



## Criminal conviction of Selahattin Demirtaş for statements made during a television broadcast breached his freedom of expression

In today's Chamber judgment<sup>1</sup> in the case of [Selahattin Demirtaş v. Turkey \(no. 3\)](#) (application no. 8732/11) 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 Mr Demirtaş's criminal conviction for statements made during a television broadcast.

The statements by Mr Demirtaş had essentially urged the authorities and the public to consider the potential role of Mr Öcalan, the imprisoned leader of the PKK (Workers' Party of Kurdistan, an illegal armed organisation), in finding a peaceful solution to the Kurdish problem, and had called for an improvement in the conditions of his detention. Following a detailed examination of the statements in question, the Court found that, taken as a whole, they could not be regarded as amounting to incitement to engage in violence, armed resistance or rebellion, nor did they constitute hate speech.

The Court held that the criminal proceedings instituted against the applicant on charges of disseminating propaganda in favour of a terrorist organisation had not met a pressing social need, had not been proportionate to the legitimate aims pursued and had consequently not been necessary in a democratic society.

### Principal facts

The applicant, Selahattin Demirtaş, is a Turkish national who was born in 1973 and was living in Diyarbakır at the time the application was lodged. The case concerned his criminal conviction for statements made during a television broadcast.

On 20 December 2005 the Diyarbakır public prosecutor charged Mr Demirtaş with disseminating propaganda in favour of a terrorist organisation, following comments he had made by telephone, during a television programme, in his capacity as President of the Human Rights Association and spokesman of the Diyarbakır Democratic Platform.

On 28 September 2010 the Diyarbakır 5th Assize Court found Mr Demirtaş guilty and sentenced him to 10 months' imprisonment, before deciding to suspend delivery of its judgment for five years under Article 231 of the Code of Criminal Procedure. The Assize Court found that the comments in question were not covered by the right to freedom of expression protected by the Convention, that they amounted to propaganda in favour of the terrorist organisation PKK/Kongra-Gel and that they publicly defended its imprisoned leader, Öcalan, and its members. The Assize Court dismissed an objection by Mr Demirtaş against its decision to suspend delivery of the judgment.

On 29 July 2013 the Diyarbakır 5th Assize Court, taking note of the entry into force of Law no. 6352, decided to set aside its judgment of 28 September 2010 and to suspend the proceedings against the applicant for three years.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Articles 9 (right to freedom of thought) and 10 (freedom of expression), the applicant alleged that the criminal proceedings against him had infringed his rights under those provisions of the Convention.

The application was lodged with the European Court of Human Rights on 23 December 2010.

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

Robert **Spano** (Iceland), *President*,  
Marko **Bošnjak** (Slovenia),  
İşıl **Karakaş** (Turkey),  
Julia **Laffranque** (Estonia),  
Valeriu **Grițco** (the Republic of Moldova),  
Arnfinn **Bårdsen** (Norway),  
Darian **Pavli** (Albania),

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

## Decision of the Court

### Article 10

In the particular circumstances of the present case, the Court found that the criminal proceedings in question and the decisions taken in that context to suspend delivery of the judgment and to stay the proceedings had amounted, in view of their potential chilling effect, to interference with the exercise of Mr Demirtaş's right to freedom of expression.

Next, the Court observed that the interference had been prescribed by section 7(2) of Law no. 3713. It had pursued legitimate aims, namely the protection of national security and public safety and the prevention of disorder and crime.

The Court reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. Where the views expressed did not constitute incitement to violence, the Contracting States could not restrict the right of the public to be informed of them, even with reference to the aims set out in Article 10 § 2, namely the protection of territorial integrity or national security or the prevention of disorder or crime.

In the present case, the Court observed that Mr Demirtaş had been conveying his ideas and opinions on an issue of indisputable public concern in a democratic society, namely the potential role of the imprisoned PKK leader – who, according to Mr Demirtaş, was viewed by the Kurds as the leader of their people – in finding a peaceful solution to the Kurdish problem and the need to provide him with the means to perform that role by improving the conditions of his detention.

Following a detailed examination of the statements made by Mr Demirtaş, the Court found that, taken as a whole, they could not be regarded as amounting to incitement to engage in violence, armed resistance or rebellion, nor did they constitute hate speech.

The Court therefore considered that the criminal proceedings instituted against the applicant on charges of disseminating propaganda in favour of a terrorist organisation had not met a pressing social need, had not been proportionate to the legitimate aims pursued and had consequently not been necessary in a democratic society. There had accordingly been a violation of Article 10.

### Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 2,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 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.