

Press release issued by the Registrar

Seven Chamber judgments concerning Turkey

The European Court of Human Rights has today notified in writing the following seven Chamber judgments¹, none of which is final.

Erdal Taş v. Turkey (application no. 77650/01), ***Yıldız and Taş v. Turkey (nos. 1, 2, 3 and 4)*** (nos. 77641/01, 77642/01, 477/02 and 3847/02), ***Falakaoğlu and Saygılı v. Turkey*** (no. 11461/03) and ***Yarar v. Turkey*** (no. 57258/00).

The Court held unanimously in each case

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

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants a total of 24,000 euros (EUR) for non-pecuniary damage and EUR 9,500 for costs and expenses. It also awarded EUR 275 to Mr Falakaoğlu and EUR 550 to Mr Saygılı in respect of pecuniary damage. (The judgments are available only in French, with the exception of ***Yarar v. Turkey***, which is available only in English.)

1. Principal facts

The five applicants, Erdal Taş, Mehmet Emin Yıldız, Bülent Falakaoğlu, Fevzi Saygılı and Mehmet Erol Yarar, are Turkish nationals who were born in 1974, 1951, 1974, 1966 and 1960 respectively. Mr Taş lives in Frauenfeld (Switzerland), Mr Yıldız in Wiesbaden (Germany) and Mr Falakaoğlu, Mr Saygılı and Mr Yarar in Istanbul.

Erdal Taş and Mehmet Emin Yıldız are editor-in-chief and proprietor respectively of the daily newspaper *2000'de Yeni Gündem*. At the material time, Bülent Falakaoğlu and Fevzi Saygılı were editor-in-chief and proprietor respectively of the daily newspaper *Yeni Evrensel* and Mr Yarar was chairman of the Association of Independent Industrialists and Businessmen (MÜSİAD).

All five applicants were convicted by state security courts on account of articles published in their respective newspapers.

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.

Erdal Taş v. Turkey

Criminal proceedings were instituted against Mr Taş for disseminating propaganda against the indivisibility of the State on account of the publication of a statement by a terrorist organisation, following the publication in the daily newspaper *2000'de Yeni Gündem* of an article consisting of an analysis of the Kurdish question.

In April 2001 the Istanbul State Security Court sentenced the applicant, in his capacity as editor-in-chief, to five months' imprisonment, commuted to a fine.

Yıldız and Taş v. Turkey (nos 1, 2, 3 and 4)

Several sets of criminal proceedings were initiated against Mr Yıldız and Mr Taş for having published statements by terrorist organisations, following publication of four articles between 29 July 2000 and 31 January 2001. These articles summarised statements made by leaders of the PKK (Workers' Party of Kurdistan).

In each set of proceedings, between February and May 2001, the applicants were ordered by the Istanbul State Security Court to pay a fine.

Falakaoğlu and Saygılı v. Turkey

Mr Falakaoğlu and Mr Saygılı were prosecuted for publishing press articles liable to make agents of the State engaged in combating terrorism a target for terrorist organisations. They were accused of having published two articles in July 2001 in which they subjected the careers of two police officers to virulent criticism, establishing a connection between their rise through the ranks and the practice of police violence.

In May 2002 the Istanbul State Security Court ordered the applicants to pay fines.

Yarar v. Turkey

Criminal proceedings were instituted against Mr Yarar for inciting people to hatred and hostility on the basis of a distinction between class and religion; he was accused of giving a speech at a MÜSİAD meeting, the content of which was subsequently reported in several newspapers.

In April 1999 the Ankara State Security Court sentenced the applicant, among other things, to one year's imprisonment; execution of the sentence was subsequently stayed.

2. Procedure and composition of the Court

The application in *Erdal Taş v. Turkey* was lodged with the European Court of Human Rights on 22 October 2001 and was declared partly inadmissible on 13 March 2001. The applications in *Yıldız and Taş v. Turkey (nos 1, 2, 3 and 4)* were lodged with the Court on 22 November 2001 (nos 1 and 2), 28 November 2001 and 24 December 2001 and were declared partly inadmissible on 13 March 2003. The application in *Falakaoğlu and Saygılı v. Turkey* was lodged on 25 March 2003 and declared partly inadmissible on 5 January 2006. The application in the case of *Yarar v. Turkey* was lodged on 20 March 2000.

3. Summary of the judgment¹

Complaints

The applicants contended that their convictions amounted to a breach of their right to freedom of expression. In addition, with the exception of Mr Yazar, they complained that the opinion of Principal State Counsel at the Court of Cassation had not been communicated to them. Mr Yazar complained of the lack of independence and impartiality of the state security court which had convicted him, owing to the presence on the bench of a military judge. He relied on Articles 10 and 6 § 1.

Decision of the Court

Article 10 of the Convention

In each of these cases the Court considered that the reasons given by the Turkish courts could not be regarded in themselves as sufficient to justify the interference with the applicants' right to freedom of expression. It found that the applicants' convictions had been disproportionate to the aims pursued and were therefore not "necessary in a democratic society".

Accordingly, it held that there had been a violation of Article 10 in each case.

Article 6 § 1 of the Convention

In the Yazar case

The Court held that there had been a violation of Article 6 § 1 with respect to the complaint concerning the lack of independence and impartiality of the state security court. As to the other complaints regarding the unfairness of the proceedings, the Court reiterated that a tribunal whose lack of independence and impartiality had been established could not, in any circumstances, guarantee a fair trial to the persons subject to its jurisdiction; consequently, it held that there was no need to examine these complaints.

In the other six cases

The Court held that there had been a violation of Article 6 § 1 on account of the failure to provide the applicants with a copy of the opinion of Principal State Counsel at the Court of Cassation.

In *Falakaoglu and Saygılı v. Turkey*, Judge Mularoni expressed a concurring opinion, which is annexed to the judgment.

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

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

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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.