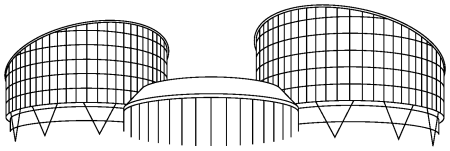

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF YİGİN v. TURKEY

(Application no. 36643/09)

JUDGMENT

STRASBOURG

30 January 2018

This judgment is final but it may be subject to editorial revision.

In the case of Yigin v. Turkey,

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

Ledi Bianku, *President,*
Nebojša Vučinić,
Jon Fridrik Kjølbro, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 9 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 36643/09) 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 a Turkish national, Ms Fatma Yigin ("the applicant"), on 10 June 2009.

2. The applicant was represented by Mr K. Derin, a lawyer practising in Adana. The Turkish Government ("the Government") were represented by their Agent.

3. On 12 September 2013 the complaint concerning the alleged violation of the applicant's right to freedom of assembly was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. On 1 August 2017 the President of the Section decided, in accordance with Rule 34 § 3 of the Rules of Court, to grant the applicant leave to use the Turkish language in the written proceedings before the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Adana.

6. On 16 February 2006 a gathering was held in Adana on the anniversary of the arrest of Abdullah Öcalan, the leader of the PKK (Kurdistan Workers' Party), an illegal armed organisation. The protesters gathered in front of the building of the Adana branch of the Democratic Society Party (*Demokratik Toplum Partisi*) (DTP), where a press statement was read out. Being a member of the DTP, the applicant participated in the gathering.

7. Subsequently, clashes occurred between police officers and some demonstrators who were attempting to block the traffic. According to police reports, two police officers were injured as a result of objects thrown from the DTP building. The police then entered the DTP building and arrested 223 people, including the applicant. The next day, the applicant was detained on remand.

8. On 10 March 2006 the Adana public prosecutor charged the applicant and sixteen other people with membership of the PKK under Articles 220 § 6 and 314 of the Criminal Code. The prosecutor alleged that the accused had participated in the public gathering in question in response to calls made by the PKK and had resisted the police officers, and that they had therefore acted on behalf of the PKK.

9. On 5 May 2006 the applicant was released pending trial.

10. On 10 September 2008 the Adana Assize Court convicted the applicant under section 7(2) of the Prevention of Terrorism Act (Law no. 3713). The assize court did not find it established that the applicant had attended the reading out of the press statement in response to calls made by the PKK or that she had injured any police officers. It therefore concluded that the applicant could not be convicted of membership of the PKK or resistance to the police. The court nonetheless considered that on 16 February 2006 the applicant had gone to the DTP building with a view to disseminating propaganda in support of the PKK and that she should therefore be convicted under section 7(2) of Law no. 3713. The applicant was sentenced to ten months' imprisonment.

11. Taking into account the applicant's good behaviour during the trial and the absence of any previous criminal record, the court suspended the pronouncement of her conviction on condition that she did not commit another intentional offence for a period of five years, under Article 231 of the Code of Criminal Procedure (*hükmün açıklanmasının geri bırakılması*).

12. On 20 November 2008 the court dismissed an objection lodged by the applicant against the above-mentioned decision. The final decision was served on the applicant on 9 January 2009.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law applicable at the material time can be found in *Belge v. Turkey* (no. 50171/09, § 19, 6 December 2016).

14. In particular, between 7 August 2003 and 18 July 2006, section 7(2) of Law no. 3713 read as follows:

> "Any person who assists members of the aforementioned [terrorist] organisations or who disseminates propaganda inciting others to violence or other methods of terrorism shall be liable to a term of imprisonment of between one and five years and a judicial fine of between five million liras and one billion liras ..."

THE LAW

I. THE GOVERNMENT'S OBJECTION

15. The Government argued that the applicant's observations had not been submitted in one of the official languages of the Court as required by Rule 34 § 1 of the Rules of Court, and that there was nothing in the case file demonstrating that she had been granted leave to use the Turkish language in the proceedings before the Court. They suggested that the Court should not take into account the applicants' observations and claims for just satisfaction.

16. The Court notes that by a letter dated 2 August 2017 the applicant was informed that on 1 August 2017 the President of the Section had decided, in accordance with Rule 34 § 3 of the Rules of Court, to grant her leave to use the Turkish language in the written proceedings before the Court (see paragraph 4 above). The Court further notes that it has already examined and dismissed similar objections by the respondent Government (see *Atılgan and Others v. Turkey*, nos. 14495/11, 14531/11, 26274/11, 78923/11, 8408/12, 11848/12, 12078/12, 12103/12, 14745/12, 21910/12 and 41087/12, § 12, 27 January 2015, and *Şakir Kaçmaz v. Turkey*, no. 8077/08, § 62, 10 November 2015). In the present case, the Court finds no reason to depart from that conclusion. The Government's arguments on this point should therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

17. The applicant complained under Articles 10 and 11 of the Convention that the criminal proceedings brought against her under section 7(2) of Law no. 3713 and her subsequent conviction had constituted a violation of her rights to freedom of expression and freedom of assembly.

