



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

1959 · 50 · 2009

SECOND SECTION

CASE OF CİHAN ÖZTÜRK v. TURKEY

(Application no. 17095/03)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment may be subject to editorial revision.

In the case of Cihan Öztürk v. Turkey,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 17095/03) 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, Mr Cihan Öztürk (“the applicant”), on 24 March 2003.

2. The applicant was represented by Mr E. Cinmen, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged, in particular, that the national courts had breached his freedom of expression and had denied him a fair trial in breach of his rights protected by Articles 6 and 10 of the Convention.

4. On 16 April 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Istanbul.

6. At the time of the events giving rise to this application, the applicant was the manager of the post office in Beyoğlu, Istanbul. He wrote an article entitled “An open letter to Ms G.B., former Director of the Istanbul PTT”,

in which he criticised Ms G.B.'s negligence in the project to restore the Beyoğlu post office building and blamed her for the dilapidated state and partial collapse of the building. In May 2000, the article was published in the 496th issue of the Pos-Tel magazine, a non-profit-making publication of the State postal service ("the PTT"), which has approximately 28,000 employees.

7. In the same edition of the magazine, in an article entitled "PTT Hospital and Beyoğlu Post office", the editor-in-chief also criticised the restoration project and claimed that the amount paid for the project suggested that it had been carried out to make certain people richer. He concluded that those who were responsible for the current state of the building or had been negligent had been put on trial, but that the unlawfulness and abuses would soon be forgotten and the accused would get away with the offences. He pointed out that justice delayed was not justice.

8. On 7 June 2000 Ms G.B. sent a letter of correction to the editor-in-chief of the magazine, requesting him to publish her replies to the allegations made against her. This letter was received by the editor-in-chief on 9 June 2000.

9. Since the magazine did not publish the letter, Ms G.B. brought an action in the Fatih Criminal Court of First Instance seeking an order for the publication of her letter.

10. On 26 June 2000 the Fatih Criminal Court ordered the publication of the correction letter. However, it decided that certain passages in the letter should be deleted as the statements contained therein went beyond the aim of responding to the allegations made against the plaintiff. The parties did not inform the Court whether this letter was published in the Pos-Tel magazine.

11. On 31 August 2000 Ms G.B. brought a civil action for compensation against the applicant and the editor-in-chief of the magazine before the Istanbul Civil Court of First Instance. She claimed that the allegedly defamatory remarks made in the magazine, particularly in the applicant's article, constituted an attack on her reputation. She thus requested that the court award her compensation in the amount of 5,000,000,000 Turkish liras (TRL) for non-pecuniary damage.

12. During the proceedings the court examined the following passages:

"My esteemed former Director, ... as a result of your pointless and inappropriate acts, which were carried out merely to obtain economic and political profit and to appear cute to some people, you caused irreparable harm to our historic PTT (Beyoğlu) building ...

... I believe that our late Minister of Communications, Hüseyin Hasip Efendi, would turn in his grave if he saw the building today ...

My esteemed retired Director, in an interview which was published in Tempo magazine, in which you appeared in the guise of a heroine and a symbol for honesty, like an exemplary manager in Turkey, you managed to exploit the sentiments of (the interviewer) by appearing innocent, clean and pure. The interview was given the title '*They ate the president who did not eat*'. This title moved me tremendously and made me think. I wished that the interview had not been published in a serious magazine. Now, like a lady with a conscience, and without twisting the truth, tell [us]. In our country there are many people who take bribes; there are thieves and crooks. And even though these people are convicted by our independent courts, they never admit that ... they stole or that they were bribed. As you may very well remember, an eminent statesman once said, 'No one can know what happens between two people and bribery cannot be documented.'...

While it was decided by the Ministry of Transport, the State Planning Agency and the Office of the Prime Minister to pay 373,800,000,000 TRL for our building, I cannot understand how you managed to spend 422,000,000,000 TRL, by consulting with Mr U.D., who has nothing to do with our administration. Do you also know that, in a telephone conversation, one of your employees told me that he could not make any payment which had not been approved by Mr U.D.?"

13. On 15 November 2001 the first-instance court decided that the article went beyond mere criticism of an unsuccessful restoration project. In its detailed decision, the court noted that there was a criminal case pending against the plaintiff on charges of breach of duty for having made an overpayment to the contractor who carried out the restoration project. The dispute between the contractor and the PTT had not yet been resolved and the plaintiff had not been convicted. Nevertheless, the proceedings in question had been suspended under Law no. 4616. However, the court held that, even assuming that the proceedings had not been suspended and that the plaintiff had been convicted of the charges, this did not mean that she had been accepting bribes or that she had not acted like a lady. The court observed that criticising an unsuccessful restoration project was not the same as insulting an individual, and that the applicant had exceeded the limits of permissible criticism by using demeaning statements in the article. It had been implied that the plaintiff had taken bribes. Taking into account the responsibility of the plaintiff in the restoration project and the socio-economic situation of the parties, the court decided to award the plaintiff the sum of TRL 750,000,000 (approximately 500 euros (EUR) at the relevant time) in compensation for non-pecuniary damage, to be paid by the applicant and the editor-in-chief. The applicant paid a total sum of TRL 1,530,232,000 (approximately EUR 1,000), which included the principal compensation, enforcement costs and interest.

