



Criminal conviction for a press article that did not call for violence or amount to hate speech breached freedom of expression

In today's **Chamber judgment**¹ in the case of **Belek and Velioglu v. Turkey** (application no. 44227/04) 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 applicants' conviction by a State Security Court for publishing an article in a daily newspaper containing a statement by an illegal armed organisation.

The Court found in particular that the text, taken as a whole, had not contained any call for violence, armed resistance or insurrection and did not amount to hate speech, which was the main factor to be taken into consideration.

Principal facts

The applicants, Ahmet Sami Belek and Savaş Velioglu, are Turkish nationals who were born in 1953 and 1981. They are the proprietor and editor respectively of the daily newspaper *Günlük Evrensel*, which has its registered office in Istanbul.

On 21 May 2003 the newspaper published an article containing a statement by members of KADEK (Kurdistan Freedom and Democracy Congress) who were in prison at the time. The activists in question called for a democratic solution to the Kurdish question and stressed the importance of, and need for, an amnesty law. The article also criticised the conditions of detention of Abdullah Öcalan, the head of KADEK, and the law on remorse.

On 22 May 2003 the public prosecutor issued an indictment against the applicants. On 10 December 2003 a State Security Court ordered Mr Belek and Mr Velioglu to pay fines equivalent to approximately 575 euros (EUR) and EUR 285 respectively. It also banned the publication of the newspaper for three days.

Mr Belek and Mr Velioglu appealed on points of law, relying on Articles 6 (right to a fair trial) and 10 (freedom of expression) of the European Convention on Human Rights. The Court of Cassation upheld the first-instance judgment.

After a change in the legislation the Assize Court – which had assumed jurisdiction following the abolition of the State Security Courts – lifted the ban on publication of the newspaper and held that the relevant part of the judgment against the applicants should not be executed.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants maintained that their criminal conviction and the ban on publication of the newspaper amounted to a violation of their right to freedom of expression. Under Article 6 § 1 (right to a fair trial), they also complained that their case

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.

had not been heard by an independent and impartial tribunal, as they had been convicted by one of the State Security Courts set up at the time by the military. They further alleged that the grounds for the decision of the State Security Court and the judgment of the Court of Cassation had been insufficient.

The application was lodged with the European Court of Human Rights on 4 November 2004.

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

Paul Lemmens (Belgium), *President*,

Işıl Karakaş (Turkey),

Helen Keller (Switzerland),

Ksenija Turković (Croatia),

Egidijus Kūris (Lithuania),

Robert Spano (Iceland),

Jon Fridrik Kjølbro (Denmark),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court examined the case in the light of its judgments in the cases of [Gözel and Özer v. Turkey](#) (nos. 43453/04 and 31098/05), [Belek v. Turkey](#) (nos. 36827/06, 36828/06 and 36829/06) and [Bayar and Gürbüz v. Turkey \(no. 2\)](#) (no. 33037/07).

Paying particular attention to the language used in the article in question and to the context of its publication, and taking into account the difficulties linked to the fight against terrorism, the Court noted that the text, taken as a whole, had not contained any call for violence, armed resistance or insurrection and had not amounted to hate speech, which was the main factor to be taken into consideration.

The Court examined the grounds for the applicants' conviction and found that they could not be regarded as sufficient to justify the interference with Mr Belek and Mr Velioglu's right to freedom of expression. It therefore held that there had been a violation of Article 10.

Article 6 (right to a fair trial)

The Court dismissed the applicants' complaint about an alleged lack of independence and impartiality of the court that had convicted them, observing that Mr Belek and Mr Velioglu had been tried by a bench of three civilian judges.

In view of its finding of a violation of Article 10, the Court considered that it was unnecessary to conduct a separate examination under Article 6 of the alleged lack of reasons for some of the domestic court decisions.

Article 41 (just satisfaction)

The Court held that Turkey was to pay EUR 575 to Mr Belek and EUR 285 to Mr Velioglu in respect of pecuniary damage, and EUR 1,250 to each of them in respect of non-pecuniary damage.

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.