



Criminal proceedings against a publisher for denigrating the Republic of Turkey: violation of the right to freedom of expression

In today's Chamber judgment¹ in the case of [Fatih Taş v. Turkey \(5\)](#) (application no. 6810/09) 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 criminal proceedings instituted against the owner of a publishing company (Mr Taş) for denigrating the Republic of Turkey on account of the publication of a book concerning the disappearance of a journalist in south-east Turkey in 1994. The domestic courts based their decision on the offence set out in Article 159 § 1 of the former Criminal Code, which was replaced by Article 301 of the new Criminal Code, in force since 1 June 2005.

The Court found in particular that there had been interference with the exercise of Mr Taş's freedom of expression. It also expressed doubts as to the foreseeability of Article 301 of the new Criminal Code and Article 159 of the former Criminal Code, on which the interference had been based, pointing in that regard to its case-law concerning the quality of the law.

The Court also found that the passages from the book complained of had in no way been "gratuitously offensive" or insulting and that they had not incited to violence or hatred, which in the Court's view was the essential element to be taken into account. It therefore considered that the criminal proceedings in question, which had been liable to have a chilling effect on Mr Taş's willingness to express his views on matters of public interest, had not met a pressing social need and had not been proportionate to the legitimate aims pursued (the protection of public safety and of national security). They had therefore not been necessary in a democratic society.

Under Article 46 of the Convention, the Court considered that bringing the domestic legislation into compliance with Article 10 of the Convention and the Court's case-law would constitute an appropriate form of execution by which to put an end to violations of the rights guaranteed by Article 10 of the Convention in cases concerning proceedings brought under Article 159 of the former Criminal Code and Article 301 of the new Criminal Code.

Principal facts

The applicant, Fatih Taş, is a Turkish national who was born in 1979 and lives in Istanbul (Turkey). At the time of the events he was a publisher and the owner of a publishing company.

In April 2004 Mr Taş's publishing company published a book entitled *Kayıpsın diyorlar* ("They say you disappeared") concerning the circumstances surrounding the disappearance of a journalist (N.B.) in 1994. The author claimed that the journalist in question had been abducted by village guards and by anti-guerrilla forces while he was in Siverek (a town in south-east Turkey) working on an investigative report.

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 July 2004, after obtaining authorisation from the Ministry of Justice, the public prosecutor charged Mr Taş with denigrating the Turkish Republic, on the basis of Article 159 § 1 of the Criminal Code as in force at the relevant time. Subsequently, in October 2005, the Criminal Court sentenced Mr Taş to six months' imprisonment under Article 301 § 1 of the new Criminal Code, which had entered into force on 1 June 2005. That judgment was quashed by the Court of Cassation on the grounds that the more favourable criminal-law provision had not been applied to the applicant. Mr Taş was eventually ordered in November 2008 to pay a fine of 1,650 Turkish lira under Article 159 § 1 of the former Criminal Code. The Criminal Court took the view that the content of the book amounted to public denigration of the Republic of Turkey. Following an appeal on points of law by Mr Taş, the case was struck out of the list as being time-barred.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Taş complained about the criminal proceedings instituted against him. Under Article 6 § 1 (right to a fair trial), he complained that the courts ruling on his case had lacked independence and impartiality, on the grounds that the Minister of Justice had intervened in the criminal proceedings by authorising the prosecution. The Court decided to examine these complaints under Article 10 (freedom of expression) alone.

The application was lodged with the European Court of Human Rights on 30 December 2008.

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 Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court noted that the criminal proceedings against Mr Taş had constituted interference with the exercise of his right to freedom of expression. The interference had been prescribed by law, in this instance by Article 301 of the new Criminal Code and Article 159 of the former Criminal Code. With regard to the quality of the law, the Court reiterated its doubts concerning the foreseeability of the Articles in question. In its judgment in *Altuğ Taner Akçam v. Turkey*², the Court had found that Article 301 of the new Criminal Code did not satisfy the requirement of quality of the law as its wording was overly broad and vague, constituted a continuing threat to the exercise of freedom of expression and did not enable individuals to regulate their conduct and foresee the consequences of their acts. The Court had also found that the requirement to obtain authorisation from the Minister of Justice in order to bring a prosecution under that provision did not provide a reliable and continuous guarantee against its abusive application, given that a change in the political situation might affect the position of the Minister of Justice and open the way for arbitrary prosecutions. In

² *Altuğ Taner Akçam v. Turkey*, no. 27520/07, 25 October 2011.

other cases³ the Court had found that serious doubts might arise as to the foreseeability for the applicants of their being charged under Article 159 of the former Criminal Code or Article 301 of the new Criminal Code, on account of the broad scope of the terms used in those provisions. The Court accepted that the interference had pursued the legitimate aims of protecting public safety and national security.

As to the necessity of the interference, the Court noted that the book in question had concerned the circumstances in which a journalist had disappeared, which was unquestionably a matter of public interest. After studying the passages of the book to which the domestic courts had referred in convicting Mr Taş it noted that, while they certainly contained criticisms of the State authorities that were at times harsh and exaggerated, they had in no way been “gratuitously offensive” or insulting and had not incited to violence or hatred, which in the Court’s view was the essential element to be taken into account. Consequently, the Court considered that the criminal proceedings complained of, which had been liable to have a chilling effect on Mr Taş’s willingness to express his views on matters of public interest, had not met a pressing social need and had in any event not been proportionate to the legitimate aims pursued. Accordingly, they had not been necessary in a democratic society. The Court therefore concluded that the national authorities had not carried out an appropriate balancing exercise, in conformity with the criteria established by the Court’s case-law, between the applicant’s right to freedom of expression and the legitimate aims pursued. **There had therefore been a violation of Article 10 of the Convention.**

Article 41 (just satisfaction)

The Court held that Turkey was to pay Mr Taş 2,500 euros (EUR) in respect of non-pecuniary damage.

Article 46 (binding force and execution of judgments)

The Court held that the violations of the right guaranteed by Article 10 of the Convention in cases concerning proceedings brought under Article 159 of the former Criminal Code and Article 301 of the new Criminal Code stemmed from a problem relating to the application of the provisions in question in a manner incompatible with the criteria established by the Court’s case-law. In that regard the Court considered that bringing the relevant domestic law into compliance with Article 10 of the Convention and the Court’s case-law would constitute an appropriate form of execution by which to put an end to the violations found.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court’s press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

³ *Dink v. Turkey* (nos. 2668/07 and 4 others, 14 September 2010); *Dilipak v. Turkey*, no. 29680/05, 15 September 2015; *Yurtsever v. Turkey* ([Committee], no. 42320/10, 5 September 2017); and *Özer v. Turkey* ([Committee], no. 47257/11, 5 September 2017).

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.