

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

SECOND SECTION

CASE OF MENGİ v. TURKEY

(Applications nos. 13471/05 and 38787/07)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Mengi v. Turkey,

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

Guido Raimondi, *President*,
Danutė Jočienė,
Peer Lorenzen,
András Sajó,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller, *judges*,
and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in two applications (nos. 13471/05 and 38787/07) 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, Ms Nesibe Ruhat Mengi ("the applicant"), on 2 April 2005 and 21 August 2007 respectively.

2. The applicant was represented by Mr M. M. Gültekin and Ms S. Balcı, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 23 March 2010 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Istanbul. She is a journalist/columnist and author of a number of books.

5. In 2003 the applicant wrote a series of articles in a daily newspaper, *Vatan,* criticising certain provisions of the draft criminal code prepared by the commission established for the drafting of a new Criminal Code ("the Commission") proposing reduced sentences for certain offences committed against women and children, *inter alia*, honour killings and rape.

A. Compensation proceedings concerning the article entitled 'Obsessed Professor' (application no. 13471/05)

6. On 19 October 2003 an article entitled 'Obsessed Professor' written by the applicant was published in *Vatan*. The article read as follows:

> "I can already guess what will happen after this article. The professor in question will reach for the phone and ask why I am writing such things. Not to me but to a male writer or manager at the newspaper. That is how he did it last time. It appears that he does not like to speak with female journalists.
>
> Anyway he believes that all crimes intentionally committed against women and children and even those committed with bare hands should receive reduced sentences. Rape, violence and murder must have a number of mitigating circumstances and if those circumstances exist then sentences should be reduced to ten to fifteen years. For example those who rape children should get away with a lenient sentence if that little girl also "wanted it". The rapist should be freed so that such incidents continue to plague us.
>
> In my article entitled "are the women in parliament alive?" published two days ago, which I had ended with a note "to be continued", I objected to the unjust, unfair and out-of-date articles contained in the new draft Turkish Criminal Code and pointed out that similar reductions in the penalties which currently exist in the Criminal Code had led to the killing of young girls and women one after another.
>
> The remainder of the article could not fit into my diminishing column space, due to advertisements, and as a result was delayed (it seems that I will have to devise a new coding system so that you can understand me in a few words). However, we can say that all things happen for a reason and it was good that it was delayed. As I was asking myself why no parliamentarian - at least no female parliamentarian - apart from AKP parliamentarian N.Ç., contested this proposal, CHP Adana parliamentarian G.E. called me to explain that they were working intensively on this issue.
>
> She said that all women parliamentarians, irrespective of their party background, will act together. Here is solidarity to be proud of!
>
> It is difficult to understand why Prof. Dr. S.D. (full name is cited in the original article) is so obsessed and has a discriminatory attitude as regards criminal provisions concerning women and children. We witnessed the same attitude during the reform of the Civil Code. I think instead of having elderly legal scholars we should now have young lawyers working at the Justice Commissions. Those who are in touch with world developments and who are aware that discriminatory attitudes have become out of date. Prof. S.D., with his way of thinking which reflects his 80 years, stands alone.
>
> In fact, he left the Justice Commission meeting after an argument broke out with the members of parliament when he insisted on his views.
>
> In fact he should have thanked them. If this draft had been accepted in its original form, who would know how many generations of children, women and families would remember him?
>
> How they will remember him, he can guess.
>
> Therefore...I consider it to be a great opportunity that the Turkish Criminal Code will be re-examined by us before it is discussed and criticised by the European Union."

7. On 4 November 2003 Prof. Dr. S.D., the president of the Commission ("the plaintiff"), brought a civil action for compensation against the applicant, the editor-in-chief of the newspaper and the publishing company ("the defendants") before the Şişli Civil Court of First Instance on the ground that certain remarks in the article above constituted an attack on his personal rights.

