



Third Party Intervention

**In the Case of Ercan and others v. Türkiye (no. 50763/22)
by**

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An independent non-governmental organization specialized in defending and promoting freedom of expression

I. Introduction

1. İFÖD will address in its intervention in the case of *Ercan and others v. Türkiye* (no. 50763/22) the issue of the limits of freedom of expression of public servants concerning matters of public interest. It is understood from the Court's communication that **disciplinary sanctions were imposed on the applicants**, teachers in National Education schools and members of the trade union Eğitim ve Bilim Emekçileri Sendikası (Education and Science Workers' Union) ("Eğitim-Sen") for having carried out a collective action, consisting of **giving a one-hour lesson in class on mother tongue**, emphasizing the importance of the mother tongue, following a decision taken by their union to celebrate International Mother Language Day on 21 February.
2. Every year on 21 February, the world celebrates International Mother Language Day, which was established by UNESCO's General Conference in 1999. The Day is an essential platform to promote the importance of cultural and linguistic diversity, and multilingualism for peaceful and sustainable societies. UNESCO therefore supports and advocates for multilingual education based on the mother tongue from the earliest years of schooling. UNESCO defends that education in the mother tongue is a key factor for inclusion and quality learning, and it also improves learning outcomes and academic performance. This is crucial, especially in primary school to avoid knowledge gaps and increase the speed of learning and comprehension. And most importantly, multilingual education based on the mother tongue empowers all learners to fully take part in society. It fosters mutual understanding and respect for one another and helps preserve the wealth of cultural and traditional heritage that is embedded in every language around the world.¹
3. The union in question, Eğitim-Sen was formed in Ankara on 13.01.1995. The union has over 100.000 members countrywide and is affiliated to KESK (Kamu Emekçileri Sendikaları Konfederasyonu – the Confederation of Public Sector Workers' Union), which is a member of Education International. The Constitution of Eğitim-Sen explicitly sets out as one of its main goals to "advocate for equal, democratic, secular, scientific, free, public and free education for all members of society in their mother tongue, in line with fundamental human rights and freedoms."²
4. The applicants complain of a violation of their rights to freedom of expression and freedom of association as a corollary of the disciplinary sanctions imposed on them. The Court, therefore, asked the parties, whether the applicants' rights to freedom of expression and/or freedom of association within the meaning of Articles 10 § 1 and 11 § 1 of the Convention were infringed by the disciplinary measures imposed on them. The Court asked in particular, whether the national courts, in their decisions, carried out a sufficient examination and a proper balancing of the applicants' rights to freedom of expression and/or freedom of association on the one hand and other interests at stake on the other in the light of the criteria set out and applied by it in freedom of expression cases.
5. In this submission **İFÖD** will deal with the questions related to Articles 10 and 11 of the Convention. The applicants as members of a teachers' union participated in a collective action to celebrate International Mother Language Day to emphasize the significance of mother tongue. The aim of the action was to bring attention of the Turkish community that there are languages other than Turkish spoken in Türkiye. The action has a symbolic value

¹ See <https://www.unesco.org/en/articles/why-mother-language-based-education-essential>

² See <https://egitimsen.org.tr/hakkimizda/tuzugumuz/>

for the recognition of the identity and language of the minority groups living in Türkiye, especially the Kurds. The Turkish Constitution, however, prohibits teaching of any language other than Turkish to the Turkish citizens as a mother tongue. Therefore, the question of whether organising an action to celebrate International Mother Language Day conflicts with this constitutional prohibition and whether it is protected under freedom of expression and association lies at the heart of this application. It is considered that the present case should be examined against this background.

6. İFÖD will therefore examine in its submission the international standards relating to the right to mother tongue education and whether the teachers' defence and support of mother tongue education is protected by the Convention. The intervention will first provide the relevant international standards concerning the right to education in the mother tongue (**Section II**). The submission will then look at the Turkish legal framework concerning the language of education (**Section III**). In the fourth section, the submission will discuss the jurisprudence of the European Court of Human Rights on the relevance between defending the right to education in the mother tongue and freedom of expression and association (**Section IV**). In the final section, Recommendations of İFÖD will be summarized (**Section V**).