14. On 27 December 2001 the applicant appealed against the decision of the first-instance court, complaining that it interfered with his freedom of expression. He noted that the impugned article had not targeted the personality of the plaintiff, but had been aimed at raising awareness on the subject of the protection of a historic monument by the State authorities. As a former manager of Beyoğlu post office, he had merely expressed his

concern at the state of the building and had criticised the plaintiff for her omissions, contributing to the collapse of the building. He argued that the first-instance court judges had erred in their decision by refusing his request that they visit the building, which might have allowed them to better understand his criticism in the article. Thus, the applicant requested the Court of Cassation to quash the above judgment which, in his opinion, risked preventing scrutiny of public values and would deter the public from raising their voices against the plunder of public monuments.

15. On 4 June 2002 the Court of Cassation upheld the judgment, holding that the first-instance court had duly examined the circumstances in which the insulting statements had been made.

16. On 20 November 2002 the Court of Cassation dismissed a request by the applicant for rectification of its decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. According to Law no. 4616 on conditional release, suspension of proceedings and execution of sentences in respect of crimes committed before 23 April 1999, proceedings could be suspended and subsequently dropped if no crime of the same or a more serious nature was committed by the offender within a five-year period.

18. Article 49 of the Code of Obligations provides as follows:

“Any person who alleges that his personality rights have been illegally violated can claim compensation for non-pecuniary damage.

The judge shall take into account the parties’ socio-economic situation, their occupation and their social status when determining the amount of compensation...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicant complained that the domestic courts’ interference with his right to freedom of expression had been unnecessary in a democratic society and in breach of Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others...”

20. The Government contested that argument.

A. Admissibility

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

22. The applicant claimed that he had written the impugned article in order to draw the public's attention to the state of a historic building, namely the dilapidated appearance of the Beyoğlu post office building. Following publication of the article, public attention had turned to the building and attempts had been made to save it. Accordingly, his aim had been to start a discussion on an issue of public importance. He concluded therefore that there was no pressing social need capable of justifying the interference in question and that it had not been proportionate to the aim pursued.

23. The Government submitted that the applicant had exceeded the limits of acceptable criticism and had accused Ms G.B. of taking bribes. Although criminal proceedings had been initiated against Ms G.B. on charges of breach of duty based on negligence, those proceedings had been postponed in accordance with Law no. 4616. Thus, in the circumstances of the case, Ms G.B. was entitled to be presumed innocent until the conclusion of the criminal proceedings against her. The domestic courts considered that even if Ms G.B. had been convicted of the charges, this would not mean that she had been bribed or that she had not behaved like a lady. When striking a balance between the conflicting interests, namely the applicant's right to freedom of expression and the plaintiff's right to be presumed innocent, the domestic courts had ruled in favour of the latter. The interference in question had therefore been proportionate to the aim pursued and should be considered to fall within the margin of appreciation of the national authorities.

2. *The Court's assessment*

24. The Court notes that it is not in dispute between the parties that the final judgment given in the defamation case constituted an “interference” with the applicant’s right to freedom of expression, protected by Article 10 § 1 of the Convention. Nor was it contested that the interference was “prescribed by law” and “pursued a legitimate aim”, that of protecting the reputation or rights of others, for the purposes of Article 10 § 2. It thus remains to be determined whether the interference in question was “necessary in a democratic society”.

25. In this connection the Court notes that the applicant and Ms G.B. are both retired civil servants and former employees of the PTT. The applicant’s article, together with the article of the editor-in-chief, was published in a magazine whose target readers are mainly the employees of the PTT. The national courts found that the applicant’s statements contained in his article in the Pos-Tel magazine had exceeded the permissible limits of criticism and constituted an attack on Ms G.B.’s reputation.

26. In the Court’s opinion, it is clear from reading the impugned article, which was written in an ironic tone, that the applicant’s aim was to raise awareness among PTT employees on the subject of the protection of a historic building, in which he himself had worked as a manager, and to criticise those responsible, including Ms G.B., for non-transparent and wasteful spending of public money in the unsuccessful restoration project which resulted in the partial collapse of the building and left it in a dilapidated state (see paragraphs 6 and 12 above).

27. In view of the above, the Court considers that the applicant’s criticism in the impugned article may be regarded as imparting information or ideas in order to contribute to a debate on a matter of legitimate public interest (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 50, ECHR 1999-I). Furthermore, although the applicant is not a journalist, given that the defamation proceedings were brought against the applicant together with the editor-in-chief of the magazine, the Court observes that the pre-eminent role of the press in a democratic society to impart ideas and opinions on matters of public interest must also be taken into consideration when examining the interference at issue (see *Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, § 65, Series A no. 30). In this regard, particularly strong reasons must be provided for any measure affecting this role of the press and limiting access to information which the public has the right to receive (see, amongst many authorities, *Oberschlick v. Austria* (no. 1), 23 May 1991, § 58, Series A no. 204).

