it can be exercised by individuals and those organising the assembly (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III). Turning to the question of whether the interference was "necessary in a democratic society", the Court refers to its case-law to the effect that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure that they are conducted peacefully (see *Oya Ataman*, cited above). The Court also observes that paragraph 2 of Article 11 entitles States to impose "lawful restrictions" on the exercise of the right to freedom of assembly. The Court notes that restrictions on freedom of assembly in public places may serve to protect the rights of others with a view to preventing disorder (see *Éva Molnár v. Hungary*, no. 10346/05, § 34, 7 October 2008).

42. The Court further reiterates that the proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2 of the Convention and those of freedom of peaceful assembly. A conviction for actions inciting violence at a demonstration can be deemed an acceptable measure in certain circumstances (see *Osmani and Others v. the Former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001). Furthermore, the imposition of a sanction for participation in an unauthorized demonstration may be compatible with the guarantees of Article 11 (see *Ziliberberg v. Moldova*, no. 61821/00, 1 February 2005). On the other hand, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a

sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as he or she does not commit any reprehensible act on such an occasion (see *Ezelin*, cited above, § 53).

(d) Application of those principles in the present case

43. The Court observes that although the applicants gathered to demonstrate in an area that had been prohibited by the relevant authorities, their intention was to participate in a debate on matters of public interest, namely the transfer of SSK hospitals to the Ministry of Health. The participants held a peaceful demonstration and did not cause any disruptions in the entrance of the hospitals; they also allowed patients to enter the hospitals. Moreover, there is no evidence to suggest that the demonstrators either presented a danger to public order or engaged in acts of violence.

44. It appears from the evidence before the Court that the groups of demonstrators were informed by the police that their gatherings were illegal and that they were ordered to disband for the sake of public order and safety. The applicants and other demonstrators did not comply with those orders and continued to read out the press statements.

45. As a general principle, the Court reiterates that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life and that it is important for public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Bukta and Others v. Hungary*, no. 25691/04, § 37, ECHR 2007-III).

46. The Court is concerned by the fact that the three applicants were prosecuted and subsequently sentenced to pay administrative fines on account of the mere fact of their participation in a peaceful demonstration. The proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2. The pursuit of a just balance means that a peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction (see *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011).

47. Furthermore, it is true that the applicants were found guilty of disobeying orders given by the relevant authorities. The Court, however, notes that it was not established in the reasoning of the domestic courts' judgments whether the domestic courts had engaged with the proportionality of the interference and the balancing of rights of the applicants on account of freedom of assembly. The Court, therefore, takes the view that the reasons indicated by the domestic courts were not relevant or sufficient, and that they were not proportionate to the legitimate aims pursued.

48. In the light of the foregoing, the Court considers that the prosecution of the applicants and the imposition of administrative fines for their participation in a peaceful demonstration were disproportionate and not necessary for maintaining public order within the meaning of the second paragraph of Article 11 of the Convention (see *Gün and Others v. Turkey*, no. 8029/07, §§ 77-85, 18 June 2013)

49. There has accordingly been a violation of Article 11 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

51. The applicants each claimed 62 euros (EUR) which had been paid as administrative fines for attending the meetings. They also asked for interest to be applied to each amounts.

52. The applicants each claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government contested those claims.

54. The Court awards each of the applicants 62 euros (EUR) in respect of pecuniary damage for the administrative fines they had to pay and dismisses their requests of application of interest to the compensation awards. Moreover the Court also awards each of applicants 1,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicants claimed approximately 1,350 euros (EUR) each for the costs and expenses incurred before the Court.

56. The Government contested those claims.

57. In accordance with the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicants merely referred to the Turkish Bar Association's scale of fees and failed to submit any supporting documents. The Court therefore does not award any sum under this head.

C. Default interest

58. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 62 (sixty two euros) to each applicant, in respect of pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 1,500 (one thousand five hundred euros) to each applicant, in respect of non-pecuniary damage, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Guido Raimondi
President