II. The Right to Education in Mother Tongue in International Law

7. The case at hand does not directly relate to the right to education in the mother tongue, but the defence and support of education in the mother language. The applicants complained of violation of their freedom of expression and association. But to present the contribution of applicants to the public debate it is necessary to portray the status of the right to education of minority groups in their mother language in international law. Therefore, İFÖD will summarize developments in international law on the recognition of the right to education in the mother language.
8. Although the right of minority groups to education in their mother tongue was subjected to international agreements like the Treaty of Lausanne for a long time, it was gradually recognised in international law as a universal right after the 1950s. The International Labour Organization (ILO), Indigenous and Tribal Populations Convention, 1957 (No. 107), provided in Article 23 that children belonging to indigenous populations had the right to be taught to read and write in their mother tongue or, if this was not practicable, in the language most widely used by the group to which they belong. Paragraph 2 of the same article provided for a gradual transition from the mother tongue or the vernacular language to the national language or one of the official languages of the country. The Convention also requires that appropriate measures be taken to preserve, as far as possible, the mother tongue or the vernacular language.
9. A few years later, the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education of 1960 prohibited, under Article 1, "any distinction, exclusion or preference" based upon language or other grounds, which "has the purpose or effect of nullifying or impairing equality of treatment in education", while making clear, in article 2 (b) that it did not constitute discrimination to establish or maintain, for linguistic reasons, separate educational systems or institutions.
10. Article 5 (1) (c) of this Convention stipulates that "it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language", provided that "this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and

language of the community as a whole and from participating in its activities, or which prejudices national sovereignty”.

11. Article 27 of the International Covenant on Civil and Political Rights (1966) provides that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”
12. Similarly, Article 30 of the Convention on the Rights of Child (1989) states that: “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”
13. Other regional or international treaties incorporating language or minority rights standards, include the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169),³ the European Charter for Regional or Minority Languages, 1992 (No.148),⁴ and the Framework Convention for the Protection of National Minorities (1995).⁵ There are also nonbinding documents dealing with minority language rights or minority rights in education, such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992),⁶ the United Nations Declaration on the Rights of Indigenous

³ Article 28 states: “1. *Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.*

2. *Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.*

3. *Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.”* Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205225.pdf

⁴ Article 8 provides that “*the Parties undertake, ... without prejudice to the teaching of the official language(s) of the State: ... to make available pre-school, primary and secondary education in the relevant regional or minority languages; or to make available a substantial part of re-school education in the relevant regional or minority languages*” Available at: <https://rm.coe.int/1680695175>

⁵ Article 14 states: “1- *The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language. 2- In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language. 3- Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.*” Available at: <https://rm.coe.int/16800c10cf>

⁶ Article 4, paragraph 3 states that: “*States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.*” Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic#:~:text=States%20shall%20protect%20the%20existence,measures%20to%20achieve%20those%20ends.>

Peoples (2007),⁷ the Vienna Declaration and Programme of Action⁸ and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (1990),⁹ among others, as well as guidance documents such as the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, the Hague Recommendations Regarding the Education Rights of National Minorities,¹⁰ the Lund Recommendations on the Effective Participation of National Minorities in Public Life¹¹ and Language Rights of Linguistic Minorities: A Practical Guide for Implementation,¹² a handbook developed by the Special Rapporteur on minority issues.

