



## Violation of freedom of expression of candidate in parliamentary elections who was penalised for speaking Turkish while campaigning

In today's **Chamber** judgment<sup>1</sup> in the case of [Mestan v. Bulgaria](#) (application no. 24108/15) 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 an administrative sanction imposed on the leader of a political party – traditionally supported by voters belonging to the Turkish minority in Bulgaria – who was a candidate in the 2013 Bulgarian parliamentary elections, for speaking in Turkish while campaigning for election. The Bulgarian authorities took the view that he had breached the Bulgarian Electoral Code.

The Court noted that the Bulgarian Electoral Code imposed an absolute prohibition on the use of any language other than the official language (Bulgarian) in election campaigning, and that breaches of the relevant provisions resulted in administrative sanctions in the form of fines.

The Court stressed the importance of pluralism, tolerance and the protection of minorities in a democratic society and observed that respect for minorities, far from weakening democracies, could only make them stronger. Thus, despite the margin of appreciation afforded to the national authorities, the Court considered that the prohibition in question did not correspond to a pressing special need and was not proportionate to the legitimate aims mentioned in Article 10 of the Convention. The interference with the exercise of the applicant's right to freedom of expression had therefore not been necessary in a democratic society.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, Lyutvi Ahmed Mestan, is a Bulgarian national who was born in 1960 and lives in Sofia. At the time of the events Mr Mestan, a politician of Turkish origin, was chairman of the Movement for Rights and Freedoms, a party which at that time had 36 seats in the Bulgarian National Assembly and was traditionally supported by voters of the Turkish minority in Bulgaria.

In May 2013 the Sliven Regional Governor found that the applicant had infringed the Electoral Code by speaking Turkish at an event held on 5 May 2013 as part of his parliamentary election campaign. The event in question was an outdoor rally held near the village of Yablanovo. According to the information in the file, the applicant addressed the rally in Turkish for seven minutes. The Regional Governor, observing that the infringement in question posed a significant threat to public order since the person concerned was the chairman of a political party, imposed an administrative sanction on the applicant in the form of a fine, which he set at the maximum amount provided for by the relevant legislation, namely 2,000 Bulgarian leva (BGR – approximately 1,000 euros (EUR)). The applicant appealed against the fine to the Kotel District Court, arguing, among other things, that the prohibition in question was contrary to Article 10 of the Convention.

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](http://www.coe.int/t/dghl/monitoring/execution).

In July 2014 the District Court observed that on 5 May 2013 the applicant had campaigned in Turkish without any interpretation into Bulgarian, in breach of the Electoral Code. Taking into account the fact that this was a first offence, the court reduced the amount of the fine to BGN 500 (approximately EUR 250). The court specified that the fine was intended as a reminder and warning to the person concerned and to others who might find themselves in a similar situation. The applicant lodged an appeal with the Sliven Administrative Court, which upheld the District Court judgment.

## Complaints, procedure and composition of the Court

Relying, in particular, on Article 10 (freedom of expression), the applicant complained about the administrative sanction imposed on him.

The application was lodged with the European Court of Human Rights on 12 May 2015.

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

Pere **Pastor Vilanova** (Andorra), *President*,  
Yonko **Grozev** (Bulgaria),  
Jolien **Schukking** (the Netherlands),  
Darian **Pavli** (Albania),  
Ioannis **Ktistakis** (Greece),  
Andreas **Zünd** (Switzerland),  
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Article 10

The Court noted that the administrative sanction imposed on the applicant in the form of a fine constituted interference with the exercise of his right to freedom of expression. The interference had been prescribed by the Electoral Code and had potentially pursued the aim of preventing disorder and protecting the rights of others.

As to whether the interference had been necessary in a democratic society, the Court noted that the Bulgarian Electoral Code imposed an absolute prohibition on the use of any language other than the official language (Bulgarian) in election campaigns, and that any breach of the relevant provision resulted in an administrative sanction in the form of a fine. In that connection it observed that the absolute nature of the prohibition in question had deprived the national courts of their power to exercise proper judicial scrutiny. This was made clear by the fact that in examining the case the District Court had confined itself to ascertaining, on the basis in particular of a video recording and some written documents and witness statements, whether the applicant had addressed the rally in a language other than Bulgarian in the course of his election campaign. The absolute nature of the prohibition was further borne out by the examples of previous rulings included in the file.

The Court accepted that States were entitled in principle to regulate the use of languages – in certain forms or in view of the circumstances relating to communication with the public – by candidates and other persons during election campaigns and, if need be, to impose certain restrictions or conditions that corresponded to a “pressing social need”. However, a regulatory framework consisting of a total prohibition on the use of non-official languages coupled with administrative sanctions could not be held to be compatible with the essential values of a democratic society, which included freedom of expression as guaranteed by Article 10 of the

Convention. In that connection the Court stressed that the language used by the applicant in the present case, namely Turkish, was both his mother tongue and that of the minority population he had been addressing. In his submissions to the domestic courts the applicant had referred to the fact that a large crowd had attended the gathering, including older people who had a better grasp of Turkish than of Bulgarian, a point not disputed by the Government. In view of the specific context of elections and the fact that free elections were inconceivable without the free circulation of political opinions and information, the Court considered that the right to impart one's political views and ideas and the right of others to receive them would be meaningless if the possibility of using a language that could properly convey those views and ideas were diminished owing to the threat of sanctions, even if they were administrative in nature.

The Court also noted that the relevant provision of the Bulgarian Electoral Code had been repeatedly criticised by the Advisory Committee on the Framework Convention for the Protection of National Minorities and by the Venice Commission and the OSCE/ODIHR<sup>2</sup>, which had found that it deprived minorities of opportunities for effective participation in public affairs through elections. The Court further referred to the recommendations and opinions of the competent international bodies, which stressed the importance of allowing candidates from minority groups to use their mother tongue in election campaigning in order to guarantee persons belonging to such groups access to elections on an equal footing with other citizens. Those considerations were consistent with the values of a "democratic society" promoted by the Court.

The Court also stressed the importance of pluralism, tolerance and the protection of minorities in a democratic society and observed that respect for minorities, far from weakening democracies, could only make them stronger.

Consequently, and despite the margin of appreciation afforded to the national authorities, the Court considered that the prohibition in question did not correspond to a pressing social need and was not proportionate to the legitimate aims mentioned in Article 10 of the Convention. Accordingly, the interference with the exercise of the applicant's right to freedom of expression – resulting from the prohibition laid down in Article 133 of the Electoral Code as in force at the relevant time, and maintained in the 2014 Electoral Code – could not be considered necessary in a democratic society.

**There had therefore been a violation of Article 10 of the Convention.**

#### **Just satisfaction (Article 41)**

The Court held that Bulgaria was to pay the applicant 1,200 euros (EUR) in respect of non-pecuniary damage and EUR 3,200 in respect of costs and expenses.

*The judgment is available only in French.*

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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.