

Press release issued by the Registrar

Chamber judgment¹

Sapan v. Turkey (application no. 44102/04)

**SEIZURE OF BOOK ABOUT SINGER TARKAN
VIOLATES PUBLISHER'S FREEDOM OF EXPRESSION**

Unanimously

***Violation of Article 10 (freedom of expression)
of the European Convention on Human Rights***

Principal facts

The applicant, Özcan Sapan, is a Turkish national who was born in 1960 and lives in Istanbul. In 2001 his publishing house published a book entitled "Tarkan – anatomy of a star" (*Tarkan – yıldız olgusu*), in which a doctoral thesis was reproduced in part. The first part of the book analysed the emergence of stardom as a phenomenon in Turkey and the second part focused on Tarkan, a well-known pop singer there. The book also contained 31 pictures of Tarkan that had been published in the press and 3 magazine covers featuring the star.

On 17 September 2001 the singer lodged a complaint with the Istanbul Court of First Instance requesting that the book be seized and its distribution prohibited, considering that it adversely affected his image and his personality rights. He based his complaint on the fact that the book bore his name and contained photos of him, and that nine brief passages featured speculation about his sexual inclination, his allegedly effeminate side and certain poses deemed explicit. On 24 September 2001 the court allowed his complaint and ordered the book to be seized. On 3 October 2001 Tarkan brought an action for damages against Mr Sapan and the book's author before the same court, for infringement of his personality rights.

On 22 October 2001 Mr Sapan applied for the seizure order to be lifted, arguing that it was unfounded and unjustified. He submitted that the book, part of which was taken from a doctoral thesis, was the result of scientific and sociological research and should be viewed as a whole. On 13 December 2001 the judge dismissed his application, without giving reasons. Mr Sapan twice renewed his application for the seizure order to be lifted, but both applications were again rejected, in September 2002 and September 2003, without any

¹ Under Article 43 of the Convention, 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.

reasons being given, in spite of two expert reports, produced at the court's request, which were favourable to Mr Sapan.

In its decision on the merits, on 13 May 2004, the court finally rejected the singer's claim for damages and lifted the seizure order on the book. In the light of the expert reports and the book as a whole, it found that the passages containing sociological research, which were partly taken from publications and audiovisual productions, had not been written with a view to infringing Tarkan's personality rights.

However, on 22 November 2005 the Court of Cassation set that judgment aside. Considering that the book "addressed subjects related to the singer's personal life rather than his public persona", it found that it had infringed his personality rights. The proceedings are still ongoing in the Turkish courts.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) and Article 6 § 1 (right to a fair hearing), Mr Sapan complained about the seizure of the book and the decision ordering it, which he considered unjustified. He further relied on Article 1 of Protocol No.1 (protection of property), in respect of the loss allegedly sustained because of the seizure of the book.

The application was lodged with the European Court of Human Rights on 14 October 2004.

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

Françoise **Tulkens** (Belgium), **President**,
Ireneu **Cabral Barreto** (Portugal),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nona **Tsotsoria** (Georgia), **Judges**,

and also Sally **Dollé**, **Section Registrar**.

Decision of the Court

Freedom of expression (Article 10)

The main question the Court had to examine was whether the seizure of the book – a measure prescribed by law and pursuing the legitimate aim of protecting the rights of others – was an interference with freedom of expression that could be considered "necessary in a democratic society".

First of all, the Court noted that the book in dispute partly reproduced a doctoral thesis, and emphasised the importance of academic freedom. The researcher who wrote the book analysed the "star" phenomenon and its emergence in Turkey, before turning his attention to the singer's arrival on the music scene and his rise to stardom. Through Tarkan, therefore, and using scientific methods, the book addressed the social phenomenon of stardom. It could not be compared with the tabloid press, or gossip columns, whose role was generally to satisfy the curiosity of a certain type of reader about details of celebrities' private lives.

As to the nature of the photographs used to illustrate the book, the Court noted that they were all pictures for which the singer had posed and which had already been published.

The Court went on to note that the court whose role it had been to examine the need for the restriction imposed on Mr Sapan's freedom of expression had ordered the book to be seized based on the singer's complaints, without giving any reasons. Just as it had rejected Mr Sapan's subsequent requests for the lifting of the seizure without giving reasons. In spite of the findings of expert reports in Mr Sapan's favour (to the effect that there had been no infringement of the singer's image or personality rights), the ban on the book had lasted almost two years and eight months, until the judgment on the merits was pronounced.

These considerations led the Court to find that, in the absence of sufficient and relevant reasons, the seizure of the book "Tarkan – anatomy of a star" could not be considered necessary in a democratic society. There had therefore been a violation of Article 10.

Other complaints (Article 6 § 1 and Article 1 of Protocol No. 1)

As the main legal issue raised by the case (freedom of expression) had been determined, the Court did not consider it necessary to examine separately Mr Sapan's complaints concerning the fairness of the proceedings or the financial loss allegedly sustained.

Just satisfaction (Article 41)

Mr Sapan asked the Court to award him sums to cover both the pecuniary damage (costs incurred for the preparation of the book, printing and advertising costs, lost sales) and the non-pecuniary damage sustained as a result of the violation. The Court rejected the claim in respect of pecuniary damage, which was extremely speculative, but held that Turkey was to pay Mr Sapan 2,000 euros (EUR) in respect of non-pecuniary damage, and EUR 1,000 for costs and expenses.

The judgment is available only in French. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<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.