



A conviction for criticising a civil servant in a letter amounted to a violation of the right to freedom of expression

In today's **Chamber** judgment¹ in the case of [Ali Çetin v. Turkey](#) (application no. 30905/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the criminal conviction of an accountant (Mr Çetin) for insulting a civil servant, as a result of comments made by Mr Çetin in a letter relating to a professional conflict. Mr Çetin accused the civil servant in question of having launched a "*fatwa*², *displaying the mentality of a Bekçi Murtaza*³" when drawing up a tax audit report on the foundation which had employed Mr Çetin.

The Court held that Mr Çetin's conviction had amounted to a disproportionate interference with his right to freedom of expression and that it had not been "necessary in a democratic society". It noted, in particular, that the criticisms had been issued in reaction to a report that had caused direct and undoubted harm to Mr Çetin, whose employment contract had been terminated; that Mr Çetin had been seeking to express his personal opinions and that his statements were akin to value judgments; that the comments in question had not been part of an open discussion of matters of public concern; and that they had not been intended to be accessible to the general public but solely to the relevant domestic authorities.

The Court also reiterated that even when the sanction was the lightest possible (a fine of 195 euros (EUR) in the present case), it nevertheless constituted a criminal sanction which could have a chilling effect on the exercise of freedom of expression, a risk that the relatively moderate nature of a fine would not suffice to negate.

Principal facts

The applicant, Ali Çetin, is a Turkish national who was born in 1954 and lives in Ankara (Turkey).

In 2003 the Turkish Foundation for Environmental Protection (*Türkiye Çevre Koruma Vakfı*) was audited by the tax authorities; irregularities in the accounts were subsequently pointed out in the report issued by the inspector responsible for the audit. As a result, Mr Çetin, who worked as an accountant for the Foundation, had his contract terminated.

Mr Çetin challenged the report in a letter sent to the Directorate General for Foundations, requesting the deletion of certain passages which were, in his view, likely to jeopardise his career, and alleging that the report had been drafted in a subjective manner and contained errors of law. He attached to his correspondence a letter that he had previously sent to the Turkish Foundation for Environmental Protection, in which he accused the inspector of having acted as though he were

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

² A "fatwa" is a decision issued by a competent religious authority, setting out the solution to a question concerning Islamic law.

³ "Bekçi Murtaza" is a fictional character in Turkish literature, who is viewed as placing his own principles and truths above everything else and seeking to impose them on others.

issuing a “fatwa”² and comparing him indirectly to “*Bekçi Murtaza*”³. The inspector lodged a complaint against Mr Çetin for insulting a civil servant.

In 2008 Mr Çetin was sentenced by the Ankara Criminal Court to seven days’ imprisonment and ordered to pay a judicial fine of EUR 164, on the basis of a report prepared by the Institute for the Turkish Language which found that certain expressions used in Mr Çetin’s letter tended to denigrate the inspector and to emphasise his shortcomings, in particular the terms “*fatwa*” and “*Bekçi Murtaza*”. The prison sentence was subsequently commuted to a fine and the applicant was ultimately ordered to pay a total fine of EUR 195. That judgment was final.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair trial) and 10 (freedom of expression), Mr Çetin complained about his criminal conviction for insult and the fact that the criminal court had delivered a final judgment which was not open to re-examination by a higher court.

The application was lodged with the European Court of Human Rights on 20 May 2009.

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

Robert **Spano** (Iceland), *President*,
Ledi **Bianku** (Albania),
İşıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

Mr Çetin had been convicted, in particular, on the grounds that he had expressed himself as follows in a letter attached to his administrative appeal: “... *It is incompatible with the serious nature of the post that they occupy and the impartiality [required of them] ... that persons who do not have the authority to do so issue a ‘fatwa’, displaying the mentality of a ‘Bekçi Murtaza’*”.

The Court noted that Mr Çetin was seeking to express his personal opinions and that his statements were akin to value judgments. The impugned comments were made in the particular context of a professional conflict between Mr Çetin and an inspector over a report prepared by the latter individual in his capacity as a civil servant, certain passages of which had resulted in the termination of Mr Çetin’s contract. In his appeal, Mr Çetin was asking for the deletion of certain passages in the report, which, in his opinion, were likely to jeopardise his career. He compared the mentality of the report’s author to that of a fictional character from Turkish literature. The comments were thus not made as part of an open discussion of matters of public concern. They were criticisms issued in reaction to a report that had caused direct and undoubted harm to Mr Çetin.

The Court accepted that the fact of comparing the inspector to a fictional character of this type could be perceived as vexatious. Nonetheless, it considered that Mr Çetin’s conviction was to be analysed in the light of the context in which the impugned comments had been expressed. In this connection, it noted that the comments had been made in a letter attached to an appeal, the purpose of which was to challenge a report which had had serious professional repercussions for Mr Çetin. They were not therefore intended to be accessible to the general public, but solely to the

relevant authorities at the domestic level, namely the Directorate General for Foundations and the Foundation in which Mr Çetin had worked. Taking into account the nature of the impugned comments and the context in which they were disseminated, the Court was thus not satisfied that the grounds relied on by the national authorities in convicting Mr Çetin were “relevant and sufficient” for the purposes of Article 10 § 2 of the Convention.

The Court also reiterated that even when the sanction was the lightest possible, it nevertheless constituted a criminal sanction and, in any event, that fact could not suffice, in itself, to justify the interference with Mr Çetin’s freedom of expression. Indeed, the Court had emphasised on many occasions that interference with freedom of expression may have a chilling effect on the exercise of that freedom, a risk that the relatively moderate nature of a fine would not suffice to negate.

The Court therefore considered that Mr Çetin’s conviction amounted to a disproportionate interference with his right to freedom of expression and that this interference was not “necessary in a democratic society” within the meaning of Article 10 of the Convention. There had therefore been a violation of Article 10 of the Convention.

Article 41 (just satisfaction)

As Mr Çetin had not submitted a claim for just satisfaction during the communication stage of the proceedings, the Court did not award him any sum on that account.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

George Stafford (tel: + 33 3 90 21 41 71)

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.