14. As the UN Special Rapporteur¹³ has pointed out, the centrality of language for individuals and communities alike is recognised in Article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which solemnly affirms in paragraph 1 that “States shall protect the existence and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity,” adding in the next paragraph that they “shall take appropriate legislative and other measures to achieve these ends.” The right of persons belonging to national minorities to preserve their identity can only be fully realised if they acquire a proper knowledge of their mother tongue through the educational process. At the same time, persons belonging to national minorities have a responsibility to integrate into the wider national society by acquiring a proper knowledge of the State language.
15. Studies showed that when the mother tongue is used as the medium of instruction for at least 6–8 years, the results are impressive: enhanced self-confidence, self-esteem and classroom participation by minority children, lower dropout rates, higher levels of academic achievement, longer periods in school, better performance in tests and greater fluency and literacy abilities for minority (and indigenous) children in both the mother tongue and the official or dominant language.¹⁴

⁷ Article 13, paragraph 1 states that: “*Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.*” Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

⁹ Paragraph 34 states: “The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.” Available at: <https://www.osce.org/files/f/documents/9/c/14304.pdf>

¹⁰ Available at: https://www.osce.org/files/f/documents/e/2/32180_0.pdf

¹¹ Available at: <https://www.osce.org/files/f/documents/0/9/32240.pdf>

¹² Available at: <https://www.ohchr.org/en/documents/tools-and-resources/language-rights-linguistic-minorities-practical-guide-implementation>

¹³ Report of the Special Rapporteur on minority issues, “Education, language and the human rights of minorities” Submitted to Human Rights Council at Forty-third Session (2020) A/HRC/43/47 Available at: <https://documents.un.org/doc/undoc/gen/g20/003/58/pdf/g2000358.pdf?token=8uGoPaK61Lac7HfBCd&fe=true>

¹⁴ See https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf p.7.

16. The UN Special Rapporteur¹⁵ also emphasized that studies published by the World Bank,¹⁶ UNESCO,¹⁷ UNICEF,¹⁸ and in different parts of the world, confirm that the proportionate use of the language of minorities in education, combined with quality teaching of the official language: (a) Is more cost-effective in the long term. (b) Reduces dropout and repetition rates. (c) Leads to noticeably better academic results, particularly for girls. (d) Improves levels of literacy and fluency in both the mother tongue and the official or majority language. (e) Leads to greater family and community involvement and support. (f) The use of minority languages in a state's administrative and other public activities thus involves fundamental issues of inclusiveness, participation, access, quality and effectiveness.
17. These studies showed that education in mother tongue affects the quality of the education. Another words, teaching children in a language other than their own is not education of the same quality as that of children who are taught in their mother tongue. If persons belonging to linguistic minorities have a responsibility to integrate into the wider society, then it would seem that this can be best achieved through effectively teaching them in their own language. As the Special Rapporteur pointed out, laws and policies which provide for a monolingual approach to education and to the provision of services, and which also impose restrictions on the use of minority languages in the public sphere, especially as medium of instruction, are often based on the misconception that investing in minority languages and creating an environment for their use and further development would alienate minorities from the learning of the national/official language, create linguistic segregation that would undermine minority integration and threaten national unity, societal cohesion and harmony.¹⁹
18. Research has shown that inclusion of minority languages in education, both as separate subjects and as mediums of instruction, and the adoption of inter-cultural and multi-lingual approaches and methods in educational and vocational training programmes, have a direct positive impact on the educational performance of minority students, their self-esteem and development, and their integration in society in general.²⁰
19. İFÖD agrees with the opinions of the UN Special Rapporteur. İFÖD, therefore argues that **since the right to education in mother tongue is an internationally recognised human right** and practically provides more success, **defending mother tongue education is protected under the freedom of expression and contributes to public debate.**

III. The Turkish Legal Framework on Education Languages

20. The Turkish Constitution provides in Article 3 that: “The State of Turkey constitutes, with its territory and nation, an indivisible whole. Its (official) language is Turkish. ...”. Although the title of article 3 includes the phrase “official language”, the content of the article

¹⁵ Report of the Special Rapporteur on minority issues, “Education, language and the human rights of minorities” A/HRC/43/47 para. 50.

¹⁶ Dutcher, N. and Tucker, G. R., *The Use of First and Second Languages in Education: A Review of Educational Experience* (World Bank: Washington DC, 1997); World Bank (note 2).

