



Kalaç v. Turkey: The Military as the Custodian of Secularism Alla Turca

Question(s) at stake:

Whether a military officer's compulsory retirement for conduct deemed incompatible with military discipline and laiklik (secularism) violated his right to religious freedom under Article 9 of the European Convention on Human Rights.

Outcome of the ruling:

The Court determined that the compulsory retirement of Mr Faruk Kalaç from the Turkish military was not based on his religious beliefs or practices but on his conduct and attitudes deemed incompatible with military discipline and the principle of secularism. The Court held that military personnel voluntarily accept certain restrictions on the exercise of their rights, and the measures taken against Mr Kalaç were justified by the need to maintain the secular and disciplined nature of the armed forces.

Topic(s):

- [Employment](#)

Keywords:

- [Freedom of thought, conscience and religion](#)
- [Laïcité](#)
- [Margin of appreciation](#)
- [Termination of employment](#)
- [Military service](#)
- [Types and actors](#)
- [Dismissal](#)
- [Public sector](#)

- [Armed Forces](#)

Tag(s):

- [Secularism](#)
- [Laiklik](#)
- [Süleymancılık tarikatı](#)

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Country:

[Turkey](#)

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ECLI:

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Date:

01 July 1997

Jurisdiction / Court / Chamber:

European Court of Human Rights

Remedy / Procedural stage:

Final

Previous stages:

- Kalaç v. Turkey, App. no. 20704/92, Report European Commission on Human Rights, 27 February 1996
- Kalaç v. Turkey, App. no. 20704/92, European Commission on Human Rights, (decision on admissibility) 10 January 1995
- Supreme Administrative Court of the Armed Forces, 30 May 1991
- Supreme Military Council, 1 August 1990

Subsequent stages:

None

Branches / Areas of law:

Constitutional Law, Administrative Law

Facts:

Faruk Kalaç was a judge advocate in the Turkish Air Force. At the time of the events, he held the rank of group captain and served as the high command's director of legal affairs. His case arose after he was subjected to compulsory retirement by the Supreme Military Council (the Council) of Türkiye on 1 August 1990. The Council cited disciplinary breaches, accusing Kalaç of adopting "unlawful fundamentalist opinions". Kalaç's compulsory retirement was authorized under the relevant Turkish military laws: section 50(c) of the Military Personnel Act, section 22(c) of the Military Legal Service Act, and Article 99(e) of the Regulations on the Assessment of Officers and Non-Commissioned Officers. The decision to retire him was subsequently approved by the President of Türkiye, the Prime Minister, and the Minister of Defence on 22 August 1990.

Following his retirement, Kalaç sought legal recourse, applying to the Supreme Administrative Court of the Armed Forces on 21 September 1990 to challenge the Council's decision. However, on 30 May 1991, the Supreme Administrative Court of the Armed Forces ruled, by a narrow margin of four votes to three, that it lacked jurisdiction over the matter, citing Article 125 of the Turkish Constitution, which states that decisions of the Supreme Military Council are final and not

subject to judicial review. The dissenting judges argued that such a decision contradicted the principle of judicial independence as enshrined in Article 139 of the Turkish Constitution, asserting that military judges' security of tenure should be protected from arbitrary decisions by the Council.

Although the court dismissed Kalaç's challenge to his retirement, it did rule in his favour on a separate issue, setting aside the Ministry of Defence's decision to revoke his and his family's social security cards. Subsequently, Kalaç lodged an application for rectification of the decision on 9 January 1992, which was also dismissed.

On 13 July 1992, Kalaç applied to the European Commission of Human Rights, alleging that his compulsory retirement was due to his religious beliefs, thus violating his rights under Article 9 of the European Convention on Human Rights (ECHR). The Commission found the application admissible on 10 January 1995 and later, in a Report of 22 February 1996, expressed its unanimous opinion that there had been a violation of Article 9.

The case presented before the European Court of Human Rights (ECtHR) centred on the alleged violation of Article 9 of the Convention, which guarantees freedom of thought, conscience, and religion. Although Kalaç also raised a complaint under Article 6 concerning the lack of a fair hearing, this issue was not considered by the Court, as it fell outside the scope defined by the Commission's decision on admissibility.

Ruling:

The ECtHR examined whether the compulsory retirement of Mr Faruk Kalaç from his position as a judge advocate in the Turkish military violated his rights under Article 9 of the ECHR.

Mr Kalaç argued that his dismissal was a violation of his religious freedom, as he claimed that it was based on his religious beliefs and practices as a Muslim. He asserted that his compulsory retirement was not justified by any legitimate concerns but was instead an arbitrary action targeting him due to his religious practices, such as daily prayers and fasting during Ramadan.