8. Before the first-instance court the defendants maintained, *inter alia*, that the aim of the article in question had not been to insult the plaintiff but to criticise various provisions of the draft Criminal Code. In this connection, they considered that the words used in the impugned article were not insulting. They emphasised that the article was truthful in that the impugned provisions in the draft Criminal Code were subject to virulent criticism by many others, including ministers. In support of their arguments the defendants submitted to the court, *inter alia*, a number of published articles written by various academics, journalists, and people from NGOs, criticising the controversial provisions of the draft Criminal Code.

9. On 26 February 2004 the Şişli Civil Court of First Instance ordered the applicant, the editor-in-chief of the newspaper and the publishing company jointly to pay compensation to Prof. Dr. S.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the legal action. It also ordered the publication by the newspaper of a summary of its judgment.

10. In its decision, the court stated*, inter alia,* that the press had a certain privileged position, as it had the competence and responsibility to provide information, educate, enlighten and direct the public by following up incidents, investigating, assessing and diffusing. However, like all freedoms the privilege and freedom of the press were not without limits. In this connection, it referred to the limitation imposed on the press by the relevant articles of the Constitution, the Civil Code and others in so far as they concerned respect for personality rights.

11. The court referred to the following passages:

> "It is difficult to understand why Prof. Dr S.D. is so obsessed and has a discriminatory attitude as regards criminal provisions concerning women and children. We witnessed the same attitude during the reform of the Civil Code. I think instead of having elderly legal scholars, we should now have young lawyers working at the Justice Commissions. Those who are in touch with world developments and who are aware that discriminatory attitudes have become out of date. Prof. S.D., with his way of thinking which reflects his 80 years, stands alone. "

12. It considered that the above passages qualified the plaintiff as an obsessive and a backward person and a bigot who discriminated against women and did not talk to women, and thus insulted him. There was therefore an attack on his personality rights.

13. The court noted, *inter alia*, that the plaintiff, who was known as "the professor of professors", was an internationally recognised legal scholar

who had written thousands of articles, translations and jurisprudential analyses.

14. It considered that the article in question had affected the plaintiff negatively in his life, as it was a savage and aggressive attack on a person who, *inter alia*, had made a great contribution to the establishment, development and execution of the contemporary legal system.

15. In addition, the court referred to the emails submitted by the defendants to note the degree of hatred of the public towards the plaintiff and other members of the Commission as a result of the publication.

16. The court therefore decided that there was a need to award compensation to the plaintiff, the amount of which it determined on the basis of, *inter alia*, the economic and social status of the parties and the nature of the infringement before it.

17. The defendants appealed. In particular, they maintained that the court had failed to take into account their evidence demonstrating the public outcry against the draft proposal, and had refused their request for a video recording of a television programme the plaintiff had appeared on after he had lodged his compensation claim to be admitted in evidence.

18. On 14 September 2004 the Court of Cassation rectified the judgment in so far as it concerned the order to publish a summary of the judgment in the newspaper, and upheld the remainder of the judgment.

19. The defendants' request for a rectification of its decision was dismissed by the Court of Cassation on 14 March 2005.

B. Compensation proceedings concerning the article entitled 'If you can't escape, enjoy it' (application no. 38787/07)

20. On 26 October 2003 an article entitled 'If you can't escape, enjoy it', written by the applicant, was published by *Vatan*. The article read as follows:

> "We are going through such times and witnessing such unbelievable events and discussions that no-one can escape their duties. In particular, those who, due to their jobs, have a first-degree debt to the next generation. Journalists, lawyers, educators, non-governmental organisations, and, particularly, women. Working women.
>
> In my article published on Saturday and entitled 'The Virginity Crisis' I referred to Prof. Dr. D. So.'s remark (full name is cited in the original article) "if a rapist marries his victim then his sentence should be reduced. All men want to marry virgins" and emphasised, once again, that some members of this commission responsible for the new draft needed psychological treatment.
>
> When I was writing those lines I had not yet heard D. So.'s later remark "If I had been raped, I would have married him". Having heard this I believe that certain people should be urgently locked up in a clinic. When the degree of their illness has reached such a level as to cause severe harm to society this is essential. This unhealthy mentality will cause harm to thousands of women and children (every day we read in the papers about eight to twenty perverts raping young girls and women in every

corner of Turkey) and will incite ignorant, unemployed and sick people to commit crimes.