¹⁷ Lopez, L.E., *Reaching the unreached: indigenous intercultural bilingual education in Latin America*, paper commissioned for the Education for All Global Monitoring Report 2010, Reaching the marginalized (UNESCO, 2010).

¹⁸ UNICEF, ‘Action Research on Mother Tongue-based Bilingual Education: Improving the equity and quality of education for ethnic minority children in Viet Nam’, September 2012.

¹⁹ Report of the Special Rapporteur on minority issues, “Education, language and the human rights of minorities” A/HRC/43/47 p. 18.

²⁰ *Ibid.*

mentions only “language”. It implies that the language of the State of Turkey is Turkish. In the original text of the Constitution, expression of ideas (Art. 26/3)²¹ and publications (Art. 28)²² in languages prohibited by law was banned. But those provisions of the Constitution were abrogated in 2001 by a constitutional amendment. When those provisions were in force, publications and broadcasting in Kurdish was prohibited. Although, there is no such prohibition currently, sometimes Kurdish speaking or even singing may be subjected to criminal investigations or prosecutions on vague terror charges.

21. Article 42 of the Constitution provides that: “No one may be deprived of the right to education. ... Citizens are not absolved from the duty to remain loyal to the Constitution by the freedom of education. ...No language other than Turkish may be taught to Turkish citizens as their mother tongue or be used for the purposes of teaching in educational institutions. The law lays down the rules concerning the teaching of foreign languages in educational institutions and those that must be complied with by schools where education is provided in a foreign language. The provisions of international conventions are reserved.”
22. Article 42 of the Constitution clearly prohibits the teaching in mother tongues other than Turkish, while allowing the teaching in foreign languages. This means that while private or public schools are allowed to teach in English or French or any other foreign language at all levels from pre-school to higher education, teaching in Kurdish is prohibited at all levels. It is interesting to note that Arabic, which is both a foreign language and a minority language in Turkey, can be taught in schools.
23. The Treaty of Lausanne, on the other hand, recognised the right of religious minorities, namely Jews, Greeks and Armenians to teach in their own languages. So, the Treaty of Lausanne constitutes an exception to Article 42 of the Constitution. Therefore, the Kurds, who constitute the largest minority group in Turkey, are most affected by the ban on mother tongue in schools.
24. The European Commission against Racism and Intolerance (ECRI) recommended that Turkish authorities revise the wording of Article 42 of the Constitution, which prohibits the teaching of non-Turkish mother tongues in schools except in accordance with provisions of international treaties. ECRI emphasised that it should be possible for such tuition to be provided alongside tuition in the official language.²³
25. Article 2 of the Law No 2923 on Foreign Languages Education and Teaching and Learning Different Languages and Dialects of Turkish Citizens states that “Without prejudice to the provisions of international treaties, the principles governing the foreign languages to be taught in formal and non-formal education institutions of all levels and types, public and private, and schools providing education and training in foreign languages are as follows:

²¹ The third paragraph of Article 26, which was repealed in 2001, read as follows: “No language prohibited by law may be used in the expression and dissemination of ideas. Written or printed papers, records, audio and video tapes and other means and materials of expression in violation of this prohibition shall be confiscated upon a duly issued judge’s decision or, in cases where delay is inconvenient, upon the order of the authority authorised by law. The authority issuing the confiscation order shall notify the competent judge of this decision within twenty-four hours. The judge shall decide on this application within three days.”

²² The second paragraph of Article 28, which was repealed in 2001, read as follows: “Publication in any language prohibited by law shall be prohibited.”

²³ The European Commission against Racism and Intolerance (ECRI), Report on Turkey (fourth monitoring cycle), adopted on 10 December 2010 and published on 8 February 2011, para.62, available at: <https://rm.coe.int/fourth-report-on-turkey/16808b5c7e>.

