



Professor penalised for unauthorised participation in a TV programme outside his town of residence: violation of the right to freedom of expression

In today's **Chamber judgment**¹ in the case of **Kula v. Turkey** (application no. 20233/06) 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 a disciplinary sanction (reprimand) imposed on Mr Kula, a university professor, for taking part in a television programme in a town other than that in which he resided without his university's authorisation.

The Court found in particular that:

- the disciplinary sanction amounted to an interference with Mr Kula's right to freedom of expression;
- no reasons had been given for the decision to impose the sanction, apart from a reference to the legal provision relied upon;
- the administrative court had merely examined the factual account of Mr Kula's unauthorised departure from his town of residence and had failed to consider the necessity of such a sanction in the light of the academic freedom argument advanced by Mr Kula.

Finally, the Court ruled that since the domestic courts had failed to provide relevant and sufficient reasons to justify the impugned interference, they could not be deemed to have applied rules compatible with the principles set out in Article 10 of the Convention.

Principal facts

The applicant, Onur Bilge Kula, is a Turkish national who was born in 1954 and lives in Ankara. At the time of the events he was a professor at Mersin University, specialising in the German language.

Mr Kula was invited to take part in a TV programme on the subject of "The cultural structure of the European Union and the traditional structure of Turkey – Comparing identities and modes of behaviour – Likely problems and suggested solutions". The programme was to be broadcast live on Saturday 31 March 2001 on a public channel in Istanbul.

Mr Kula informed the director of the translation course at the University, who notified the Faculty Dean in a letter expressing misgivings as to whether there was any link between Mr Kula's specialist field and the subject of the programme. A few days later the Dean notified his disagreement, but Mr Kula went ahead and took part in the programme.

Subsequently, Mr Kula appeared on the TV programme again, on Saturday 14 April 2001, following an international conference – which had taken place from 11 to 13 April 2001 in Istanbul – which he had been authorised to attend.

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.

A disciplinary enquiry was initiated against Mr Kula for having twice taken part in the programme in question in Istanbul without his university's authorisation. The Faculty Dean penalised him by reducing his salary by one eighth. Following an appeal to the Chancellor of the University, the penalty was reduced to a reprimand. Mr Kula appealed against that decision to the administrative courts, but his appeal was dismissed.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion) and Article 10 (freedom of expression), the applicant complained about the disciplinary sanction imposed on him for taking part in a TV programme outside his town of residence without his university's authorisation. Without relying on any Article, he also complained of a breach of the principle of respect for his private life.

Mr Kula also alleged a violation of Articles 6 (right to a fair trial), 7 (no punishment without law), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention.

The application was lodged with the European Court of Human Rights on 24 April 2006.

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

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),

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

Decision of the Court

Article 10 (freedom of expression)

Reiterating that Article 10 of the Convention also protected the manner in which ideas were transmitted, the Court considered that the application primarily concerned Mr Kula's exercise of his right to freedom of expression as an academic during a television programme organised outside his town of residence. It held that the case undeniably concerned the applicant's academic freedom, which should guarantee freedom of expression and action, freedom to communicate information, as well as freedom to "seek and unrestrictedly disseminate knowledge and truth".

The Court considered that however minimal the disciplinary penalty (a reprimand) imposed on Mr Kula, it could have impacted on his exercise of freedom of expression and have had a "chilling" effect. There had therefore been an interference, prescribed by law², with Mr Kula's right to freedom of expression. In that connection it noted that the authorities had not sufficiently clearly stated why Mr Kula's participation in the 31 March 2001 TV programme had been deemed inappropriate, and that no reasons had been given for the decision to penalise him apart from a bald reference to the legal provision relied upon².

As regards the necessity of the impugned measure, the Court reiterated that it was for the domestic courts to verify whether the reasons forming the basis for the disciplinary sanction had been "relevant and sufficient". However, the administrative court had merely ascertained the facts

² Rules 8(g) and 16 of the Disciplinary Rules for directors, teachers and officials of institutes of higher education.

regarding Mr Kula's unauthorised departure from his town of residence and had failed to consider the necessity of such a sanction in the light of the "academic freedom" argument explicitly put forward by Mr Kula. Yet that court, as well as the Council of State, which had validated the first-instance judgment, should have conducted a broader assessment than a simple scrutiny of formal compliance with the law under Rule 8(g) of the Disciplinary Rules, as would have been possible under section 7(4) of Law No. 2577.

The decisions given by the domestic courts did not therefore explain how they had fulfilled, on the one hand, their duty to balance the competing interests in the case and, on the other, their obligation to prevent any wrongdoing by the authorities. The same omissions also prevented the Court from effectively exercising its European scrutiny of whether the domestic authorities had implemented the standards established in its case-law on the balancing of competing interests.

Consequently, since the domestic courts had not provided relevant and sufficient reasons to justify the impugned interference, the Court held that they could not be deemed to have applied rules compatible with the principles set out in Article 10 of the Convention and, moreover, to have based themselves on an acceptable assessment of the relevant facts. **There had therefore been a violation of Article 10 of the Convention.**

Other articles

The Court rejected Mr Kula's other complaints, considering them manifestly ill-founded.

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.