



Abuse of process in bringing a civil-party claim

In its decision in the case of [Oran-Martz v. France](#) (application no. 24466/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a conviction for a vexatious civil-party claim.

Ms Oran-Martz, the applicant, had had to withdraw as an election candidate on a Socialist/Green Party list after coming under pressure from the incumbent mayor, among others, for taking what was viewed as an ambiguous position on the Armenian genocide. In the criminal proceedings she subsequently brought against the mayor for “discrimination through interference with the normal exercise of an economic activity”, Ms Oran-Martz had contended that the mayor was “electorally beholden to Armenian extremists” and that his statements “about Turkey, the Turks and French citizens were bound to incite racial hatred”. Her claim had been dismissed and she had been convicted of abuse of process in bringing a civil-party claim.

The basis for Ms Oran-Martz’s conviction for abuse of process had been the fact that she had inappropriately set in motion the prosecution of the incumbent mayor for acts that clearly could not be characterised as “discrimination through interference with the normal exercise of an economic activity”. There had therefore not been a restriction or penalty amounting to interference with the exercise of her freedom of expression.

Principal facts

The applicant, Sirma Oran-Martz, is a French national of Turkish origin who was born in 1971 and lives in Villeurbanne. In 2006 she joined the Villeurbanne branch of the Green Party. In the 2008 Villeurbanne municipal elections she stood as a Green Party candidate on the Socialist/Green Party list. She alleged that she had been subjected to various forms of pressure, in particular from B., the incumbent mayor, for taking what was viewed as an ambiguous position on the Armenian genocide, leading her to withdraw as a candidate. On 24 February 2009 she brought proceedings against the mayor in the Lyons Criminal Court, by means of a direct summons, for interference with the normal exercise of an economic activity (specifically, her access to elected office) on account of her origins or her actual or presumed membership of a particular ethnic group or nationality. She applied to join the proceedings as a civil party seeking damages of 5,000 euros (EUR) from B. for non-pecuniary harm.

In a judgment of 5 January 2010 the Lyons Criminal Court dismissed her claim. It held that a person’s presence on or absence from a list of election candidates could not constitute an economic activity and that the conditions relating to a gainful activity were “by definition alien to any elected office”. Since the constituent element of the offence of discrimination was lacking, the offence was not made out. The court convicted Ms Oran-Martz of abuse of process in bringing a civil-party claim and ordered her to pay EUR 1,500 to B. in damages. It observed that “the rashness of bringing a politician renowned for his commitment to human rights before a criminal court on an unsubstantiated charge of discrimination ... is further compounded by the allegation that [B.] is ‘electorally beholden to Armenian extremists’; the civil party even went so far as to maintain that ‘his statements about Turkey, the Turks and French citizens [of Turkish origin] are bound to incite racial hatred’”.

On 6 September 2010 the Court of Appeal upheld the judgment. Ms Oran-Martz appealed on points of law. The Criminal Division of the Court of Cassation dismissed her appeal in a decision delivered

on 22 November 2011. It confirmed that holding elected office, even where an allowance was paid, did not constitute an economic activity within the meaning of Article 225-2 of the Criminal Code.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 March 2012.

Relying on Article 10 (freedom of expression), Ms Oran-Martz complained of a violation of her right to freedom of expression as a result of her conviction for abuse of process in bringing a civil-party complaint, on account of statements made in her submissions filed with the Lyons Criminal Court.

The decision was given by a Committee of three judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,
André **Potocki** (France),
Síofra **O’Leary** (Ireland), *judges*,

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court noted that in her summons Ms Oran-Martz had accused B., the incumbent mayor, of the offence of “discrimination through interference with the normal exercise of an economic activity”. The domestic court had noted first of all that this offence could not be made out where the activity in question was devoid of any economic connotations. It then held that it had been rash to bring B., who was renowned for his commitment to human rights, before a criminal court on an unsubstantiated charge of discrimination. In so holding, the domestic court found that the offence of abuse of process in bringing a civil-party complaint had been made out. One of the defining features of such an abuse of process was the vexatious nature of the civil-party complaint, and the harm suffered by the person against whom proceedings had unjustifiably been brought stemmed from the “fact of being wrongly brought before a criminal court”.

The court had admittedly taken the offending statements by Ms Oran-Martz into account in finding that her rashness in bringing the proceedings had been compounded by her allegation that B. was “electorally beholden to Armenian extremists” or that “his statements about Turkey, the Turks and French citizens [of Turkish origin] are bound to incite racial hatred”. However, such considerations had appeared in the court’s reasoning only after it had already found that the civil-party complaint had been vexatious.

Ms Oran-Martz’s conviction for abuse of process in bringing a civil-party complaint had not been based on her statements before the domestic court as such – she had not been prosecuted for defamation, proffering insults, or abuse of a person holding public office – but rather on the fact that she had inappropriately set in motion the prosecution of B. for discrimination through interference with the normal exercise of an economic activity on account of acts that clearly could not be characterised as constituting that offence. There had therefore not been a restriction or penalty amounting to interference with the exercise of Ms Oran-Martz’s freedom of expression.

Since this complaint was manifestly ill-founded and had to be rejected, the Court unanimously declared the application inadmissible.

The decision 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.