- a) (Amended: 30/7/2003-4963/23 Art.) In education and training institutions, no language other than Turkish shall be taught to Turkish citizens as their mother tongue. However, for the learning of different languages and dialects traditionally used by Turkish citizens in their daily lives, special courses may be opened subject to the provisions of the Law on Private Education Institutions; language courses may be established for the same purpose in these courses and other language courses. In these courses and lessons, teaching contrary to the fundamental qualities of the Republic set forth in the Constitution and the indivisible integrity of the State with its territory and nation shall not be allowed. The principles and procedures regarding the opening and supervision of these courses and lessons shall be regulated by a regulation to be issued by the Ministry of National Education. (Additional sentences: 2/3/2014-6529/11 Art.) Furthermore, subject to the provisions of the Law on Private Education Institutions, private schools may be opened to provide education and training in different languages and dialects traditionally used by Turkish citizens in their daily lives. The languages and dialects to be taught in these institutions shall be determined by a Presidential decree. The principles and procedures regarding the opening and supervision of these institutions shall be regulated by a regulation to be issued by the Ministry of National Education. ...

26. Now, private schools are allowed to teach languages and dialects used by minority groups in their daily life (Article 11 of Law No. 6529). Furthermore, the education ministry has introduced language classes in Kurdish, Abkhaz, Adyghe, Laz and other languages as optional courses in public schools and hired several Kurdish language teachers as permanent staff. Several universities have started teaching Kurdish. However, for the minority groups that are not protected by the 1923 Lausanne treaty, the teaching of non-Turkish languages as mother tongues is still prohibited by Article 42 of the Turkish Constitution. ECRI indicates that as many children from the Kurdish and other minority groups do not sufficiently master Turkish, which is the language of instruction, this results in structural discrimination.²⁴ On the other hand, recently Kurdish departments in some universities such as Mardin Artuklu University have been closed.²⁵

IV. The European Court's Case Law on the relevance between defending the right to education in the mother tongue and freedom of expression and association

27. The European Court of Human Rights in one of its early judgments clearly stated that there was no “automatic” right to be educated in one’s language under Article 2, Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Belgian Linguistics Case²⁶), even in combination with the prohibition of discrimination on the ground of language. The State refused to establish or subsidise, in the Dutch unilingual region, primary school education in which French was employed as the language of instruction. For the Court, the difference in treatment was justified as, the two regions being predominantly unilingual, it would not have been feasible to make teaching available in both languages. Furthermore, families were not prevented from making use of private education in French in Dutch-speaking regions. However, it did not exclude the possibility that, in appropriate circumstances, it could be discrimination on the grounds of language not to use one’s mother tongue as a medium of instruction.
28. The European Court found a violation of freedom of expression and association in several cases related to the defending of education in the mother language. In the case of *Eğitim ve*

²⁴ See, ECRI, Report on Turkey (fifth monitoring cycle), Adopted on 29 June 2016 Published on 4 October 2016, para. 85-86 available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

²⁵ <https://www.gazeteduvar.com.tr/gundem/2019/08/15/yasayan-diller-enstitusu-icin-kapatma-karari-alindi>

²⁶ “*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*” v. Belgium (Merits), Nos. 1474/62, 1677/62, 1691/62, 1994/63 and 2126/64), 23.07.1968.

*Bilim Emekçileri Sendikası v. Turkey*²⁷ the applicant union was forced to amend its constitution which included the following provision: “[Eğitim-Sen] defends the right of all individuals in society to receive, with equality and freedom, a democratic, secular, scientific and cost-free education in their mother tongue.” The Turkish authorities requested the applicant union to delete the words “in their mother tongue” from its constitution on the ground that they were in breach of Articles 3 and 42 of the Constitution and of sections 1 and 20 of Law no. 4688 on public servants’ unions. Two consecutive dissolution proceedings were launched against the applicant union, and it finally forced to amend offending part of Article 2 (b) of its constitution to read as follows: “[Eğitim-Sen] defends, in the context of human rights and fundamental freedoms, the right of all individuals in society to receive a democratic, secular, scientific and cost-free education.”

