



Conviction for speaking Kurdish during election campaigns breached freedom of expression

In today's Chamber judgment in the case of [Şükran Aydın and Others v. Turkey](#) (application no. 49197/06), which is not final¹, 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 applicants' complaint about a law, amended in 2010, which prohibited the use of any language other than Turkish during election campaigns.

The Court held in particular that, while States had discretion to determine their linguistic policies and were entitled to regulate the use of languages during election campaigns, a blanket ban on the use of unofficial languages coupled with criminal sanctions were not compatible with freedom of expression.

Principal facts

The applicants, Şükran Aydın, Ayşe Gökkan, Ayhan Erkmen, Orhan Miroğlu, and Mesut Bektaş, are Turkish nationals who were born in 1957, 1965, 1973, 1952 and 1966 and live in Diyarbakır, Şanlıurfa, Kars, Ankara and Diyarbakır respectively. Candidates (or a supporter in the case of Mr Erkmen) in the 2002 (Ms Aydın and Ms Gökkan) and 2007 (Mr Miroğlu and Mr Erkmen) parliamentary elections and the 2004 municipal elections (Mr Bektaş), they were convicted and sentenced to prison terms and fines for having spoken Kurdish during the election campaigns, in breach of section 58 of Law no. 298. The judges finally decided to defer delivery of the judgments, or ordered a stay of execution of the judgments in the case of Ms Şükran Aydın and Ms Ayşe Gökkan, having taken into account the applicants' personality and the circumstances of the cases.

In the course of their trials, Ms Aydın, Ms Gökkan and Mr Erkmen submitted they had addressed the crowd in Kurdish because part of the population could not understand Turkish (Kurdish people, elderly people and women).

Complaints, procedure and composition of the Court

The applicants complained that their conviction and sentencing simply for speaking Kurdish during an election campaign had been in breach of their rights under the Convention. They relied on Articles 6 (right to a fair trial), 9 (freedom of thought), 10 (freedom of expression), 11 (freedom of assembly), 14 (prohibition of discrimination) as well as Article 3 of Protocol No. 1 (right to free elections).

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

The application was lodged with the European Court of Human Rights on 28 November 2006.

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

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

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

Decision of the Court

Article 10

The Court observed that the ban on using non official languages in election campaigning at the relevant time, prescribed by section 58 of Law no. 298, had directly affected the applicants and had thus amounted to an interference with their freedom of expression.

The case did not concern the use of an unofficial language in the context of communications with public authorities² or before official institutions³, but a linguistic restriction imposed on persons in their relations with other private individuals. The Court reiterated that Article 10 encompassed the freedom to receive and impart information and ideas in any language that allowed persons to participate in the public exchange of all varieties of cultural, political and social information and ideas.

The Court underlined that the relevant law at the time had contained a blanket prohibition on the use of any language other than the official language, Turkish, in election campaigning. Breaches of this provision had entailed criminal sanctions ranging from six months to one year and payment of a fine. Moreover, Turkish courts had had no power to exercise judicial scrutiny in this matter and they had not gone, in the applicants' cases, beyond checking records and recordings of the election rallies. While States had discretion to determine their linguistic policies and were entitled to regulate the use of languages during election campaigns, a blanket ban on the use of unofficial languages coupled with criminal sanctions were not compatible with freedom of expression.

Furthermore, Kurdish had been the applicants' mother tongue as well as the mother tongue of the population at the rallies. Some of the applicants had stressed that many people in the crowd, notably the elderly and women, had not understood Turkish. Free elections were inconceivable without the free circulation of political opinions and information and noted that Turkey had been the only country - on the basis of the material available in respect of 22 Contracting States⁴ - to make the use of minority

² As for instance in the judgments of [Mentzen v. Latvia](#) of 10 January 2002 or [Fryske Nasjonale Partij and Others v the Netherlands](#) (electoral context) of 12 December 1985

³ [Birk-Lévy v. France](#) (working language in a parliamentary assembly), 21 September 2012

⁴ Albania, Azerbaijan, Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom

languages by candidates speaking at election meetings subject to criminal penalties. The Court welcomed, in this respect, the amendment of section 58 of Law no. 298 in 2010.

The Court therefore concluded that there had been a violation of Article 10, as the interference with the applicants' freedom of expression had not been "necessary in a democratic society".

In view of this finding, the Court considered that it was not necessary to examine the applicants' complaint under Article 14. It also declared the remainder of their complaints inadmissible as manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Turkey was to pay each applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 each to Ms Gökkan and Mr Miroğlu, EUR 2,000 each to Ms Aydın and Mr Bektaş and EUR 3,000 to Mr Erkmen in respect of costs and expenses.

Separate opinion

Judge Keller expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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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.