28. In the same vein, the Court reiterates that, as part of their role as a “public watchdog”, the media’s reporting on “‘stories’ or ‘rumours’ – emanating from persons other than an applicant – or ‘public opinion’” is to be protected where they are not completely without foundation (see *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, § 65, Series A no. 239). In

the present case, the authorities' failure to provide detailed information about the project to restore a historic public building, and the allegations of bribes leading to the bringing of charges against Ms G.B. and others for breach of duty, might have raised doubts about the spending of public money on the project and, therefore, could reasonably have prompted the applicant and the editor-in-chief of the magazine to exploit all available material, including unconfirmed allegations or rumours (see *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 36, 27 November 2007).

29. This being so, the Court observes that the domestic courts qualified certain statements in the impugned article as assertions of fact which lacked foundation, namely the statements that Ms G.B. had been negligent and responsible for the dilapidated state of the Beyoğlu post office building and had taken bribes in connection with the restoration project (see paragraph 13 above). In this respect the Court reiterates that in its practice it "has distinguished between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10" (see *Jerusalem v. Austria*, no. 26958/95, § 42, ECHR 2001-II, and *Busuioc v. Moldova*, no. 61513/00, § 61, 21 December 2004).

30. In the Court's view, having regard to the satirical character of the article, the questions raised by the applicant about the spending of public money for an unsuccessful restoration project cannot be interpreted as serious accusations of bribe-taking. The applicant's statements must therefore be qualified as value judgments based on facts already known to the public.

31. Be that as it may, even where a statement amounts to a value judgment, the proportionality of the interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *Sokołowski v. Poland*, no. 75955/01, § 48, 29 March 2005). In the present case, however, there was a sufficient factual basis for the applicant to make a critical analysis of the situation and to raise questions about the restoration project, since the authorities had already brought criminal proceedings against the applicant for breach of duty.

32. In this context, the Court observes that, while paragraph 2 of Article 10 of the Convention recognises that freedom of speech may be restricted in order to protect the reputation of others, defamation laws or proceedings cannot be justified if their purpose or effect is to prevent legitimate criticism of public officials or the exposure of official wrongdoing or corruption. A right to sue in defamation for the reputation of officials could easily be abused and might prevent free and open debate on matters of public interest or scrutiny of the spending of public money. As demonstrated in the instant

case, the authorities took no note of the applicant's argument that he had been acting in good faith in order to protect a legitimate public interest (see paragraphs 14 and 15 above). Instead, they gave undue weight to the protection of the reputation of a retired public official on the grounds that her right to the presumption of innocence was at stake.

33. Bearing in mind the amount of the compensation which the applicant was ordered to pay, together with the editor-in-chief of the magazine, the Court observes that the sanction imposed on the applicant was significant. This could deter others from criticising public officials and limit the free flow of information and ideas (see paragraph 13 above). The national courts might instead have considered other sanctions, such as the issuance of an apology or publication of their judgment finding the statements to be defamatory. Indeed, the order issued by the Fatih Criminal Court for the publication of the letter of correction sent by Ms G.B. would appear to be a sufficient remedy in the circumstances of the present case (see paragraph 10).

34. In view of the foregoing, the Court finds that the reasons adduced by the domestic courts cannot be regarded as sufficient and relevant justification for the interference with the applicant's right to freedom of expression. The national authorities therefore failed to strike a fair balance between the relevant interests.

35. It follows that the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

36. There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

37. The applicant complained that the domestic courts' decisions ordering him to pay damages to the plaintiff had been unfair for the purposes of Article 6 § 1 of the Convention.

38. The Government contested that argument.

39. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

40. Having regard to the facts of the case, the parties' submissions and its finding of a violation under Article 10, the Court considers that it has examined the main legal question raised in the present application. It concludes therefore that there is no need to make a separate ruling under this head (see, for example, *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 43, 17 July 2007, and *K.Ö. v. Turkey*, no. 71795/01, § 50, 11 December 2007).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage, costs and expenses

42. In his letter dated 21 November 2007 the applicant stated that he had paid TRL 1,530,232,000 (EUR 1,000) to Ms G.B. for the non-pecuniary damages awarded by the domestic courts.

43. The Government argued that the applicant had failed to submit his just satisfaction claims and that, therefore, no award should be made under this head.

44. The Court notes that in a letter dated 16 October 2007 the Registry invited the applicant to submit his just satisfaction claims, together with the required supporting documents. In reply to that letter, the applicant merely indicated the amount of damage he had suffered in the instant case, together with the supporting documents. However, he did not specify his claims for non-pecuniary damage or the costs and expenses he may have incurred in the course of the proceedings before the Court.

45. In view of the above, the Court considers that the applicant's statement that he paid TRL 1,530,232,000 to Ms G.B. may be accepted as a valid claim for pecuniary damage in the circumstances of the present case. It thus awards him EUR 1,000 in respect of pecuniary damage.

46. However, in the absence of any quantified claim, the Court makes no award in respect of non-pecuniary damage or costs and expenses.

B. Default interest

47. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 6 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President