



Conviction of local politician for illegal publications found in his office was unjustified

In today's **Chamber** judgment¹ in the case of **Müdür Duman v. Turkey** (application no. 15450/03) 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 complaint by a local leader of a political party that his conviction on account of illegal pictures and publications found in the office of his party had amounted to an unjustified interference with his right to freedom of expression.

The Court noted that although Mr Duman had denied any knowledge of the material found in his office, his conviction constituted an interference with his rights under Article 10. The Court found that the reasons given for his conviction by the Turkish courts could not be considered relevant and sufficient. In particular, Mr Duman's conduct could not be construed as support for unlawful acts and there was no indication that the material in question advocated violence, armed resistance or an uprising.

Principal facts

The applicant, Müdür Duman, is a Turkish national who was born in 1956 and lives in Istanbul (Turkey).

At the time of the events giving rise to this application Mr Duman was the director of the Eminönü district branch of HADEP (Halkın Demokrasi Partisi – The People's Democracy Party).

On 24 June 2000 a demonstration, organised by a number of trade unions, took place in Istanbul. During the event, some of the participants carried signs and chanted slogans in support of Abdullah Öcalan, the leader of the PKK (Kurdistan Worker's Party), an illegal armed organisation. These demonstrators were identified by the police as being members of HADEP. Following this demonstration, on 26 June 2000, the Eminönü branch office of HADEP was searched by police. The search protocol, signed by Mr Duman, indicated that illegal publications and flags and symbols of the PKK had been found there, together with pictures, articles and books pertaining to Mr Öcalan.

On questioning by the police, Mr Duman contended that he had not been aware of the existence of the pictures and symbols pertaining to Mr Öcalan and the PKK found in his office. Mr Duman denied responsibility for the illegal publications and books, claiming that they had been brought in by publishers or other persons visiting the office without his knowledge. On 15 June 2001 a hearing was held in his absence during which he was found guilty of the offence of praising and condoning acts punishable by law. He was sentenced to six month's imprisonment and given a fine of 91,260,000 old Turkish liras. Mr Duman appealed, and on 5 June 2002, the Court of Cassation quashed the fine imposed but upheld the remainder of the judgment.

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.

Complaints, procedure and composition of the Court

Relying on Article 10 of the Convention Mr Duman complained of a violation of his right to freedom of expression and to impart and share information. Relying on Article 6 § 3 (b), he further complained that his right to defend himself had been violated as the court of first instance had delivered its decision in his absence without giving him the opportunity to submit his defence and reply to allegations.

The application was lodged with the European Court of Human Rights on 8 January 2003.

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

Nebojša Vučinić (Montenegro), *President*,

Işıl Karakaş (Turkey),

Helen Keller (Switzerland),

Ksenija Turković (Croatia),

Egidijus Kūris (Lithuania),

Robert Spano (Iceland),

Jon Fridrik Kjølbro (Denmark),

and also Abel Campos, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court noted that Mr Duman had denied any knowledge of the material found in his office. Nevertheless, his conviction had to be regarded as constituting an interference with his exercise of his right to freedom of expression. The Court underlined that to hold otherwise would be tantamount to requiring Mr Duman to acknowledge the acts of which he stood accused. If it was not accepted that his criminal conviction constituted an interference, he would be deprived of the protection of the Convention.

The interference with Mr Duman's rights under Article 10 had been prescribed by law, namely the relevant provisions of the former Turkish Criminal Code. However, the Court came to the conclusion that his conviction had not been necessary in a democratic society for the purpose of Article 10. It noted in particular that Mr Duman had been prosecuted and convicted merely for keeping material in the HADEP party's office, which had been interpreted by the Turkish courts as an indication of respect and approval for the illegal organisation and its leader. However, the Court considered that Mr Duman's conduct could not be construed as support for unlawful acts committed by Mr Öcalan and the PKK, or any approval in this regard, as neither the domestic court nor the observations of the Turkish Government gave any indication that the material in question advocated violence, armed resistance or an uprising.

The reasons given by the Turkish courts for convicting and sentencing Mr Duman could therefore not be considered relevant and sufficient to justify the interference with his right to freedom of expression. The Court concluded that Mr Duman's conviction had been disproportionate to the aims pursued, namely the need to protect public order and to prevent crime as part of the fight against terrorism. There had accordingly been a violation of Article 10 of the Convention.

Other articles

The Court held that there was no need to examine separately the complaint under Article 6 § 3(b) of the Convention in conjunction with Articles 6 § 1.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Duman EUR 12,500 in respect of non-pecuniary damage and EUR 3,200 in respect of costs and expenses.

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.