29. The applicant union complained of a violation of its freedom of expression and association with the interference of Turkish authorities. The European Court ruled violation of both Articles 10 and 11 of the Convention. The Court stated that the proceedings brought against the applicant union constituted an interference by the national authorities in the exercise of its right to freedom of expression and association and that interference deprived it of the possibility of pursuing collectively or individually the aims that it had laid down in its constitution. The Court stated that, the principle defended by Eğitim-Sen, according to which individuals making up Turkish society could receive education in a mother tongue other than Turkish, was not incompatible with the fundamental principles of democracy. It reminded that nothing in the impugned Article of Eğitim-Sen’s constitution could be regarded as a call to violence, uprising or any other form of rejection of democratic principles, this being an essential factor to be taken into consideration. The Court accepted that the content of Article 2 (b) of Eğitim-Sen’s constitution could be seen as a contribution to the public debate (§§ 55 and 75). It recalled that, at the material time, a public debate on the subject had resulted in an amendment to the law, which allowed education, at least on a private basis, in mother tongues used by Turkish citizens other than Turkish (§ 74). Whilst acknowledging that the applicant’s proposal may have been contrary to the majority view of public opinion, certain institutions or certain State organisations, or even to Government policy, the Court reiterated that it is necessary for the proper functioning of democracy that the various associations or political groups should be able to take part in public debates in order to contribute to finding solutions to general questions affecting political and public actors of all persuasions (§ 56).
30. The Court emphasised that the mere presence in the union’s constitution of the expression “to receive education in their mother tongue”, without any other element indicating or proving that the real aim was different from that stated in the contested article of the constitution, could not be incompatible with the principles of democracy. In the Court’s view, such an objective, aimed at developing the culture of nationals with a mother tongue other than Turkish through education in that mother tongue, was not in itself incompatible with national security and did not constitute a threat to public order. Even if the competent national authorities could have taken the view that education in one’s mother tongue favoured the culture of a minority, the Court held that the existence of minorities and different cultures in a country was a historical fact which a democratic society must tolerate, or even protect and promote, in accordance with the principles of international law (§ 59).

²⁷ *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, 25.09.2012.

31. In the light of the foregoing, the Court found a violation of Articles 11 and 10 of the Convention.
32. The Court also found a violation of Article 10 of the Convention in a case where the applicant was prosecuted for allowing Kurdish to be spoken at a political party meeting.²⁸
33. The Court also found a violation of Article 2 of Protocol No. 1 in several applications on the basis of disciplinary sanctions imposed on the applicants for petitioning the Rectorate of the University to introduce Kurdish language teaching as an optional module.²⁹

V. The Turkish State's Intolerance of the Kurdish Language

34. As mentioned above, Kurdish is the minority language most affected by the mother tongue ban. However, restrictions on Kurdish in Türkiye are not only in terms of the language of education. As can be seen from the European Court's case law the Kurdish mother tongue issue has been brought before the ECtHR on various occasions. Politicians speaking in Kurdish,³⁰ students collecting signatures for Kurdish education,³¹ participation in demonstrations to defend Kurdish education,³² refusing to deliver publications in Kurdish to prisoners,³³ the attempt to close down Eğitim-Sen due to its advocacy of Kurdish education,³⁴ and defendants speaking Kurdish in the courtroom³⁵ are some of the issues examined by the Court. In all these cases the Court found violations of several articles of the Convention.
35. İFÖD considers that the current application is another sign of public authorities' intolerance of the Kurdish language. The applicants, teachers in public schools, delivered a one-hour class on the importance of the mother tongue on the International Mother Language Day. The public authorities considered this action incompatible with their duties as civil servants and reprimanded them. The Turkish Constitutional Court **evaluated this disciplinary sanction as justifiable** and found no violation of the freedom of expression and association of the applicants.³⁶
36. The Constitutional Court reminded that language policies of modern states are shaped by their political aims and determining the language of education is within the state's margin of appreciation. It emphasized that the Turkish state has chosen to teach in Turkish rather than other mother tongues referring to Article 42 of the Constitution. The Court's evaluation is as follows:

“it has been established that teachers may not make ideological statements or participate in political actions during the performance of their duties. In the present case, the applicants, who are teachers, expressed themselves in the course of their duties, contrary to the policies and principles established by the State in this area, by teaching a subject that is not included in the

²⁸ *Semir Güzel v. Turkey*, no.29483/09, 13.09.2016.

