



The requirement for a newspaper publisher to print a reply did not breach the Convention

This case concerned the requirement for a newspaper publisher (Mr Eker) to print a reply correcting an article which he had written and published in his newspaper. The reply was written by the Sinop journalists' association in response to criticisms made by Mr Eker in his article.

In today's **Chamber** judgment¹ in the case of **Eker v. Turkey** (application no. 24016/05) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

Mr Eker complained, among other matters, of the lack of a hearing before the domestic courts.

The Court held, in particular, that in the context of the proceedings concerning the right of reply, in which the legal issues had not been especially complex and the domestic courts had been called upon to rule promptly, the fact that the courts had formed a view after examining the documents in the file, without holding a hearing, did not breach the requirements of Article 6 § 1 regarding the oral and public nature of proceedings.

No violation of Article 10 (freedom of expression) of the Convention.

Mr Eker argued that the fact of being compelled to print the text correcting his article had harmed his reputation and his dignity and amounted to interference with his freedom of expression.

The Court held, in particular, that the domestic courts had struck a fair balance between Mr Eker's right to freedom of expression and the right of the Sinop journalists' association to protection of its reputation. The Court considered that the reply had not overstepped the limits of admissible criticism and that the order to publish had been proportionate to the aim pursued, namely to protect the reputation and rights of others. Furthermore, Mr Erker had not been required to amend the content of his article and there had been nothing to prevent him from re-publishing his version of the facts.

Principal facts

The applicant, Mustafa Eker, is a Turkish national who was born in 1971 and lives in Sinop (Turkey). At the relevant time he was the publisher of the local newspaper *Bizim Karadeniz*, which was circulated in Sinop.

In February 2005 Mr Eker published an editorial entitled *Yolunuz açık olsun* ("May your road be smooth") in which he criticised the Sinop journalists' association, alleging that its actions contradicted its main objective and that it was no longer fit for its intended purpose. The president of the association, taking the view that Mr Eker's article had undermined his dignity and that of the other leaders of the association, sent a reply correcting the article, but Mr Eker refused to print it in his newspaper.

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.

In March 2005 the president of the association applied to the Sinop Magistrate's Court seeking an order for his reply to be published. The court granted the application, ruling on the basis of the case file. Mr Eker appealed to the Sinop Criminal Court, which dismissed his appeal in a final ruling based on the case file. The reply was printed in Mr Eker's newspaper.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy), Mr Eker complained of the lack of a hearing before the Magistrate's Court and the Criminal Court. He also complained that the examination conducted by those courts had been inadequate, and that he had been unable to appeal to a higher court against their decisions. The Court decided to examine these complaints from the standpoint of Article 6 § 1 (right to a fair trial).

Under Article 10 (freedom of expression), Mr Eker complained of being compelled to print the text correcting his article; in his view, this had harmed his reputation and dignity and amounted to interference with his freedom of expression.

The application was lodged with the European Court of Human Rights on 9 June 2005.

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

Julia Laffranque (Estonia), *President*,
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 6 § 1 \(right to a fair trial\)](#)

1. Lack of a hearing

The Court reiterated that the public character of proceedings constituted a fundamental principle enshrined in Article 6 § 1 of the Convention, but that the obligation to hold a public hearing was not absolute. It also noted that the right of reply was an integral part of the Turkish legal system, which provided for both parties to the dispute to lodge appeals (both the media outlet and the person wishing to have a reply published).

In this case the Sinop journalists' association had applied to the Magistrate's Court seeking publication of its reply; Mr Eker had been barred from participating in those proceedings under section 14 of Law no. 5187. However, it had been open to him to lodge an appeal with the Criminal Court. The Magistrate's Court and the Criminal Court had examined respectively the association's application for a publication order and Mr Eker's appeal, on the basis of the case file and without holding a hearing. The issue to be determined by those courts was whether the association's honour and dignity had been harmed and whether it was entitled to exercise a right of reply. Next, the courts had had to examine the content of the reply (to ensure that it did not contain anything that might amount to an offence and did not infringe the rights of others) and its form (to ensure that it was not longer than the article it was intended to correct).

