

Press release issued by the Registrar

**CHAMBER JUDGMENT
ERBAKAN v. TURKEY**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Erbakan v. Turkey* (application no. 59405/00).

The Court held

- by six votes to one that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights; and
- unanimously that there had been a **violation of Article 6 § 1** (right to a fair hearing) of the Convention.

As the applicant had not submitted a claim for just satisfaction within the time allowed, the Court considered that no award should be made to him under Article 41 (just satisfaction) of the Convention.

(The judgment is available only in French.)

1. Principal facts

The applicant, Necmettin Erbakan, is a Turkish national who was born on 29 October 1926 and lives in Ankara. He is a politician and was notably Prime Minister of Turkey from June 1996 to June 1997. At the material time he was chairman of Refah Partisi (the Welfare Party), which was dissolved in 1998 for engaging in activities contrary to the principles of secularism.

On 25 February 1994, during the local election campaign, the applicant gave a public speech in Bingöl in south-east Turkey. No official recording of the speech was made.

More than four years later, in July 1998, criminal proceedings were brought against the applicant for having incited the people to hatred or hostility through comments made in his 1994 speech about distinctions between religions, races and regions.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In the Diyarbakır State Security Court the applicant contested the accusations against him, in particular disputing the authenticity and reliability of a video cassette produced by the public prosecutor's office containing a recording of the speech.

On 10 March 2000 the State Security Court convicted Mr Erbakan and sentenced him to one year's imprisonment and a fine. Taking into account the situation at the material time in the city of Bingöl, where the inhabitants had been victims of terrorist acts perpetrated by an extremist organisation, the State Security Court concluded that the applicant, in particular by making a distinction between "believers" and "non-believers", had overstepped the acceptable limits of freedom of political debate.

On 5 July 2000 the Court of Cassation dismissed an appeal on points of law by the applicant and upheld his conviction. It held that by describing "all parties except his own as parties of the unjust, lovers of the infidel, defending a system allegedly based on self-interest", the applicant had advocated the view that "those parties had declared war, according to the Koran, against Allah".

In January 2001, pursuant to Laws nos. 4454 and 4616, the State Security Court stayed the execution of the sentence imposed on the applicant.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 July 2000 and declared partly admissible on 10 November 2005.

Judgment was given by a Chamber of 7 judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Riza **Türmen** (Turkish),
Peer **Lorenzen** (Danish),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Anatoly **Kovler** (Russian),
Elisabeth **Steiner** (Austrian), *judges*,

and also Santiago **Quesada**, *Deputy Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 10 and Article 6 § 1 of the Convention, the applicant complained that his conviction had infringed his right to freedom of expression and submitted that his case had not been heard by an independent and impartial tribunal on account of the presence of a military judge among the members of the State Security Court.

¹ This summary by the Registry does not bind the Court.

Decision of the Court

Article 10

With regard to the comments attributed to the applicant, the Court considered that by using religious terminology in his speech, he had, among other things, reduced diversity – a factor inherent in any society – to a simple division between “believers” and “non-believers” and had called for a political line to be formed on the basis of religious affiliation. The Court further noted that at the material time the region’s inhabitants had been victims of a number of tragic acts perpetrated by fundamentalist movements.

The Court pointed out that combating all forms of intolerance was an integral part of human-rights protection and that it was crucially important that in their speeches politicians should avoid making comments likely to foster such intolerance. However, in view of the fundamental nature of freedom of political debate in a democratic society, the Court had to ascertain whether there were compelling reasons that could justify a severe penalty in relation to political speech. In that connection it noted in particular that the authorities had not sought to establish the content of the speech in question until five years after the rally, and had done so purely on the basis of a video recording whose authenticity was disputed.

Having regard to the circumstances of the case, the Court considered that it was particularly difficult to hold the applicant responsible for all the comments cited in the indictment. Furthermore, it had not been established that at the time of his prosecution the speech in question had given rise to, or been likely to give rise to, a “present risk” and an “imminent danger”. Lastly, the Court took into account the extremely severe sentence imposed on such a well-known politician.

In conclusion, the Court considered that the criminal proceedings instituted against a politician four years and five months after the alleged comments had been made had not been reasonably proportionate to the legitimate aims pursued, regard being had to the interest of a democratic society in ensuring and maintaining freedom of political debate.

The Court accordingly held that there had been a violation of Article 10.

Article 6 § 1

The Court reiterated that civilians standing trial for offences under the Criminal Code had legitimate reason to fear that a state security court which included a military judge among its members might not be independent and impartial. It therefore held unanimously that there had been a violation of Article 6 § 1.

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

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.