



Dissolution of a foundation striving for a State based on Sharia was justified

In today's **Chamber** judgment¹ in the case of **Zehra Foundation and Others v. Turkey** (application no. 51595/07) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the foundation *Zehra Eğitim Vakfı*, which was dissolved in 2005 and remained inactive until 2013, on the grounds that its covert aim was to disseminate the vision of the theologian Said Nursi², namely the creation of a Kurdish State based on Sharia.

The Court found that, given that it was clear from the foundation's activities that it pursued an objective other than those laid out in its statute – namely to set up educational establishments and propagate ideas opposed to pluralist democracy among students – the authorities had been entitled to intervene to put an end to that divergence. The national courts had therefore not overstepped their margin of appreciation in finding that there had been a pressing social need – in order to protect the specific nature of education in a pluralist democratic society and thus preserve public order and protect the rights of others – to prevent the foundation from achieving its covert aim of providing teaching at secondary and university level with the ultimate goal of establishing a regime based on Sharia.

Principal facts

The applicants are the Zehra Cultural and Educational Foundation (*Zehra Eğitim Vakfı*), which had its registered office in Istanbul at the relevant time, and six Turkish nationals, Gıyasettin Bingöl, Yasin Yıldırım, Hüseyin Daşkın, Zekeriya Özbek, Cesim Yıldırım and Abdullah Şahin, who were born between 1950 and 1966 and live respectively in Bursa, Istanbul, Eskişehir, Istanbul, Van and Diyarbakır (Turkey).

The foundation *Zehra Eğitim Vakfı* was set up in 1989 in order to promote social, cultural and economic cooperation between its members and contribute to scientific, social and economic development in Turkey. In 2000, at the request of the Ministry of the Interior, its activities were the subject of checks by three inspectors who concluded that its local branches had carried out unlawful activities which went beyond its social purpose and the aims laid down in its statute. The following year proceedings for the foundation's dissolution were brought in the District Court.

In 2005 the District Court considered, among other findings, that the true, undeclared aim of the foundation was to disseminate the vision of Said Nursi², namely the creation of a Kurdish State based on Sharia, and to publicly defend his teachings as an opponent of the republican regime and advocate of a theocratic totalitarian State. That judgment was upheld by the Court of Cassation. The foundation was therefore dissolved and its 25 properties were confiscated.

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.

2. Said Nursi, known as Bediüzzaman ("wonder of the age") was born in 1876 in Bitlis and died in 1960 in Urfa (Turkey).

In 2014, at the request of the founding members who were still alive, the foundation was re-entered in the register of foundations on the basis of a new Law enacted in 2013. A total of 22 of the confiscated properties were returned to the foundation. The three remaining properties had been placed at the disposal of other public services in the meantime.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the applicants complained of the dissolution of the applicant foundation, the cessation of its activities between 2005 and 2013 and the failure to return three properties to it in 2013. They also relied on Articles 6 (right to a fair hearing) and 13 (right to an effective remedy) and on Article 1 of Protocol No. 1 (protection of property) to the Convention.

The application was lodged with the European Court of Human Rights on 16 November 2007.

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

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Ledi **Bianku** (Albania),
İşıl **Karakaş** (Turkey),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

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

Decision of the Court

Article 11 (freedom of assembly and association)

The Court reiterated that democracy was without doubt a fundamental feature of the European public order and the only political model contemplated in the Convention. Accordingly, no group must be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society.

In the present case the Court noted that the interference in question – the dissolution of the foundation, entailing a cessation of its activities for more than seven years, and the failure to return some of its properties – was prescribed by law³ and had pursued the legitimate aims of protecting the rights and freedoms of others, preventing disorder and ensuring public safety. The Court also observed that the national courts had ordered the foundation's dissolution on the basis of articles published in its official newsletter (*Zehra Bülteni*), and had examined a selection of the articles in question, disregarding those that might not have been attributable to the foundation. The domestic courts considered, among other findings, that it was clear from the content of the articles that their ultimate objective was the establishment of a State system based on Sharia and the opening of educational establishments serving that cause. In the courts' view, those two factors demonstrated clear opposition to the principles of secularism and pluralist democracy.

In that connection the Court noted that there was nothing in the case file to suggest that the national courts' interpretation of the facts had been irrelevant or unreasonable. It observed that a foundation whose actions were aimed in reality at introducing Sharia in a State party to the

³ Articles 74 § 2 and 81/A of the former Civil Code, in force at the relevant time, and Law no. 6495, enacted on 2 August 2013, which amended Law no. 5737.

Convention could hardly be regarded as an association complying with the democratic ideal underlying the whole of the Convention. As to the foundation's activities aimed at setting up educational establishments designed to counter the promotion of the principles of secularism and pluralist democracy – principles that were portrayed in the newsletter articles as undesirable, according to the courts – the Court considered that the judicial authorities, in taking the measures complained of, could be said to have satisfied their obligation to ensure that the national curriculum was organised in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind with regard to religion in a calm atmosphere free of any proselytism.

The Court also noted that the expression of ideas and opinions contrary to the principle of secularism had no longer been punishable as a criminal offence in Turkey since 1991. That situation was in line with the Court's case-law on freedom of expression, according to which, in pluralist democracies, even ideas diverging from those of a democratic system could be expressed in public debate provided that they did not give rise to hate speech or incite others to violence. However, the Court emphasised that this interpretation of freedom of expression did not preclude the Contracting States from taking measures to ensure that a foundation did not deploy its assets to serve educational policy goals that were contrary to the values of pluralist democracy and in breach of the rights and freedoms guaranteed by the Convention.

The Court therefore found that, since it was clear from the activities of the applicant foundation that it pursued an aim other than that set forth in its statute, the authorities had been entitled to intervene to put an end to that divergence without having to wait for the covert aim to be achieved, namely the setting-up of educational establishments and the propagation of ideas opposed to pluralist democracy among students. Consequently, the national courts had not overstepped their margin of appreciation in finding that there had been a pressing social need – in order to protect the specific nature of education in a pluralist democratic society, preserve public order and protect the rights of others – to prevent the applicant foundation from achieving its covert aim of providing teaching at secondary and university level with the ultimate goal of establishing a regime based on Sharia. The Court also found that, given that the applicant foundation's activities had ceased for a limited period only, that most of its properties had been returned to it and that the few properties that remained at the disposal of the public services had been selected on the basis of an objective criterion prescribed by law, the measure complained of had not been disproportionate to the aims pursued. Hence, the interference in the present case had corresponded to a "pressing social need" and had been "proportionate to the aims pursued", and could thus be regarded as "necessary in a democratic society" within the meaning of Article 11 § 2 of the Convention. **There had therefore been no violation of Article 11 of the Convention.**

Other articles

In view of its findings under Article 11 (freedom of assembly and association), the Court held, by six votes to one, that it was unnecessary to examine separately the complaints under Articles 6 (right to a fair hearing) and 13 (right to an effective remedy) of the Convention and Article 1 of Protocol No. 1 (protection of property) to the Convention.

Separate opinion

Judge Lemmens expressed a partly dissenting opinion which is annexed to the judgment.

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.