The Court considered that these issues, which called for a textual and technical examination of the form and content of the reply, could be examined and determined adequately on the basis of the parties' observations and the documents submitted by them. In the present case there had been no issues of credibility requiring oral presentation of evidence or cross-examination of witnesses. The Court noted in that connection that proceedings concerning the right of reply were conducted separately from any subsequent proceedings for defamation, during which the accuracy of the claims made could be tested in strict compliance with the adversarial principle. The aim of the right-of-reply proceedings at that stage was to ensure a balance between the criticism directed against an individual and the redress he or she sought.

Furthermore, proceedings concerning the right of reply under Turkish law came under an exceptional emergency procedure in which the Magistrate's Court had to rule on applications for publication orders under the right of reply within three days, and the Criminal Court had three days in which to rule on any appeal against the publication order. Promptness was therefore a key element in proceedings concerning the right of reply, and this requirement for the domestic courts to deal swiftly with cases concerning the publication of a reply could be considered necessary and justifiable in order to enable untruthful information published in the media to be contested, and to ensure a plurality of opinions in the exchange of ideas on matters of general interest. The Court reiterated in that regard that news was a perishable commodity and that to delay its publication, even for a short period, might well deprive it of all its value and interest.

Accordingly, the Court found that in the present case, in the context of the proceedings concerning the right of reply, where the legal issues had not been especially complex and the domestic courts had been called upon to rule promptly, the fact that they had formed their opinion on the basis of the case file, without holding a hearing, did not breach the requirements of Article 6 § 1 regarding the oral and public nature of proceedings. **There had therefore been no violation of Article 6 § 1 of the Convention on account of the lack of a hearing before the domestic courts.**

2. Other complaints

The Court found Mr Eker's remaining complaints under Article 6 § 1 of the Convention to be manifestly ill-founded and dismissed them pursuant to Article 35 §§ 3 and 4 of the Convention.

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

The Court considered that the publication of the journalists' association's reply had concerned the exercise of its freedom of expression. It also found that the requirement for Mr Eker to print a reply constituted interference with his right to freedom of expression. That interference had been prescribed by law² and had pursued the legitimate aim of protecting the reputation and rights of others. The Court further specified that the aim of the right of reply was to afford all persons the possibility of protecting themselves against certain statements or opinions disseminated by the mass media that were likely to be injurious to their private life, honour or dignity.

As to whether the interference had been necessary, the Court reiterated that, in a democratic society, the right of reply was a guarantee of the pluralism of information that must be respected. In the present case Mr Eker had been required to publish a text from the Sinop journalists' association responding to the criticisms made of its leaders. The text had given details of the association's functioning and the work carried out by its members, and had provided answers to the questions raised by Mr Eker in his editorial. It had also contained criticism of Mr Eker and implied criticism of his professional integrity. However, the domestic judicial bodies had taken the view that the text in question had related to Mr Eker's editorial and had not contained anything that might constitute an offence. In that regard the Court observed that when exercising its supervisory function, the Court's task was not to take the place of the national courts but rather to review, in the light of the case as a

² Article 32 of the Constitution and section 14 of the Press Act.

whole, whether the decisions they had taken pursuant to their power of appreciation were compatible with the provisions of the Convention relied on.

In the present case, in the Court's view, the domestic courts could be said to have struck a fair balance between Mr Eker's right to freedom of expression and the right of the association in question to protection of its reputation. Although the reply had contained possibly disparaging remarks about Mr Eker, the Court considered that it had not overstepped the limits of permissible criticism. The tone of the reply, moreover, had been substantially similar to that used by Mr Eker in his editorial. Furthermore, the impugned publication order had been proportionate to the aim pursued, as Mr Eker had not been required to amend the content of his article. In addition, there had been nothing to prevent him from re-publishing his version of the facts. **The Court therefore held that there had been no violation of Article 10 of the Convention.**

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.