By demolishing the concept of crime and punishment, in short, justice, they will create an unhappy and anarchic country where tragic events will be heard of one after another and people will be unbalanced and unhealthy.

Prof. (I don't want even to say it) So. and some other members of the Commission are trying to make the weird Turkish joke of "If you can't escape it, enjoy it", which cannot even be imagined in contemporary societies, into a reality.

As they try to reduce the sentences given for rape, reports of rapes of children and young girls are increasing. Perverts crowd the entrances of schools.

A scandal is taking place in respect of the Turkish Criminal Code. This scandal, like the headscarf crisis at the reception given by the President and others, will cast a shadow over the 80th anniversary of the establishment of the Republic.

Tonight at Habertürk [private television channel] female writers are going to discuss all these shadows on 'Press Club'. They called from Habertürk yesterday, but since I am not fully recovered I am not sure if I can make it. But as a journalist, who has been actively involved in women's rights issues with relevant ministries together with non-governmental organisations for the past fifteen years, and who has written much on issues such as non-discrimination and the headscarf problem, I wish it dearly.

In a country where even professors have this mentality, and in order to prevent the harm that it will cause, it has become imperative to discuss everything openly."

21. On 4 November 2003 an article entitled 'The Never-Ending Virginity Battle" written by the applicant was published by *Vatan*. The article focused critically on the statements made by Prof. Dr D.So. on a television programme called 'Press Club'.

22. On 24 December 2003 Prof. Dr. D.So., a member of the Commission and advisor to the Minister of Justice, brought a civil action for compensation against the applicant, the editor-in-chief of the newspaper and the publishing company ("the defendants") before the Ankara Civil Court of First Instance, on the ground that certain remarks in the articles published on 26 October 2003 and 4 November 2003 constituted an attack on his personal rights.

23. On 30 November 2004 the Ankara Civil Court of First Instance ordered the applicant and the publishing company jointly to pay compensation to Prof. Dr. D.So. of TRL 12,000,000,000 for the article of 26 October 2003 and TRL 3,000,000,000 for the article of 4 November 2003, together with interest at the statutory rate from the date of publication of the articles. The case was dropped in so far as it concerned the editor-in-chief.

24. In its decision the court held, *inter alia*, that freedom of the press was limited by protection of honour and reputation of persons. It considered that when criticising turns into unfair badmouthing, insulting and demeaning language, the objective boundaries of criticism are exceeded and abuse of rights occurs. In this connection, the court held that the following

principles had to be respected: truthfulness, public interest, topicality and interconnectedness between the thoughts and the words used and the aim sought.

25. The court, while underlining the importance of different opinions and ideas and the usefulness of criticism, held, *inter alia*, that in the instant case the author had implied, in her article of 26 October 2003, that the plaintiff was stupid, unhealthy and mentally ill and that she considered that he was not apt to be a professor.

26. The first-instance court referred to the following passages:

> "...In my article published on Saturday and entitled 'The Virginity Crisis' I referred to Prof. Dr. D. So.'s remark "if a rapist marries his victim then his sentence should be reduced. All men want to marry virgins" and emphasised, once again, that some members of this commission responsible for the new draft needed psychological treatment.
>
> When I was writing those lines I had not yet heard D. So.'s later remark "If I had been raped, I would have married him". Having heard this I believe that certain people should be urgently locked up in a clinic. When the degree of their illness has reached such a level as to cause severe harm to society this is inevitable. This unhealthy mentality will cause harm to thousands of women and children (every day we read in the papers about eight to twenty perverts raping young girls and women in every corner of Turkey) and will incite ignorant, unemployed and sick people to commit crimes.
>
> Prof. (I don't want even to say it) So. and some other members of the Commission are trying to make the weird Turkish joke of "If you can't escape it, enjoy it", which cannot even be imagined in contemporary societies, into a reality."

