

SUMMARY

ECtHR 24 April 2018, application no. 56237/08 (Sadrettin Guler), Freedom of assembly and association

<p>Giving an employee an official warning after he participated in a large pre-announced Labour Day demonstration is found to be in breach of the right to freedom of association.</p>

<p>Sadrettin G¨l¨r – v – Turkey, Turkish case</p>

Facts

Mr Güler was a civil servant in the Metropolitan Municipality of Istanbul. He was also a member of the Tümbel-Sen trade union, which is affiliated with KESK, one of the largest trade unions in Turkey. In April 2008, KESK and DISK (another large trade union) announced a large 1 May (Labour Day) demonstration, which at the time was illegal. Mr Güler took part in the demonstration.

In May 2008, the Metropolitan Municipality of Istanbul informed Mr Güler that they had started a disciplinary investigation into his absence without leave on 1 May 2008. When asked for his comments, he explained that he had participated in the 1 May demonstration. Subsequently, he received a warning. On 13 May 2008, he objected to this. Three days later, the Disciplinary Board of the Istanbul Municipality overruled his objection and found that the decision had been in accordance with the law and that there were no grounds to annul it.

Mr Güler then brought a claim in court.

Judgment

Mr Güler based his claim on Article 6 of the European Convention on Human Rights (Right to a fair trial), but the court considered it to fall within Article 11 (Freedom of peaceful assembly

and freedom of association, including the right to join trade unions).

At the time (1 May 2008), Labour Day was not a public holiday in Turkey and any public gathering by civil servants on that day was strictly forbidden. Only on 22 April 2009, was 1 May designated a public holiday. Nevertheless, the demonstration in 2008 was organised by two of the largest unions.

During the investigation, the Municipality of Istanbul and the Disciplinary Board were made aware of the reasons of Mr Güler's absence, but it seems they did not take the reason for his absence into account and he was given a disciplinary sanction, purely because he had been absent from work.

The Turkish Government argued that Mr Güler was not sanctioned for his trade union activities, but for being absent from work.

However, the court was of the view that even before it became a public holiday, Labour Day was highly symbolic for trade union members. The Municipality of Istanbul and the Disciplinary Board could not have ignored the reason for Mr Güler's absence, all the more so because the demonstration was announced publicly by two of the largest trade unions. It is therefore safe to presume that the authorities were aware of the reason for the absence. Bearing in mind these facts, the disciplinary sanction, albeit light, was enough to dissuade trade union members from participating in trade union activities. Consequently, there was a violation of Article 11 of the Convention. The court also found that as Turkish law lacks an effective remedy for a breach of Article 11, Article 13 (Right to an effective remedy), was also violated.

Finally, the ECtHR rejected Mr Güler's claims based on Article 6 and Article 14 (Prohibition of discrimination), as they were manifestly ill-founded.

Ruling

The court declared the complaints concerning Mr Güler's rights to freedom of association and an effective remedy admissible and held that there had been a breach of Articles 11 and 13 of the Convention.

Creator: European Court of Human Rights (ECtHR)

Verdict at: 2018-04-24

Case number: 56237/08