



13-years' imprisonment for pouring paint over statues of Atatürk was grossly disproportionate

In today's **Chamber** judgment¹ in the case of **Murat Vural v. Turkey** (application no. 9540/07) 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, and a violation of Article 3 of Protocol No. 1 (right to free elections) to the Convention.

The case concerned Mr Vural's complaint about the lengthy prison sentence he had to serve for pouring paint over statues of Mustafa Kemal Atatürk, the founder of the Republic of Turkey, as a political protest.

The Court found in particular that the sentence imposed upon Mr Vural was grossly disproportionate to the legitimate aim of protecting the reputation or rights of others under Article 10. Furthermore, his disenfranchisement, as an automatic consequence of his prison sentence, for more than 11 years was in breach of the right to free elections.

Principal facts

The applicant, Murat Vural, is a Turkish national who was born in 1975 and lives in Ankara.

In October 2005 he was convicted under the Law on Offences Committed Against Atatürk, after he had poured paint over several statues of Mustafa Kemal Atatürk, the founder of the Republic of Turkey, located in public places, including two school yards. He was initially sentenced to 22 years and six months' imprisonment, but on appeal the sentence was reduced to about 13 years' imprisonment. At the same time, the trial court imposed a number of restrictions on Mr Vural; in particular, while serving his sentence, he was banned from voting, taking part in elections and running associations.

According to Mr Vural, he carried out his actions to express his dissatisfaction with the Kemalist ideology in Turkey. In June 2013, he was conditionally released from prison.

Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), Mr Vural complained that he had been punished for having expressed his opinions and that the punishment was excessive with regard to the offence committed. He further complained that the ban on voting imposed on him was in breach of Article 3 of Protocol No. 1 (right to free elections).

The application was lodged with the European Court of Human Rights on 16 February 2007.

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.

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),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 10

Addressing first the Turkish Government's objection that Mr Vural's actions fell outside the scope of freedom of expression under Article 10, as his actions were to be considered acts of vandalism, the Court came to the conclusion that Article 10 was indeed applicable in the case. It noted in particular that pouring paint onto statues of Atatürk could be seen as an expressive act. Moreover, in the course of the criminal proceedings against him, Mr Vural had stated that he had intended to express his "lack of affection" for Atatürk. Finally, he had not been found guilty of vandalism but of having insulted the memory of Atatürk. His conviction, the imposition of a prison sentence and his disenfranchisement as a result of his conviction had thus constituted an interference with his rights under Article 10.

That interference had been prescribed by law, namely the Law on Offences Committed Against Atatürk, and it had pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10.

The Court recalled that Atatürk was an iconic figure in Turkey and that the Turkish Parliament had chosen to criminalise certain conduct which it considered would be insulting to Atatürk's memory and damaging to the sentiments of Turkish society. However, the Court was struck by the extreme severity of the sentence of more than 13 years' imprisonment imposed on Mr Vural. While his acts had involved a physical attack on property, the Court did not consider that those acts had been of a severity warranting the imposition of a custodial sentence.

The Court considered that no reasoning could be sufficient to justify the imposition of such a severe punishment for the actions in question. Accordingly, there was no need to consider whether the reasons brought forward by the Turkish courts for Mr Vural's conviction had been sufficient to justify the interference with his right to freedom of expression or to examine whether his acts had amounted to an "insult". The Court concluded that the sentence imposed had been grossly disproportionate to the legitimate aim pursued. There had accordingly been a violation of Article 10.

Article 3 of Protocol No. 1

The Court observed that Mr Vural's deprivation of his right to vote had not ended when he was conditionally released from prison in June 2013. Altogether, he had been and would be unable to vote for a period of more than 11 years, from 5 February 2007, when his conviction became final, until 22 October 2018, the date initially foreseen for his release. So far, he has been unable to vote in two sets of parliamentary elections.

Referring to its case-law, in particular, the judgment of the Grand Chamber in the case of *Hirst v. the United Kingdom (No.2)* 74025/01, the Court underlined that a general, automatic, and indiscriminate restriction on the right to vote, applied to all those serving custodial sentences, was incompatible

with Article 3 of Protocol No. 1. It had already observed in another case², in which it had found a violation of Article 3 of Protocol No. 1, that the ban on convicted prisoners' voting rights in Turkey was automatic and indiscriminate and did not take into account the nature or gravity of the offence, the length of the prison sentence – leaving aside suspended sentences of less than a year – or the prisoner's individual circumstances.

The Court concluded that there had been a violation of Article 3 of Protocol No. 1 in Mr Vural's case.

[Just satisfaction \(Article 41\)](#)

The Court held that Turkey was to pay Mr Vural 26,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Sajó expressed a partly concurring and partly dissenting opinion. Judges Vučinić and Kūris expressed a joint concurring opinion. These separate opinions are 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.

² *Söyler v. Turkey* (29411/07), Chamber judgment of 17 September 2013