27. It further referred to a part of the applicant's column entitled 'Saying of the Day', in which she cites the famous saying, her choice of the day, which read: 'Never argue with stupid people, they drag you down to their level, and beat you with experience."

28. It further held that the applicant had expressed similar remarks in her article of 4 November 2003 and that these remarks constituted an attack on the plaintiff's personality rights.

29. The defendants appealed. In particular, they maintained that the articles had been written on the basis of statements given by the plaintiff to the media. In this respect, they submitted that the article of 26 October 2003 had been written following the publication of an interview with the plaintiff on 25 October 2003 in another newspaper, namely *Milliyet,* and the article of 4 November 2003 after the plaintiff's statements made on a television programme on 2 November 2003.

30. On 25 April 2006 the Court of Cassation, by a majority vote, quashed the judgment of the first-instance court.

31. As regards the statements contained in the applicant's article of 4 November 2003 it held that the article concerned a discussion programme in which the plaintiff had taken part, and that it had criticised the mentality behind the drafting of the Turkish Criminal Code and the statements of the

plaintiff which had been reported by the press. It therefore considered that that article did not infringe the plaintiff's personality rights.

32. As to the article of 26 October 2003, the court held that the limits of permissible criticism had been exceeded in some parts of the article and that therefore the decision of the first-instance court was correct. However, having regard to the circumstances, especially the status of the plaintiff and the aim of the publication, it found the compensation awarded by the domestic court excessive.

33. One of the judges Mr M.U. partially dissented. In his dissenting opinion, he held, *inter alia*, that the plaintiff had given rise through his own statements to the criticisms expressed in the article of 26 October 2003, and that therefore he could be expected to tolerate heavy criticism. He considered that the limits of permissible criticism had not been exceeded in the case.

34. Following the Court of Cassation's ruling, the first-instance court dismissed, on 12 December 2006, the compensation claim as regards the article published on 4 November 2003 and awarded the plaintiff 8,000 new Turkish liras (TRY)[1] in respect of compensation for non-pecuniary damage for the article published on 26 October 2003.

35. The defendants appealed.

36. On 10 May 2007 the Court of Cassation upheld the judgment of the first-instance court. It dismissed the defendants' request for a rectification of its decision on 26 November 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. A description of the relevant domestic law at the material time can be found in *Sapan v. Turkey*, no. 44102/04, §§ 24-25, 8 June 2010.

THE LAW

III. JOINDER

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

1. On 1 January 2005 the Turkish lira (TRY) entered into circulation, replacing the former Turkish lira (TRL). TRY 1 = TRL 1,000,000.

IV. ALLEGED VIOLATION OF ARTICLES 6, 10 AND 14 OF THE CONVENTION

39. The applicant complained under Articles 6, 10 and 14 of the Convention that the judgments given in the civil cases against her had breached her right to freedom of expression and that she had been ordered to pay an excessive amount of compensation because the domestic courts had been unduly influenced by the status of the plaintiffs and that she had criticised the gender-discriminatory provisions of the draft Criminal Code.

40. The Court considers that the applicant's complaints should be examined under Article 10 alone, which, in so far as relevant, reads:

> "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..."

A. Admissibility

41. The Court notes this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

42. The Government did not submit any observations on the admissibility and merits of the case following the communication of the applications to them. Subsequently, in their additional observations, they merely submitted that there had been no violation of Article 10 in the circumstances of the instant applications.

