



Seizure by prison authorities of prisoner's draft novel had no legal basis and breached his right to freedom of expression

In today's **Chamber judgment**¹ in the case of **Sarigül v. Turkey** (application no. 28691/05) 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, by the prison authorities, of a draft novel that Mr Sarigül had written in prison, and the seizure of a letter he wanted to send to his lawyer.

The Court found in particular that the seizure of Mr Sarigül's manuscript constituted an interference with his right to freedom of expression, then noted that the interference was not "in accordance with the law" under Article 10 of the Convention.

The Court referred to its previous finding that the prison administration rules, on which the authorities had based their decision to seize Mr Sarigül's manuscript, did not indicate with sufficient clarity the scope and terms of the authorities' discretionary powers in such matters, and that their practical application did not appear to remedy that shortcoming.

Principal facts

The applicant, Resul Sarigül, is a Turkish national who was born in 1962. He was being held in Erzurum Prison (Turkey) when he lodged his application.

On 1 December 2004 Mr Sarigül deposited a handwritten draft of a novel with the prison administration, requesting that it be sent to his lawyer, who was supposed to forward it to his family with a view to publication. On 6 December 2004 the chairman of the prison board responsible for reading prisoners' correspondence reported that the text supported an illegal organisation, insulted the police and used abusive and inappropriate language, including expressions that were directed against women, public morale and beliefs. The manuscript was thus sent to the prison administration's disciplinary board, which decided to seize it on 15 December 2004. On 16 December 2004 Mr Sarigül appealed to the Erzurum sentence executions judge to have that decision revoked, stating that the novel was a work of fiction, but his appeal was dismissed on 7 January 2005. Mr Sarigül appealed against the decision to the Erzurum Assize Court, invoking his freedom of expression, but was unsuccessful.

On 25 January 2005 Mr Sarigül handed the prison administration a letter for his lawyer, together with the decision of the sentence executions judge of 7 January 2005 and his further appeal against that decision. The letter was seized by the prison administration and Mr Sarigül's request for annulment of that decision was rejected.

In addition, a criminal investigation was opened against Mr Sarigül for public denigration of Turkishness, of the Republic, of the armed forces and of the State security services, but the

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.

proceedings were discontinued as one of the elements of the offence – that of publicity – was lacking. In March 2006 the draft novel was returned to Mr Sarigül.

Complaints, procedure and composition of the Court

Relying on Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression) of the Convention, Mr Sarigül complained about the seizure of his draft novel. Relying on Article 6 (right to a fair hearing), Mr Sarigül complained about the seizure of the letter of 25 January 2005 that he had addressed to his lawyer. Without relying on any Article of the Convention, Mr Sarigül lastly complained that the proceedings before the executions judge and the Assize Court were unfair; he alleged that they were not public or adversarial, that no hearings were held, and that he did not receive legal assistance.

The application was lodged with the European Court of Human Rights on 29 July 2005.

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 observed that the seizure of Mr Sarigül's manuscript constituted an interference with his right to freedom of expression. That interference was not "in accordance with the law" within the meaning of Article 10 § 2 of the Convention.

Firstly, the disciplinary board had not expressly relied on any statutory basis in ordering the seizure of the manuscript, explaining only that the text in question contained inappropriate words and expressions according to the administration's pre-established verification table, of which no details were given in the application file. The Court reiterated that any rules concerning the supervision of prisoners' correspondence which did not circumscribe the scope or define what was meant by "inappropriate" could not meet the requirement of foreseeability.

Secondly, the correspondence-reading board had based its decision to forward the manuscript to the disciplinary board on a circular concerning the prisoners' contacts with the outside world. That circular, considered by the Government to be the legal basis for the interference, referred to Articles 144 and 147 of the prison administration rules – as in force at the time – and sought to clarify the implementation of the measures imposed by those rules. The Court thus found that the legal basis for the interference was constituted by Articles 144 and 147. The Court referred to its previous finding that the prison administration rules did not indicate with sufficient clarity the scope and terms of the authorities' discretionary powers in such matters, and that their practical application did not appear to remedy that shortcoming. It saw no reason to depart from that approach and concluded that the interference with Mr Sarigül's right to freedom of expression was not "in accordance with the law". **It thus held that there had been a violation of Article 10 of the Convention.**

[Article 6 \(right to a fair hearing\)](#)

As regards the seizure of the letter of 25 January 2005, the Court noted that Mr Sarigül had not exhausted all the domestic remedies because he had not appealed against the decision of the executions judge of 8 February 2005.

As regards the complaints concerning the unfairness of the domestic proceedings, those complaints had been submitted to the Court by 11 May 2010, more than six months after the final domestic decision (decision of the Erzurum Assize Court of 1 March 2005), and were thus out of time.

The Court thus rejected those complaints pursuant to Article 35 §§ 1 and 4 of the Convention.

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

The Court held that Turkey was to pay the applicant 1,500 euros (EUR) 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.