



Three individuals convicted in criminal proceedings for activities covered by their freedom of expression: violation of Article 10

In today's **Chamber judgment**¹ in the case of **Mart and Others v. Turkey** (application no. 57031/10) 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 conviction of the three applicants in criminal proceedings for disseminating propaganda in favour of an illegal organisation (the MKLP, the Marxist-Leninist Communist Party).

The Court observed that, in giving reasons for its judgment, the Assize Court had noted in particular that the applicants were readers of the periodicals *Atılım* and *Özgür Gençlik*, that they had chanted slogans and displayed banners and placards at demonstrations, and that they had books, periodicals and documents at their homes connected to the organisation in question.

The Court held that the applicants' conviction had been based on activities covered by the exercise of their right to freedom of expression, and observed that there had been interference with the exercise of that right. In the Court's view, the domestic courts had not provided relevant and sufficient reasons to justify that interference. They had not examined the content of the articles published by the periodicals, the slogans that had been chanted, the placards and flags that had been displayed or the publications and documents found at the applicants' homes. Hence, they had not provided sufficient clarification as to whether the activities in question could be regarded generally as containing an incitement to violence, armed resistance or insurrection, and whether they amounted to hate speech, which in the Court's view was the main element to be taken into account.

As a result, the Court considered that it was not possible to determine on the basis of the domestic courts' rulings how they had performed their task of weighing the applicants' freedom of expression against the legitimate aims pursued. Accordingly, the interference had not met a pressing social need, had not been proportionate to the legitimate aims pursued and had not been necessary in a democratic society.

Principal facts

The applicants, Selçuk Mart, Yusuf Bayraktar and Selver Orman, are Turkish nationals who were born in 1982, 1983 and 1981 respectively.

In July 2004 the Ankara public prosecutor charged the applicants with the offence of membership of an illegal organisation (the MLKP). In February 2007 the Ankara Assize Court sentenced them to two years and six months' imprisonment, reclassifying the offence as disseminating propaganda in favour of the illegal organisation the MLKP, which was likely to incite others to violence (section 7(2) of Law no. 3713). The Assize Court considered, among other points, that the applicants were readers of the periodicals *Atılım* and *Özgür Gençlik* – which the court considered to be official organs of the MLKP, in view of their editorial line and the articles they published, their target readership and the persons

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.

who distributed them – and that the applicants had participated in meetings and demonstrations organised by those periodicals. The Assize Court also noted that during the demonstrations the applicants had chanted slogans in favour of the MLKP; had carried placards of organisations that the court considered to be sub-branches of the MLKP; had covered their faces with scarves in accordance with the MLKP's instructions; and had waved the flags and banners of that organisation and portraits of its members. The Assize Court held that the acts in question had been aimed at publicly demonstrating the strength of the MLKP and imposing its violent methods on the population. The acts had thus amounted to disseminating propaganda in favour of the MLKP, an illegal organisation, and promoting violence. Mr Mart and Ms Orman served their sentences while Mr Bayraktar's was suspended.

Complaints, procedure and composition of the Court

The applicants complained of being convicted of acts which, they alleged, fell within the scope of their rights under Articles 10 (freedom of expression) and 11 (freedom of assembly and association), among other provisions. They also complained of the manner in which the domestic courts had assessed the evidence and applied the criminal law, and alleged that the courts had given inadequate reasons for their decisions. The Court decided to examine the complaints from the standpoint of Article 10 alone.

The application was lodged with the European Court of Human Rights on 21 August 2010.

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

Robert Spano (Iceland), *President*,
Paul Lemmens (Belgium),
Işıl Karakaş (Turkey),
Julia Laffranque (Estonia),
Ivana Jelić (Montenegro),
Arntfinn Bårdsen (Norway),
Darian Pavli (Albania),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

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

The applicants had been convicted on charges of disseminating propaganda in favour of the illegal organisation the MLKP for being readers of periodicals allegedly linked to that organisation, chanting slogans and displaying banners and placards in favour of the MLKP during demonstrations, having books, periodicals and documents connected to the organisation in their homes and, in the case of one of the applicants, being the director of a periodical allegedly attached to the organisation. The Assize Court had also reclassified the acts in question, considering that they amounted to disseminating propaganda in favour of a terrorist organisation rather than membership of an illegal organisation, the offence with which the applicants had been charged in the indictment.

The Court considered that the applicants' conviction had been based on activities covered by the exercise of their right to freedom of expression. It therefore found that there had been interference with that right, noting that this had been set down in prescribed by law (section 7(2) of Law no. 3713) and had pursued the legitimate aims of ensuring public safety, preventing crime and protecting the rights of others.

After careful scrutiny of the domestic judgment the Court observed that the Assize Court had not examined the content of the articles published by the periodicals, which were legal publications that the applicants had been accused of reading. Likewise, the Assize Court had not examined the content of the slogans chanted or the placards and flags displayed during the demonstrations, or of the publications and documents found at the applicants' homes. The Court further noted that neither the Assize Court nor the Court of Cassation judgment had provided sufficient clarification as to whether the activities in question could be regarded generally as containing an incitement to violence, armed resistance or insurrection, and whether they amounted to hate speech, which in the Court's view was the essential element to be taken into account.

The Court therefore found that it was not possible to determine on the basis of the domestic courts' rulings how they had performed their task of weighing the applicants' freedom of expression against the legitimate aims pursued. Accordingly, the Court held that since the domestic courts had not given relevant and sufficient reasons to justify it, the interference in question had not met a pressing social need and had not been proportionate to the legitimate aims pursued, and had thus not been necessary in a democratic society. There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Turkey was to pay 2,500 euros (EUR) to Mr Bayraktar and EUR 5,000 each to Mr Mart and Ms Orman in respect of non-pecuniary damage. It was also to pay EUR 2,000 jointly to the applicants in respect of costs and expenses.

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.