43. The applicant maintained her allegations.

2. The Court's assessment

44. The Court considers that the final judgments given in the compensation cases brought by the two members of the Commission for protection of their personal rights interfered with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

a) Prescribed by law and legitimate aim

45. It finds that the interference in question was prescribed by law, namely Article 49 of the Code of Obligations, and that it pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

b) Necessary in a democratic society

46. In the present case what is in issue is whether the interference was "necessary in a democratic society".

i. General principles

47. The test of "necessary in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

48. However, the Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII).

49. In this connection, the Court reiterates that in order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, 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. The classification of a statement as a fact

or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

50. A central factor for the Court's determination in the present case is the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. In cases such as the present one the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its vital role of "public watchdog" in imparting information of serious public concern (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 59 and 62, ECHR 1999-III).

51. However, Article 10 § 2 of the Convention states that freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Therefore, when examining the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011).

52. Various factors, such as the contribution made by the article to a debate of general interest, how well known the person is and the subject of the report, the previous conduct of the person concerned, the content, form and consequences of the publication, and the severity of the sanction imposed, are taken into account by the Court in its balancing exercise (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012).

53. Finally, the Court reiterates that, although it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent politicians do, civil servants acting in an official

capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals (see *Dyundin v. Russia*, no. 37406/03, § 26, 14 October 2008 and *Thoma v. Luxembourg*, no. 38432/97, § 47, ECHR 2001-III and the references cited therein) and they must display a greater degree of tolerance, especially when they themselves makes public statements that are susceptible of criticism (see, for example, *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 59, *Reports* 1997-IV).

ii. Application of these principles to the present cases

54. In the instant case, the Court notes that the applicant is a journalist/columnist and that the impugned articles written by her were published in a daily newspaper. The articles concerned the applicant's comments and views on current events, notably on certain allegedly controversial provisions of the draft Criminal Code. In the applicant's opinion these provisions were discriminatory against women and, if adopted, would have harmful effects on them and on children. Within the scope of this framework the applicant voiced her distress at what she described as the views of some Commission members charged with the preparation of the draft Criminal Code. In her opinion the views of these commission members demonstrated the mentality behind these provisions. The Court finds that the subject matter of the articles in question, particularly a legal framework which promoted alleged gender discrimination, concerned important matters in a democratic society which the public has a legitimate interest in being informed of and which fall within the scope of political debate. The articles in question therefore contributed to a debate of general interest.

55. The Court observes that the plaintiffs in the two sets of compensation proceedings above were members of the Commission in charge of drafting the draft Criminal Code. They therefore assumed a public function and were acting in an official capacity in this respect. In this connection, the first plaintiff, a law professor, was the president of the Commission and was described by the domestic court as "the professor of professors" and "an internationally recognised legal scholar" (see paragraph 13 above). The second plaintiff, a law professor, was also advisor to the Minister of Justice (see paragraph 22 above). Moreover, it appears from the information in the case file that both plaintiffs had media presence (see paragraphs 17 and 29 above). The Court therefore considers that the plaintiffs were sufficiently well known at the time to qualify as public figures and, in particular, as members of the Commission were akin to public officials. Therefore, the level of acceptable criticism of the plaintiffs within the context of the subject matter at issue was higher than for any private individual.

56. As regards the applicant's first article entitled "Obsessed Professor", the domestic courts found that the plaintiff's personal interests in having his

reputation protected outweighed the applicant's right to freedom of expression. They noted in this connection, *inter alia*, that the remarks contained in the article went beyond the limits of acceptable criticism and that there had been an attack on the plaintiff's personality rights. In this connection, the first-instance court held that certain passages qualified the plaintiff as an obsessive and a backward person and a bigot who discriminated against women and did not talk to women, and thus insulted him. As to the applicant's second article entitled "If you can't escape, enjoy it", the domestic courts also found that the remarks contained in the article went beyond the limits of acceptable criticism. In this connection, the first-instance court considered that the article in question had implied that the plaintiff was stupid, unhealthy and mentally ill and not apt to be a professor.

