



Fairness of proceedings must be guaranteed in order to protect the competing interests of freedom of expression and the rights of others

In today's Chamber judgment in the case of [Dilipak and Karakaya v. Turkey](#) (application nos. 7942/05 and 24838/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights, and
a violation of Article 10 (freedom of expression).**

The case concerned a judgment against two journalists, after hearings in their absence, for having written articles that were considered offensive towards a high-ranking dignitary of the army.

The Court found that Mr Dilipak and Mr Karakaya had not been given the opportunity to participate in the civil proceedings against them or to defend their interests. It observed that the articles in question were part of a debate on the political role of the army and that the remarks of the two journalists clearly fell within a matter of general interest. Lastly, the particularly significant award of damages against the two journalists was a sanction that would be likely to have a chilling effect not only on the applicants themselves but on all journalists.

Principal facts

The applicants, Abdurrahman Dilipak and Hasan Karakaya, are Turkish nationals who were born respectively in 1949 and 1953 and live in Istanbul (Turkey). They are both journalists and worked at the relevant time for the daily newspaper *Akit*. In June 2000, in connection with the funeral of Admiral Güven Erkaya, former Commander-in-Chief of the Navy and member of the National Security Council, Mr Karakaya published an article in which he criticised the deceased on account of the role he had played in the political process triggered by a meeting of the Council in February 1997 – a process described by some observers as a "postmodern *coup d'état*". In the same month, Mr Dilipak also published in the same paper an article criticising the action of Admiral Erkaya.

In September 2000 the deceased's family brought civil proceedings to obtain damages from the two journalists. However, the postal services were not able to serve either the statement of claim or the writ of summons on them. The court asked the police to supply their addresses. As Mr Dilipak had not been traced at the address established by the authorities, the court decided to have the notification published in the press. As to Mr Karakaya, it regarded as valid the notice served on the individual who had been present at the address supplied by the police.

On 21 January 2003 the court delivered a judgment in the absence of the defendants, who had never appeared at the hearings. They were ordered jointly to pay 30,000 Turkish lira plus default interest for non-pecuniary damage. The court found that the applicants had overstepped the limits of criticism by personally attacking the deceased on account of his public duties, and pointed out

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

that the Admiral had been a distinguished military commander who had served the nation. The judgment could not be served on Mr Karakaya, who was not living at the address known to the court's registry. As to Mr Dilipak, the judgment was notified by publication in a newspaper.

In June 2003 the deceased's family brought enforcement proceedings. Orders to pay were issued and sent to the applicants, both of whom received them this time directly at their respective home addresses. Mr Dilipak and Mr Karakaya appealed on points of law against the judgment of 21 January 2003, indicating that they had only become aware of it when they received the orders to pay. Their appeals were dismissed.

The enforcement proceedings, which led to the seizure of Mr Dilipak's house with a view to its sale by auction, are still pending. The amount owed by the two journalists totals over 160,000 Turkish lira.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing) and 10 (freedom of expression), the applicants complained of a violation of their right to a court and a breach of their right to freedom of expression.

The application was lodged with the European Court of Human Rights on 28 January 2005.

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

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Helen **Keller** (Switzerland),
Paul **Lemmens** (Belgium),
Robert **Spano** (Iceland),

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

Decision of the Court

Article 6

The Court noted that the domestic court did not seem to have questioned the research carried out by the police or considered the need for further enquiries before deciding on notification by publication, whereas such a means often had harmful consequences for the addressee. The Court found that there was no evidence to suggest that the steps that could legitimately and reasonably have been expected of the authorities had been taken in order to inform the applicants of the proceedings against them. In this connection it observed that no enquiries seem to have been made with the civil registry, professional bodies or the authority responsible for issuing press cards.

In addition, the Court found it quite troubling that, when it came to enforcing the judgment, the real addresses of the two journalists had then been traced without difficulty.

Lastly, the Court observed that the two journalists had not had the possibility of a new trial in their presence, whereas neither of them had waived such right.

The Court held that there had been a violation of Article 6.

Article 10

In the context of proceedings concerning a claim of defamation or insults, the Court reiterated that the limits of acceptable criticism were wider as regards a politician as such than as regards a private individual. That principle extended to any person who could be described as a public figure. The Court took the view that any decision awarding damages for defamation had to maintain a reasonable relationship of proportionality with the harm caused to the person's reputation. Lastly, the Court noted that it was essential to protect the competing interests of freedom of expression on the one hand and the rights of others on the other, and that a fair procedure respecting the equality of arms principle had to be provided for that purpose.

The Court observed that the articles in question were part of a debate about the political role of the army and the political and social consequences of the National Security Council meeting in February 1997. Mr Dilipak and Mr Karakaya had criticised in their articles the role of Admiral Güven Erkaya and the decisions taken on that occasion, comparing them with a *coup d'état*. The Court noted that the two journalists' remarks had clearly fallen within a matter of general interest relating to a major event which had occurred in the recent past and had remained topical. The articles had a bearing on an issue which went beyond the context of the expression of a personal opinion, because they fundamentally served to highlight certain shortcomings in the democratic process.

Lastly, the Court observed that the damages awarded against Mr Dilipak and Mr Karakaya represented a particularly heavy burden because the award had led to the seizure of Mr Dilipak's home with a view to its sale by auction. The Court took the view that it was a sanction that was likely to have a chilling effect not only on Mr Dilipak and Mr Karakaya but on all journalists. Lastly, the Court observed that the proceedings had not been fair and adversarial because they had taken place without the applicants' participation.

The impugned interference not being proportionate to the legitimate aim pursued, the Court found that there had been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that the question of just satisfaction in respect of Mr Dilipak was not ready for decision and reserved it. It invited the Government and the applicant to submit observations on this question and, in particular, to inform it of any agreement they might reach.

Separate opinion

Judge Spano expressed a separate opinion, which is appended to the judgment.

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.