



Seizure of all copies of a magazine published by an association promoting LGBT rights in Turkey breached its right to freedom of expression

In today's **Chamber** judgment¹ in the case of [Kaos GL v. Turkey](#) (application no. 4982/07) 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.

The case concerned the seizure of all the copies of a magazine published by Kaos GL, a cultural research and solidarity association for gays and lesbians.

The Court found in particular that the ground of protecting public morals relied upon by the authorities had been insufficient to justify the seizure order and the confiscation of all the copies of issue 28 of the magazine for more than five years.

The Court accepted that the measures taken to prevent access by specific groups of individuals - including minors - to this publication might have met a pressing social need. However, it emphasised that the domestic authorities had not attempted to implement a less harsh preventive measure than seizure of all the copies of the issue in question, for example by prohibiting sale of the magazine to persons under the age of 18 or requiring special packaging with a warning for minors.

Principal facts

The applicant is a Turkish association known as "The Kaos cultural research and solidarity association for gays and lesbians" (*Kaos Gey ve Lezbiyen Kültürel Araştırmalar ve Dayanışma Derneği*), based in Ankara. Its aim is to promote the rights of the lesbian, gay, bisexual and transsexual (LGBT) community in Turkey.

On 21 July 2006 the Ankara Chief Prosecutor, drawing on section 25 [1] of the Press Act, seized three copies of issue 28 of the magazine *Kaos GL* before its distribution. The issue in question contained articles and interviews on pornography related to homosexuality, illustrated with occasionally explicit images. On the same day the Criminal Court of First Instance, at the request of the Chief Prosecutor, ordered the seizure of the 375 copies of issue 28 of the magazine with a view to launching criminal investigations. That court considered that the content of some of the articles and some of the images published were contrary to the principle of protection of public morals. The Kaos GL association appealed against that decision before the Ankara Criminal Court, which dismissed the appeal.

Furthermore, the Ankara Chief Prosecutor charged Mr Umut Güner, the President of the applicant association and editor-in-chief of the *Kaos GL* magazine, with publishing obscene images via the press, an offence punishable under Article 226 § 2 of the Penal Code. He considered that the painting reproduced on page 15 of the issue seized, showing a sexual act between two men, whose sexual organs were visible, was clearly obscene and pornographic. In 2007, the Ankara Criminal Court acquitted Mr Güner of the charge against him. It held that not all the factors constituting the offence were present because the copies of the magazine had been seized before they could be

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.

distributed. The Criminal Court also ordered the return of the 378 copies of the magazine seized to the defendant once the decision had become final. In 2012 the Court of Cassation upheld the judgment of the Criminal Court of First Instance.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicant association complained of the seizure of issue 28 of the magazine *Kaos GL* and the criminal proceedings brought against the President of the association and editor-in-chief of the magazine.

The application was lodged with the European Court of Human Rights on 26 January 2007.

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

Nebojša **Vučinić** (Montenegro), *President*,
Işıl **Karakaş** (Turkey),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark),
Georges **Ravarani** (Luxembourg),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

Assessing whether the interference was prescribed by law, the Court noted that the domestic authorities had seized the copies of issue 28 of the magazine *Kaos GL* pursuant to Article 28 of the Constitution and Article 162 of the Code of Criminal Procedure.

Furthermore, the Court observed that the legitimate aim pursued by the impugned interference had been to protect public morals.

As regards whether the interference had been “necessary in a democratic society”, the Court considered the reasons given by the domestic court and concluded that in the present case it was impossible to determine, from the decisions taken by the domestic courts, the reason why a given article or a specific image in the issue in question of the magazine had infringed public morals. Indeed, there was nothing in the decision of the Criminal Court of First Instance to seize the magazines to suggest that the judge had examined in detail the compatibility of the magazine’s content with the principle of protection of public morals. Nor did the Criminal Court’s decision to dismiss the appeal against the seizure decision set out any further relevant details or reasoning. The Court accordingly considered that the protection of public morals argument advanced in such a broad, unreasoned manner had been insufficient to justify the decision to seize and confiscate all the copies of issue 28 of the magazine for over five years.

The Court then conducted its own analysis of the impugned publication, and noted that having regard to the content of the articles concerning the sexuality of the LGBT community and pornography, and to the explicit nature of some of the images used, issue 28 of the magazine could be considered as a publication specifically aimed at a certain social category. Nonetheless, the Court was prepared to accept that the measures taken to prevent access by specific groups of individuals - minors in particular - to this publication might have met a pressing social need, namely the need to protect the sensibilities of a section of the general public.

The Court noted, however, that it had been unjustifiable to prevent general public access to the impugned issue of the magazine. It emphasised that the domestic authorities had not attempted to implement any preventive measure less harsh than seizure of all the copies of the issue in question. Such a measure might have involved, for example, prohibiting the sale of the magazine to persons under the age of 18, or requiring special packaging with a warning for minors, or even withdrawing the publication from the newspaper kiosks, but not seizing subscriber copies.

Even supposing that the issue seized, accompanied by a warning for persons under the age of eighteen, could have been distributed after the return of the confiscated copies, that is to say after the Court of Cassation judgment of 29 February 2012, the Court held that the confiscation of the copies of the magazine and the delay of five years and seven months in distributing the publication could not be considered as proportionate to the aim pursued.

The Court therefore held that the seizure of all the copies of issue 28 of the magazine *Kaos GL* amounted to a disproportionate interference with the exercise of the applicant association's right to freedom of expression and had not been "necessary in a democratic society" within the meaning of Article 10 of the Convention. There had therefore been a violation of Article 10 of the Convention.

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

In the absence of any claim for just satisfaction from the association *Kaos GL*, the Court considered that there was no need to make any award on that head.

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.