57. The Court has examined the articles in question and the reasons given in the domestic courts' decisions to justify the interference with the applicant's right to freedom of expression. It has taken into consideration the applicant's professional interest as a journalist/columnist to convey to the public her views on current events of general interest and in voicing her criticism, against the plaintiffs' interests as public figures exercising a public function in having their reputation protected and being protected against personal insult. The Court considers that, even assuming that the language and expressions used in the two articles in question were harsh and that they could be perceived as offensive, they were, however, mostly value judgments based on particular facts, events or controversial views voiced in the media and thus were already known and subject to virulent debate before the general public, as the applicant sought to demonstrate in the domestic proceedings (see paragraphs 8, 17 and 29 above). They therefore had a factual basis. In so far as it concerns statements of fact contained in the impugned articles, the Court finds that the domestic courts did not attempt to distinguish them from value judgments nor do they appear to have examined whether the "duties and responsibilities" within the meaning of Article 10 § 2 of the Convention were observed on the part of the applicant or the publishing company. In particular, for the Court, the domestic courts' decisions failed to assess whether the articles were published in good faith.

58. As regards the form of the applicant's articles, the Court notes that the author disseminated her views, coloured by her own political opinions and perceptions, by using an informal style. In the instant case, for the Court, the domestic courts, in their examination of the cases, omitted to set the impugned remarks within the context and the form in which they were expressed (see paragraph 56 above). In this connection, the Court reiterates that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult (see *Skałka v. Poland*,

no. 43425/98, § 34, 27 May 2003). However, the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression, as it may well serve merely stylistic purposes. For the Court, style constitutes part of communication as a form of expression and as such is protected together with the content of the expression (see *Uj v. Hungary*, no. 23954/10, § 20, 19 July 2011).

59. In the light of the above considerations, and notwithstanding the national authorities' margin of appreciation, the Court considers that the interference with the applicant's freedom of expression in respect of the articles of 19 and 26 October 2003 was not based on sufficient reasons to show that the interference complained of was necessary in a democratic society for the protection of the reputation and rights of others. This finding makes in unnecessary for the Court to pursue its examination in order to determine whether the amount of compensation which the applicant was ordered to pay was proportionate to the aim pursued. It follows that there has been a violation of Article 10 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant, by referring to the amount she had been ordered to pay and the costs and expenses incurred before the domestic courts, asked for pecuniary damages. In support of her pecuniary damages claim she submitted documents pertaining to the enforcement proceedings brought against the applicant and the co-defendants and the payment effected by their lawyer on their behalf. She did not submit any documents in respect of her claim for costs and expenses. In addition, the applicant, without referring to any particular sum, asked to be awarded an amount in compensation for non-pecuniary damage.

62. The Government contested the award of any amount on any grounds. In particular, they submitted that it was not possible to ascertain the exact amount paid by the applicant.

63. The Court is satisfied that there is a causal link between the payment of the compensation awarded by the domestic courts referred to by the applicant and the violation of the Convention found in respect of her two articles dated 19 and 26 October 2003. Therefore, the Court finds that the reimbursement by the Government of the compensation paid by the

applicant, plus the statutory interest applicable under domestic law, running from the date when the applicant paid it, would satisfy her claim in respect of pecuniary damage (see *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 57, 21 February 2012).

64. It further considers that the applicant has suffered non-pecuniary damage as a result of the domestic courts' judgments in respect of her articles dated 19 and 26 October 2003, which were incompatible with Convention principles. The damage cannot be sufficiently compensated for by a finding of a violation. Taking into account the circumstances of the case and having regard to its case-law, the Court awards the applicant EUR 7,000 in respect of non-pecuniary damage.

65. Finally, the Court considers unsubstantiated, and therefore rejects, the applicant's request regarding costs and expenses incurred before the domestic courts.

B. Default interest

66. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention in respect of the applicant's articles dated 19 and 26 October 2003;

4. *Holds*
   (a) that the respondent State is to reimburse to the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the compensations paid by her, plus the statutory interest applicable under domestic law, running from the date of that payment, and to pay to the applicant within the same period EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Guido Raimondi
Deputy Registrar	President