The Turkish government, however, contended that Mr Kalaç's dismissal was not an interference with his religious freedom. Instead, it was argued that the decision was made to preserve military discipline and the principle of secularism, which, the government argued, is a foundational element of the Turkish state. The government presented documents to the Court, alleging that Mr Kalaç had been involved with the Süleyman sect, an Islamic group with purported fundamentalist tendencies. However, previously the Commission did not find these documents convincing, and was not persuaded that Kalaç's conduct and attitudes were incompatible with the requirements of military service. The government maintained that while Mr Kalaç was free to practise his religion privately, his involvement with a group that was perceived to threaten the secular nature of the military justified his dismissal.

The Commission had earlier given its unanimous opinion in favour of Mr Kalaç, concluding that his dismissal constituted a violation of Article 9. It determined that the relevant Turkish laws did not provide sufficient safeguards against arbitrary decisions and that the interference with Mr Kalaç's rights was not "prescribed by law" as required under Article 9(2). The Commission also questioned the validity of the evidence presented by the government, noting that some of the documents were introduced late in the proceedings and did not convincingly demonstrate Mr Kalaç's alleged affiliation with the Süleyman sect.

The Court approached the case by reiterating that while Article 9 protects religious freedom, this right is not absolute and may be subject to limitations, particularly in the context of military service. The Court noted that military personnel are subject to a unique system of discipline that can justifiably impose certain restrictions on rights and freedoms that would not be permissible for civilians.

The Court emphasized that Mr Kalaç, by choosing a military career, had voluntarily accepted the limitations inherent in military life, including those related to discipline and the maintenance of secularism. It found that Mr Kalaç was able to practise his religion within the confines of military life, as he was allowed to perform religious duties such as praying, fasting, and attending Friday

prayers.

Importantly, the Court held that Mr Kalaç's dismissal was not based on his religious beliefs or practices but rather on his conduct and attitude, which were deemed incompatible with military discipline and the principle of secularism. The Court concluded that the measures taken against Mr Kalaç were not an interference with his religious freedom as protected by Article 9.

Main quotations on cultural or religious diversity:

- "The Commission, basing its opinion on the documents submitted to it by the Government, took the view that the applicant's compulsory retirement constituted interference with the right guaranteed by Article 9 para. 1 (art. 9-1) and concluded that there had been a breach of that provision (art. 9-1) on the ground that the interference in question was not prescribed by law within the meaning of the second paragraph (art. 9-2), finding that the relevant provisions did not afford adequate protection against arbitrary decisions. The Delegate observed that, in support of their memorial to the Court, the Government had produced documents which, during the proceedings before the Commission, had been said to be 'secret in the interests of national security'. In any event, these documents did not support the argument that Mr Kalaç had any links with a sect." (para. 26)
- "The Court reiterates that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion not only in community with others, in public and within the circle of those whose faith one shares, but also alone and in private (see the *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, p. 17, para. 31). Article 9 (art. 9) lists a number of forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance. Nevertheless, Article 9 (art. 9) does not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual may need to take his specific

situation into account". (para. 27)

- "In choosing to pursue a military career Mr Kalaç was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians (see the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 24, para. 57). States may adopt for their armies' disciplinary regulations forbidding this or that type of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service". (para. 28)
- "It is not contested that the applicant, within the limits imposed by the requirements of military life, was able to fulfil the obligations which constitute the normal forms through which a Muslim practises his religion. For example, he was in particular permitted to pray five times a day and to perform his other religious duties, such as keeping the fast of Ramadan and attending Friday prayers at the mosque". (para. 29)
- "The Supreme Military Council's order was, moreover, not based on Group Captain Kalaç's religious opinions and beliefs or the way he had performed his religious duties but on his conduct and attitude (see paragraphs 8 and 25 above). According to the Turkish authorities, this conduct breached military discipline and infringed the principle of secularism". (para. 30)
- "The Court accordingly concludes that the applicant's compulsory retirement did not amount to an interference with the right guaranteed by Article 9 (art. 9) since it was not prompted by the way the applicant manifested his religion. There has therefore been no breach of Article 9 (art. 9)." (para. 31)

Main legal texts quoted in the decision:

Domestic law

- Articles 14, 24, 125, 139, 144, and 145 of the Turkish Constitution

- Section 22 (c) of the Military Legal Service Act
- Section 50 (c) of the Military Personnel Act
- Article 99 of the Regulations on assessment of officers and non-commissioned officers

International law

- Articles 6, 9 of the European Convention on Human Rights

Cases cited in the decision:

- *Engel and Others v. the Netherlands*, App. nos. 5100/71, 5101/71, 5102/71, 5354/72, and 5370/72, 8 June 1976. ECLI:CE:ECHR:1976:0608JUD000510071
- *Kokkinakis v. Greece*, App. no. 14307/88, 25 May 1993. ECLI:CE:ECHR:1993:0525JUD001430788
- *Scollo v. Italy*, App. no. 19133/91, 28 September 1995. ECLI:CE:ECHR:1995:0928JUD001913391
- *Hussain v. the United Kingdom*, App. no. 21928/93, 21 February 1996. ECLI:CE:ECHR:1996:0221JUD002192893
- *Ahmet Sadik v. Greece*, App. no. 18877/91, 15 November 1996. ECLI:CE:ECHR:1996:1115JUD001887791

