



## The electoral measures applied during the Turkish parliamentary elections of July 2007 did not infringe the right to the free expression of the opinion of the people or the applicant's right to stand for election

In today's Chamber judgment in the case of [Oran v. Turkey](#) (applications nos. 28881/07 and 37920/07), which is not final<sup>1</sup>, the European Court of Human Rights held that there had been:

**no violation of Article 3 of Protocol No. 1 (right to free elections) taken alone and in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights (by a majority), and**

**no violation of Article 13 (right to an effective remedy) of the Convention (unanimously).**

The case concerned a complaint lodged by a university lecturer who had stood as an independent candidate without party affiliations in the parliamentary elections. He complained of the fact that Turkish citizens who had lived abroad for more than six months could only vote for the lists presented by the political parties, and not for independent candidates like himself, in the polling stations set up at customs posts. He further complained of the fact that independent candidates, unlike political parties, were barred by law from campaigning on radio and television.

The Court held that the electoral measures applied by the Turkish authorities during the parliamentary elections had not impaired the very essence of the right to the free expression of the opinion of the people or the applicant's right to stand for election.

The Court acknowledged that there were numerous ways of organising and running electoral systems and a wealth of differences within Europe in terms of history, culture and political thought. By reason of their direct and continuous contact with the vital forces of their country and with their society and the latter's needs, the national authorities, both legislative and judicial, were best placed in principle to assess the specific difficulties faced in safeguarding the country's democratic order.

### Principal facts

The applicant, Baskin Oran, is a Turkish national who was born in 1945 and lives in Ankara (Turkey).

Mr Oran, a lecturer in political science, stood for election in the parliamentary elections of 22 July 2007 as an independent candidate not belonging to any political party. In accordance with the electoral law in force at the time, confirmed by a decree issued on 27 May 2007, Turkish citizens who had been living abroad for more than six months were allowed to vote, in the polling stations set up at customs posts, for political parties but not for independent candidates like Mr Oran.

On 3 July 2007 Mr Oran applied to the National Electoral Commission seeking to have the decree of 27 May 2007 annulled. On 4 July 2007 the Electoral Commission refused his request, stating that the relevant provision of the decree could be altered only by means of a legislative amendment.

<sup>1</sup> 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)

Section 52(1) of the Law on elections provided that political parties participating in the elections could campaign on national radio and television (TRT); however, independent candidates who were not affiliated to a political party did not have the same right.

## Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 (right to free elections) taken in conjunction with Articles 10 (freedom of expression) and 14 (prohibition of discrimination) of the Convention, the applicant complained firstly (application no. 28881/07) that Turkish citizens who had lived abroad for more than six months could only vote for the lists presented by the political parties, and not for independent candidates like himself, in the polling stations set up at customs posts. He complained secondly (application no. 37920/7) that, unlike the political parties, he had been unable to campaign on radio and television.

Relying on Article 13 (right to an effective remedy) read in conjunction with Article 3 of Protocol No. 1 (right to free elections), the applicant also alleged that he had not had an effective remedy by which to complain of the alleged breach of his rights, since the decisions of the National Electoral Commission were not subject to appeal.

The applications were lodged with the European Court of Human Rights on 7 and 16 July 2007.

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

Guido **Raimondi** (Italy), *President*,  
Işıl **Karakaş** (Turkey),  
András **Sajó** (Hungary),  
Nebojša **Vučinić** (Montenegro),  
Helen **Keller** (Switzerland),  
Paul **Lemmens** (Belgium),  
Robert **Spano** (Iceland),

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

## Decision of the Court

### [Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14](#)

The Court reiterated that having to satisfy a residence or length-of-residence requirement in order to have or exercise the right to vote was not, in principle, an arbitrary restriction of that right and was therefore not incompatible with Article 3 of Protocol No. 1. In its Grand Chamber judgment of 15 March 2012 in [Sitaropoulos and Giakoumopoulos v. Greece](#), the Court had held that Article 3 of Protocol No. 1 did not impose any obligation on States Parties to secure voting rights to citizens living abroad.

In its Grand Chamber judgment of 8 July 2008 in [Yumak and Sadak v. Turkey](#), the Court had already noted that one of the features of the parliamentary elections of 22 July 2007 had been the strong showing by independent candidates seeking to circumvent the 10% electoral threshold imposed on political parties with a view to ensuring stable government.

The Court noted that the national legislature had weighed up the various interests at stake: those of expatriate voters, political parties and independent candidates. The legislature had chosen to grant voting rights to expatriate voters subject to a restriction imposed on the grounds that it was not possible to form an entire constituency for these expatriate voters or to assign an existing constituency to them. Hence, voting rights had been granted to Turkish citizens living abroad subject to certain conditions.

The Court observed in that regard that in a judgment of 22 May 1987, the Constitutional Court had found the reasons given by the national legislature to be compatible with the Constitution. The Constitutional Court had ruled that, faced with the difficulty of introducing voting rights for citizens who had lived abroad for more than six months, the legislature had chosen an option which struck a fair balance between the interests of expatriate voters and those of voters living inside the country. The Court also noted the legitimate concern of the legislature to limit the influence of citizens living abroad in parliamentary elections, which focused primarily on issues affecting citizens living in the country.

The Court therefore took the view that the restrictions imposed on citizens living abroad had been designed to ensure the political stability of the country and of the government that would be in charge following the elections. Taking into consideration the wide margin of appreciation left to the State, the Court considered that there had been no infringement of the very essence of the right to the free expression of the opinion of the people or of the applicant's right to stand for election, for the purposes of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14.

As to the right to campaign on radio and television, the Court observed that this applied only to political parties. The Court reiterated that it was in the nature of the role they played that political parties, the only bodies which could come to power, had the capacity to influence the whole of the regime in their countries. They sought to address all sectors of the population in order to present their vision of how they would run the country if elected. Their election campaigning was not confined to a single constituency but extended over the entire country. An independent candidate running without a party ticket did not have the capacity to exercise the same influence as a political party. Accordingly, the Court was not convinced that the two could be said to be in a "comparable situation" for the purposes of Article 14.

Lastly, the Court noted that Mr Oran had not been prevented from campaigning in the constituency where he was standing as an independent candidate. Although he had been unable to take advantage of election broadcasts on radio and television he had not been barred from using other means of campaigning. The Court took the view that the decision to reserve election campaigning on radio and television for political parties had been based on objective and reasonable grounds and did not amount to disproportionate interference with the very essence of the right to the free expression of the opinion of the people or of Mr Oran's right to stand for election, for the purposes of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14.

### Article 13

The Court observed that Mr Oran had complained of his inability to challenge the impugned provisions of the electoral legislation before the Constitutional Court or another domestic court. It noted the applicant's claims that the treatment of which he complained stemmed from the legislation in force and that the decision of the National Electoral Commission of 4 July 2007 was not subject to appeal before a second appellate court.

The Court reiterated that Article 13 of the Convention did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention. There had therefore been no violation of Article 13 of the Convention.

*The judgment is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

**Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

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

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

Nina Salomon (tel: + 33 3 90 21 49 79)

Jean Conte (tel: + 33 3 90 21 58 77)

**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.