18. The Court considers at the outset that the application should be examined from the standpoint of Article 11 which reads:

> "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."

19. The Government contested the applicant's argument. They submitted that the interference with the applicant's freedom of assembly had been

prescribed by law, had pursued the legitimate aim of protecting public order and the rights of others and had been necessary in a democratic society. They noted that the applicant had not only attended a demonstration organised in support of the PKK, which was considered to be a terrorist organisation by a number of international organisations, including the Court itself, but had also disseminated propaganda in its favour.

20. The Court notes 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.

21. As to the merits of the case, the Court considers that the applicant's conviction, although its pronouncement was suspended, amounted to an "interference" with the exercise of her freedom of assembly (see *Şükran Aydın and Others v. Turkey*, nos. 49197/06 and 4 others, § 44, 22 January 2013; *Gülcü v. Turkey*, no. 17526/10, §§ 98-102, 19 January 2016; and *Fatih Taş v. Turkey (no. 2)*, no. 6813/09, § 15, 10 October 2017). The Court further considers that the interference was based on section 7(2) of Law no. 3713. In the light of its findings regarding the necessity of the interference (see paragraph 24 below) the Court considers that it is not required to conduct an examination of the "lawfulness" of the interference. The Court is also prepared to accept that, in the present case, the national authorities may be considered to have pursued the legitimate aims of protecting national security and preventing disorder and crime (see *Faruk Temel v. Turkey*, no. 16853/05, § 52, 1 February 2011).

22. As regards the necessity of the interference in a democratic society, the Court notes that it has already examined similar grievances in a number of cases and found violations of Articles 10 and 11 of the Convention (see, for example, *Savgın v. Turkey*, no. 13304/03, §§ 39-48, 2 February 2010; *Gül and Others v. Turkey*, no. 4870/02, §§ 32-45, 8 June 2010; *Menteş v. Turkey (no. 2)*, no. 33347/04, §§ 39-54, 25 January 2011; *Kılıç and Eren v. Turkey*, no. 43807/07, §§ 20-31, 29 November 2011; *Faruk Temel*, cited above, §§ 58-64; *Öner and Türk v. Turkey*, no. 51962/12, §§ 19-27, 31 March 2015; *Gülcü* cited above, §§ 110-117; and *Belge*, cited above, §§ 24-38). The Court has examined the present case and considers that the Government have not put forward any argument which would require it to reach a different conclusion in the present case.

23. In particular, the Court notes that the applicant was convicted under section 7(2) of Law no. 3713 for the sole reason that she had participated in the reading out of a press statement on the anniversary of the arrest of Abdullah Öcalan. The Court observes that the first-instance court's judgment does not contain any information as to the reasons for which the applicant was found guilty of disseminating propaganda in support of the PKK. Besides, there is nothing in the case file showing that the applicant had been involved in violent acts or incited or had the intention of inciting

others to violence during the public gathering in question. She was not involved in the clashes between the demonstrators and the police. Nor did she chant any slogans or carry banners containing expressions which might be construed as encouraging violence, armed resistance or an uprising or capable of inciting to violence. The Adana Assize Court, however, does not appear to have given consideration to any of the above. In sum, the Court considers that the national courts did not adduce "relevant and sufficient" reasons justifying the applicant's criminal conviction under section 7(2) of Law no. 3713.

24. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's right to freedom of assembly was not "necessary in a democratic society".

Accordingly, there has been a violation of Article 11 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed EUR 20,000 in respect of non-pecuniary damage. She also claimed EUR 2,230 for her lawyer's fees and her expenses. The applicant submitted that her lawyer had carried out eight hours' legal work on the application to the Court. In support of her claims, she submitted receipts and invoices for translation and postal expenses.

26. The Government contested those claims.

27. Ruling on an equitable basis, the Court awards the applicant EUR 2,500 in respect of non-pecuniary damage. As to costs and expenses, taking account of the documents in its possession and the above criteria, the Court rejects the claim in respect of the domestic proceedings and considers it reasonable to award the sum of EUR 1,135 for the proceedings before the Court.

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 applicant within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,135 (one thousand one hundred and thirty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President