



Criticism by law professor of Turkish judges for their dissolving a political party was within acceptable bounds

In today's Chamber judgment in the case of [Mustafa Erdoğan and Others v. Turkey](#) (application no. 346/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (right to the freedom of expression) of the European Convention on Human Rights.

The case concerned the complaint by a law professor, editor and publisher that they were ordered by the Turkish courts to pay damages to three judges of the Constitutional Court for insulting them in a journal article which reported on a decision dissolving a political party. The article was published in a quarterly law journal in 2001.

The Court stated that members of the judiciary acting in an official capacity should expect to be subject to wider limits of acceptable criticism than ordinary citizens. Both the context (a virulent public debate on the Constitutional Court's rulings) in which the article had been written and the form (a quasi-academic journal, not a popular newspaper) used had not been given sufficient consideration by the national courts in the defamation proceedings against the applicants. The Court underlined the importance of academic freedom and, in particular, academics' ability to freely express their views, even if controversial or unpopular, in the areas of their research, professional expertise and competence. As to the content of the article, whilst some of the remarks made were harsh they were largely value judgments, set out in general terms, with sufficient factual basis. They could not be considered gratuitous personal attacks on the three judges. Accordingly, the Court determined that the reasons given, namely the judges' right to be protected against personal insult, to justify interfering in the applicants' right to voice criticism on a topic of general interest were not sufficient to show that that interference had been "necessary in a democratic society".

Principal facts

The applicants are Mustafa Erdoğan, a Turkish national born in 1956, Haluk Kürşad Kopuzlu, a Turkish national born in 1975, and Liberte A. Ş., a joint-stock Turkish company and publisher of 'Liberal Thinking', a quarterly law journal.

In 2001, Mr Erdoğan, a constitutional law professor, published an article in the quarterly law journal, edited by Mr Kopuzlu, criticising the judges of the Constitutional Court for their decision to dissolve a political party named *Fazilet*. The article questioned whether, as a matter of law, the conditions for dissolving the political party were met, which was allegedly operating contrary to the principles of secularism. The article further insinuated that the judges were incompetent and called into question their impartiality.

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

Three judges in particular brought separate proceedings against the applicants, claiming that the article was a serious personal attack on their honour and integrity. The decisions of the national courts, in separate but related proceedings, were passed during 2002 to 2004 and held that the expressions used in the article intimating a lack of independence and competence on the part of the judges of the Constitutional Court constituted defamation. The applicants were ordered to pay damages to each respective judge.

Complaints, procedure and composition of the Court

Relying in particular on Article 10, the applicants complained that the decisions of the national courts, ordering them to pay damages for defamation to the judges of the Constitutional Court, violated their right to freedom of expression. They complained that their criticisms of the judges were justified because they had a basis in fact, were in conformity with the law, and fell within the bounds of acceptable criticism of judges in a democratic society.

The application was lodged with the European Court of Human Rights on 15 October 2003.

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

Guido **Raimondi** (Italy), *President*,
İşıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

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

Decision of the Court

[Article 10 \(right to freedom of expression\)](#)

The Court found that the national courts' decisions complained of by the applicants had amounted to an interference, prescribed by Turkish law, with the exercise of the applicants' right to freedom of expression. The issue turned, however, on whether that interference had been justified as "necessary in a democratic society" for the protection of the reputation and rights of others.

The Court reiterated that issues concerning the functioning of the justice system constitute questions of general interest enjoying protection under Article 10. The article in question, written by an academic, contributed to a debate of general interest about the manner in which the Constitutional Court ruled on certain issues, already the subject of virulent debate in Turkey, which the public had a legitimate interest in being informed of. The Court underlined the importance of academic freedom and clarified that such freedom is not restricted to academic or scientific research but extends to an academics' ability to freely express their views, even if controversial or unpopular, in the areas of their research, professional expertise and competence. Furthermore, members of the judiciary acting in an official capacity should expect to be subject to wider limits of acceptable criticism than ordinary citizens, like politicians only to a slightly lesser extent.

Thus, courts, as with all other public institutions, are not immune from criticism and scrutiny. However, a clear distinction has to be made between criticism and insult. The Court made clear that the judiciary must enjoy public confidence and it could prove necessary to protect it in that respect against destructive attacks which are essentially unfounded.

In this case, the national courts did not place the language and expressions used in the article in the context and form in which they were expressed. Therefore, whilst some of the remarks made in the article were harsh they were largely value judgments, set out in general terms, with sufficient factual basis. They could not be considered gratuitous personal attacks on the three judges. In addition, the article was published in a quarterly law journal as opposed to a popular newspaper.

Accordingly, the national courts had not struck the right balance between the applicants' right to convey Mr Erdoğan's opinion on a topic of general interest with the judges' right to be protected against insult. The Court therefore determined that the reasons given to justify interfering with the applicants' right to freedom of expression had not been sufficient to show that that interference had been "necessary in a democratic society" for the protection of the reputation and rights of others and as such violated Article 10 of the Convention.

Just satisfaction (Article 41)

The court held that Turkey was to pay the applicant, Mr Erdoğan, a sum in euros (EUR) in respect of pecuniary damage equivalent to the damages paid by him in respect of the damages claims lodged by the three judges Ms F.K., Mr Y.A. and Mr B.M., and EUR 7,500 in respect of non-pecuniary damage. No claim for just satisfaction was made by Mr Kopuzlu or the applicant publisher and therefore no award was made to either of them.

Separate opinions

Judges Sajó, Vučinić and Kūris expressed a joint concurring 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.