Commentary

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“*Laiklik*” (secularism) became a key principle of the Turkish Republic in its first decade under the rule of Mustafa Kemal Atatürk. He sought to modernize Türkiye, and one of the main pillars of this transformation was the establishment of a secular state. While *laiklik* was ostensibly designed to establish a neutral state with no official religion, its implementation often revealed a contradictory reality. In practice, the state assumed a proactive role in regulating and controlling religious expression, particularly for the Muslim majority. This raises the question of whether *laiklik* was, from its inception, deliberately intended to construct a unified state-sanctioned Islam rather than a truly “neutral” framework. By

marginalizing existing Islamic groups and sects, which were perceived as threats to the “*laik*” state model, the state sought to consolidate its authority over religious life. This approach was embedded in legislation and institutional practices, reflecting a deliberate choice to control and limit religious expression among Muslims, thereby ensuring that religion conformed to the ideological and political priorities of the state. Far from being an unintended contradiction, this dynamic suggests that *laiklik* in Türkiye was inherently designed to subordinate religion to state interests, even at the expense of religious diversity and individual freedoms (Yıldız 1998).

Türkiye has long been home to a variety of Islamic movements and religious orders, organized in diverse forms and structures. However, *Kalaç v. Turkey* illustrates that membership, or even presumed membership, in a movement operating outside the oversight of the Directorate of Religious Affairs (Diyanet), founded in 1924, was perceived to be at odds with the secular state. The choice to affiliate with such movements, which constitutes an exercise of religious freedom closely tied to the *forum internum* (the internal dimension of religious belief), often resulted in discriminatory consequences. In *Kalaç*, the applicant was allegedly part of the Süleymanî movement, which is a Turkish Islamic religious group founded by Süleyman Hilmi Tunahan in the mid-20th century. It is known for its emphasis on Quranic education and for operating Quran courses and student dormitories, particularly during periods when such activities were restricted by the state.

Custodians of “*laiklik*”

The Turkish military has historically seen itself as the custodian of the secular-nationalist character of the state. It played a unique role in Turkish politics by acting as a check on civilian governments, particularly when they were perceived to be drifting away from *laiklik* (Özbudun 2011).

Throughout the 20th century, the Turkish military staged multiple coups (1960, 1971, 1980, 1997) to “restore order” and protect secularism. Each time, the military justified its intervention by claiming that the government in power was

undermining the secular nature of the state or endangering national unity. This led to a lot of civil servants being dismissed or forcefully retired in these periods.

The 1982 Constitution, adopted after the 1980 coup, is widely criticized for having a “rule by law” character instead of a “rule of law” one, and an “ideology based” paradigm instead of a “rights based” one (Arslan 2002). In such systems, the law and judicial institutions may function primarily as mechanisms to safeguard the interests of state elites against democratic encroachments. Rather than protecting individual rights and freedoms, they often serve to legitimize and entrench the ideological and authoritative dominance of these elites (Hirschl 2004).

The Constitution of 1982 also gave the military a tutelary role over civilian politics. The military’s social structure was also supervised in order to keep it ideologically pure.

Around 4 months before this case was lodged at the ECtHR, the National Security Council (MGK) of Türkiye, in its meeting on 28 February 1997, issued Decision No. 406, which outlined an 18-point plan aimed at combating “anti-secular religious activities” (*irtica*). The measures emphasized strengthening secular principles and curbing religious influence in public life. Key provisions included transferring religiously affiliated dormitories, foundations, and schools to the Ministry of National Education, enforcing bans on outlawed religious orders, and preventing media portrayals of the military as anti-religious. Additionally, the measures sought to prevent the infiltration of religious extremists into state institutions and to uphold secular dress codes, reflecting a broader effort to preserve Türkiye’s secular character and modern identity. These actions were part of the broader “February 28 process”, often referred to as the “post-modern coup”, which significantly impacted Türkiye’s political and social landscape.

As the ECtHR cases of *Suküt v. Turkey*, *Tepeli and others v. Turkey*, and *Sodan v. Turkey* show, even when the wives of army personnel wore headscarves, it was deemed a disciplinary or sackable offence. In order to better understand these cases and to evaluate the ECtHR’s rulings, this background needs to be kept in

mind.

Commission vs. the Court

Before the ECtHR fully evolved into its current form, cases were first reviewed by the Commission, which acted as a preliminary body. It assessed the admissibility and merits of the complaints. This ended in 1998 with the adoption of Protocol No. 11, where the Convention became a single-tier system.