²⁹ *Çölgeçen and others v. Turkey*, nos.50124/07, 53082/07, 53865/07, 12.12.2017; *İrfan Temel and others v. Turkey*, no. 36458/02, 03.03.2009; See also other cases relating to petitioning for Kurdish education, *Döner and others v. Turkey*, no. 29994/02, 07.03.2017.

³⁰ *Şükran Aydın and others v. Turkey*, nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, 22.01.2013; *Semir Güzel v. Turkey*, no.29483/09, 13.09.2016.

³¹ *Çölgeçen and others v. Turkey*, nos.50124/07, 53082/07, 53865/07, 12.12.2017; *İrfan Temel and others v. Turkey*, no. 36458/02, 03.03.2009.

³² *Hakim Aydın v. Turkey*, no. 4048/09, 26.05.2020

³³ *Yurtsever and others v. Turkey*, nos. 4946/08, 21030/08, 24309/08, ..., 20.01.2015.

³⁴ *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, 25.09.2012.

³⁵ *Zana v. Turkey*, no. 18954/91, 25.11.1997

³⁶ *Abdulcebbar Tekin ve Diğerleri*, B. No: 2018/561, 14.04.2022.

curriculum. The administrative and judicial authorities considered that this action was incompatible with the impartiality of civil servants and their loyalty to the State. It was considered legitimate that the action complained of, which they chose as a method of expressing their views on their demand for education in their mother tongue, was considered contrary to the obligation of prudence and caution imposed on the applicants, who are teachers. Having regard to the potential impact of the applicants' statements on their pupils during the action in question, it was concluded that the disciplinary sanctions imposed on the applicants for going outside the curriculum met a compelling social need in a democratic society in order to ensure the proper functioning and continuity of public services, since the disciplinary sanctions imposed on the applicants for going outside the curriculum were not of such a nature as to prevent them from participating in democracy and expressing their opinions freely, or to make it significantly more difficult and eliminate its effect." (§ 63).

37. It is clear from the logic of the Constitutional Court that mentioning the importance of the mother tongue in the classroom to celebrate International Mother Language Day is considered by the Court to be incompatible with teachers' duty of loyalty to the State. However, İFÖD is of the opinion that this approach of the Constitutional Court cannot be considered independently from the policy of excluding Kurdish, the mother tongue of the Kurds, who constitute a very large minority group in Turkey, from the public sphere altogether. It should be emphasized that there is a difference between a short action to draw attention to the exclusion from the public sphere of a language spoken by millions of people and forcing students to learn in a language that is not the language of instruction. Associating the demand to use a language spoken by millions of people in a State party in education with the concept of loyalty to the State would mean interpreting the use of this language as a breach of loyalty. Therefore, the present case should be evaluated in the light of the principles developed by ECtHR in previous judgments on the sanctioning of the use of Kurdish in public sphere.

38. İFÖD believes that the Turkish authorities' intolerance of the Kurdish language is in contradiction with the basic values of the Convention such as open-mindedness and plurality of ideas.

VI. Conclusions

39. İFÖD is of the opinion that the right to mother tongue education is an internationally recognised right and that the demand for mother tongue education should be considered as a contribution to the public debate. İFÖD is of the opinion that the symbolic action of teaching one hour of mother tongue on the International Mother Language Day, which was decided by the teachers' union, should be seen as an exercise of freedom of expression and freedom of association.

40. İFÖD submits that the present case should be examined in the light of the principles laid down by the Court in *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, since the circumstances of the present application are almost identical to that of *Eğitim ve Bilim Emekçileri Sendikası* application.

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İfade Özgürlüğü Derneği (İFÖD) has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The new Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.