



Turkish authorities infringed freedom of speech by prosecuting a politician for his failure to prevent a political meeting from being held in Kurdish

In today's **Chamber** judgment¹ in the case of **Semir Güzel v. Turkey** (application no. 29483/09) 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 prosecution of a politician because he had permitted participants at a congress of his political party to speak in Kurdish.

The Court found in particular that Mr Güzel's failure to prevent participants at the congress speaking in Kurdish had been an expression of defiance towards an authority representing the State. His conduct had therefore been a form of expression, which was protected under Article 10 of the European Convention. It also found that his conviction for that conduct had not been sufficiently foreseeable under Turkish law at the time, because the law was unclear.

Principal facts

The applicant, Semir Güzel, is a Turkish national who was born in 1968 and lives in Diyarbakir (Turkey). At the time of the events in question, Mr Güzel was Vice-President of HAK-PAR (*Hak ve Özgürlükler Partisi* – the Rights and Freedoms Party), a political party in Turkey. The party held its first ordinary congress in Ankara on 4 January 2004, during which Mr Güzel was elected by delegates to act as the meeting's chairman. The congress proceeded with speeches being made in the Kurdish language.

In February 2005 Mr Güzel, along with 12 other members of HAK-PAR, was indicted for allowing Kurdish to be used during the congress. The prosecutor relied on Section 81 (c) of Law no. 2820, which was said to make it an offence for political parties to use a language other than Turkish for their constitutions or programmes, at congresses or meetings and when engaging in propaganda activities.

Mr Güzel admitted that he had not intervened when certain delegates at the congress had spoken in Kurdish. However, he maintained that it would not have been legal or ethical for him to stop them. Mr Güzel stated that Kurdish should be used in all areas of life, as it was the Kurds' mother tongue. Furthermore, he maintained that the speeches could not amount to a criminal offence, when taking into account Turkey's international human rights obligations.

On 14 February 2007, Mr Güzel was convicted of the charges against him in the Ankara Criminal Court of First Instance. He was sentenced to one year's imprisonment.

However, the conviction was subsequently quashed by the Court of Cassation and, ultimately on 6 December 2011 the criminal proceedings against Mr Güzel and the other 12 defendants were terminated by the Ankara Criminal Court of First Instance, because the statutory time-limit had expired.

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 (freedom of expression), Mr Güzel complained that he had been tried and convicted for permitting Kurdish to be spoken at his party's congress. In his view, his conviction had been the result of a desire to diminish the Kurdish language and culture.

The application was lodged with the European Court of Human Rights on 6 May 2009.

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

Julia Laffranque (Estonia), *President*,
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Valeriu Griţco (the Republic of Moldova),
Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court noted that criminal proceedings had been initiated against Mr Güzel because he had failed to prevent delegates at a political gathering from speaking in Kurdish; that he had done so despite the warnings of a government superintendent; and that he had acted in this way because he believed in the ethical and legal right of the congress delegates to speak in Kurdish. In that context, Mr Güzel's failure to act had been an expression of defiance towards an authority representing the State. His conduct had therefore been a form of expression, which was protected under Article 10 of the Convention. Mr Güzel could therefore rely on the protection of Article 10.

The Court then addressed the question of whether Mr Güzel had been directly affected by the measures taken by the Turkish authorities, to the extent that they had interfered with his right to freedom of expression. Although accepting that the proceedings against Mr Güzel had eventually been terminated, the Court found that whilst they had been ongoing Mr Güzel had been sentenced to one year's imprisonment; that he had continued to face the threat of such a sanction for nearly seven years; and that he had also faced the ongoing fear that he could face a new set of criminal proceedings for similar offences. The Court therefore found that Mr Güzel had been directly affected by the measures taken by the Turkish authorities, and that they had interfered with his right to freedom of expression.

The Court found that that interference had not been "prescribed by law". In particular, the law under which Mr Güzel had been prosecuted established that political parties could "not remain indifferent" to the use of Kurdish in a political context – but without being precise as to what form of indifference or inaction could be the basis of a criminal prosecution of an individual. Although the offence in question had been declared unconstitutional in 2012, and had been abrogated, the Turkish government had failed to submit any evidence of how the law had been interpreted at the time of Mr Güzel's prosecution (between February 2005 and December 2011). Consequently, the Court found that at the relevant time, Turkish law had not been clear enough to have allowed Mr Güzel to foresee that he would face criminal prosecution for his conduct. Accordingly, the Court held that there had been a violation of Article 10.

The Court therefore considered that it was not required to determine whether the interference in question had been justified under the other criteria of Article 10 (namely, the issues of whether it pursued a legitimate aim, and whether it was necessary in a democratic society).

Article 41 (just satisfaction)

The Court held that Turkey was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 2000 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.