What makes this case really interesting is the contrast between the unanimous opinion of the Commission and the ruling of the ECtHR. Both the opinion and the ruling are around the same length, but their outcomes are different.

Before showcasing these differences, it is important to show what they both agreed upon, which is that military personnel, by the nature of their profession, accept certain limitations on their rights and freedoms. Mr Kalaç accepted the nature of his profession voluntarily, yet even in the context of military service, where certain restrictions are permissible, the Court is obligated to ensure that these restrictions are prescribed by law and do not exceed what is necessary in a democratic society. The Court's role remains one of European supervision, ensuring that national measures are proportionate and that individual rights are adequately protected.

The Commission

The Commission highlighted in its opinion that the phrase "prescribed by law" under Article 9(2) requires not only that the measure is grounded in domestic law but also that the law itself meets certain quality criteria: it must be accessible to the public and sufficiently clear for individuals to foresee its consequences.

The Commission also emphasized that the level of precision required of domestic law depends largely on the nature of the law, the area it governs, and the individuals to whom it applies. National authorities are primarily responsible for interpreting and applying domestic law. However, the phrase "prescribed by law" goes beyond mere compliance with domestic legislation. It also requires that domestic law provides adequate protection against arbitrary interference by

public authorities with individual rights, particularly when executive power is exercised secretly, as emphasized in paragraph 30 of *Kruslin v. France*, App. no. 11801/85, 24 April 1990.

The Commission acknowledged that the Turkish legal framework includes provisions requiring state officials, particularly high-ranking military officers, to demonstrate loyalty to the foundational principles of the state. However, it also qualified that when such provisions grant public authorities discretion to impose penalties for perceived violations, the scope and application of this discretion must be clearly defined. This is essential to ensure that individuals are adequately protected against arbitrary actions by authorities. The fact that the allegations involve the exercise of fundamental rights, such as freedom of religion, one of the most intimate aspects of personal liberty, makes the importance of this more pronounced.

The Commission noted that while there is no dispute regarding the accessibility of the relevant legal provisions, the provisions related to “dismissal for acts of indiscipline and moral conduct” were not formulated with sufficient precision to allow the applicant to foresee the consequences of his actions accordingly. Furthermore, it considered that the provisions did not offer sufficient safeguards against arbitrary use of the military hierarchy’s disciplinary powers.

The Commission noted that the applicant was dismissed from his judicial position through an administrative decision, with no opportunity for judicial review. While the Military Personnel Act and Disciplinary Regulations required the initiation of disciplinary proceedings in such cases, these procedures were not applied in this instance.

Moreover, prior to his dismissal, the applicant had not received any warnings regarding his conduct that might be considered contrary to the principle of secularism. Neither the Turkish Government’s submissions nor the decisions of the Supreme Military Council and the High Military Administrative Court provided clear details about the specific acts for which the applicant was being penalized.

In light of these considerations, the Commission found that the measure in question cannot be regarded as “prescribed by law” within the meaning of Article 9(2) of the Convention. The relevant provisions were neither sufficiently accessible nor adequately formulated to offer protection against arbitrary decisions by the authorities.

ECtHR

In its ruling, the ECtHR adopted a narrower approach, focusing more on the specific context of military life. While the Commission scrutinized the “rule of law” issue closely, the Court did not engage with this aspect in detail. The ECtHR instead concentrated on the military’s unique role and the limitations that can be imposed on the freedoms of military personnel. The Court also concluded that the applicant’s compulsory retirement was based not on his religious beliefs or practices but on his conduct and attitude, which allegedly breached military discipline and secularism.

By not engaging with the rule of law element, the Court sidestepped a key question regarding the foreseeability and clarity of the legal provisions used to justify Mr Kalaç’s forced retirement. Furthermore, the Court also appears to not critically assess the sufficiency of the evidence provided by the Turkish government to establish a direct link between Mr Kalaç and fundamentalist activities. Even though it is not explicitly mentioned, the margin of appreciation afforded to the Turkish authorities by the Court seems to come at the expense of the “European supervision” role the Court has to play, regardless of the national context. The Commission’s opinion provides a good example of how, without acting as a fourth-instance court, the ECtHR could follow the same approach and still address the “rule of law” aspect of this case, from which even the margin of appreciation does not allow states to derogate.

Conclusion

This case highlights the tension between individual rights and state interests, particularly in the context of military life in a country with a history of secularism enforced by its military. In situations where the “rule by law” approach is evident,

the Court should critically assess the legal framework to ensure that laws are not merely tools of control, but rather serve to protect fundamental rights. By not addressing these concerns thoroughly, the Court missed an opportunity to provide robust protection for individual freedoms in a system where legal mechanisms serve to entrench authority rather than uphold justice.

Literature related to the main issue(s) at stake:

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