EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 057 (2020)
11.02.2020

Freedom of expression: a judgment recapitulating case-law on the offence of propaganda in favour of terrorist organisations

In today's **Chamber** judgment[1] in the case of Özer v. Turkey (No. 3) (application no. 69270/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of speech) of the European Convention on Human Rights

The case concerned criminal proceedings brought against Mr Özer over an article published in his magazine. Mr Özer was prosecuted and convicted of the criminal offence of providing propaganda for a terrorist organisation, under section 7(2) of Law No. 3713.

The Court reiterated the principles which it had established in its case-law under Article 10 of the Convention concerning criminal proceedings initiated for the offence of propaganda in favour of a terrorist organisation, punishable under section 7(2) of Law No. 3713.

The Court noted that the domestic courts had not taken account of all the principles established in its case-law, given that their assessment of the case had not answered the question of whether the impugned passages of the article in question could – having regard to their content, context and capacity to lead to harmful consequences – be considered as comprising incitement to the use of violence, armed resistance or rebellion, or as amounting to hate speech.

The Court therefore held that the domestic authorities had failed to conduct an appropriate analysis having regard to all the criteria set out and implemented by the Court in cases concerning freedom of expression, and that the Government had not demonstrated that the impugned measure had met a pressing social need, had been proportionate to the legitimate aims pursued and had been necessary in a democratic society.

Principal facts

The applicant, Aziz Özer, is a Turkish national who was born in 1964 and lives in İstanbul (Turkey).

The case concerns criminal proceedings against Mr Özer, the owner and editor of the magazine *Yeni Dünya İçin Çağrı*, for the criminal offence of publishing propaganda in favour of a terrorist organisation in his magazine.

In 2007 the Istanbul prosecutor's office charged Mr Özer with disseminating propaganda in favour of a terrorist organisation on account of an article published in the January 2007 edition of his magazine.

The following year the Istanbul Assize Court found him guilty of the offence and sentenced him to 15 months' imprisonment. The Assize Court considered in particular that some sections of the article, which had borne the title "*The Kurdish question: seeking a solution and our obligations*", had constituted propaganda for the PKK (the Kurdistan Workers' Party, an illegal armed organisation), and had corresponded not to the exercise of the right to freedom of expression but to a misuse of that freedom.

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.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In 2012 the Court of Cassation upheld that judgment. The same year, following the entry into force of Act No. 6352, Mr Özer was granted a three-year stay of execution of his sentence.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the Convention, Mr Özer complained of an infringement of his right to freedom of expression on account of the criminal proceedings brought against him.

The application was lodged with the European Court of Human Rights on 22 June 2012.

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

Robert **Spano** (Iceland), *President*,
Marko **Bošnjak** (Slovenia),
Valeriu **Griţco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Darian **Pavli** (Albania),
Saadet **Yüksel** (Turkey),
Peeter **Roosma** (Estonia),

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

Decision of the Court

Article 10

Recapitulation of the principles established in the Court's case-law concerning criminal proceedings brought on the basis of section 7(2) of Law No. 3713.

1. Principles relating to quality of the law (section 7(2) of Law No. 3713): in its case-law the Court had noted a lack of clarity and foreseeability in section 7(2) of Law No. 3713 in its versions in force up until 2013.

The Court had considered, in particular, that having regard to the wording of section 7(2) – in the two versions successively in force between 2003 and 2013 – and to the manner in which the domestic courts had interpreted that provision in order to convict the applicants, that there were serious doubts about the foreseeability of its application. It had also held, in *Belge v. Turkey*[2], that neither the offence of propaganda in favour of a terrorist organisation – in the version of section 7(2) in force between 2006 and 2013 – nor its interpretation by the domestic courts were entirely clear.

2. Principles relating to the necessity in a democratic society of an interference prompted by a set of criminal proceedings brought on the basis of section 7(2) of Law No. 3713: in its case-law the Court had noted violations of Article 10 of the Convention on the basis of two different types of assessment.

- First of all, the Court had itself analysed the impugned documents and statements, as well as other acts allegedly committed by the applicants. In the cases in question, it had concluded that even though the documents, statements and alleged acts had sometimes been hostile in nature and comprised serious criticism of the State authorities or opinions liable to be deemed favourable to certain illegal organisations or their leaders or members, all in all they had neither contained any

[2] See *Belge v. Turkey*, no. 50171/09, 6 December 2016.

incitement to violence, resistance or rebellion nor amounted to hate speech, nor had they been likely to foster violence by instilling deep-rooted, irrational hatred of identified persons.

- Secondly, in some cases the Court had based its assessment on the reasoning given by the domestic courts in their final convictions. It had, in particular, had recourse to that analytical method where it had not been patently obvious that the impugned documents, statements or acts could not be considered as comprising incitement to the use of violence, armed resistance or rebellion, or as amounting to hate speech. It had held in those cases that the domestic authorities had given neither relevant and sufficient reasons to justify the applicants' criminal convictions, nor sufficient explanations, in particular, concerning whether the impugned documents, statements or acts could, having regard to their content, context and capacity to lead to harmful consequences, be considered as comprising incitement to the use of violence, armed resistance or rebellion, or as amounting to hate speech. The Court had further considered that the domestic authorities had failed to conduct an appropriate analysis having regard to all the criteria set out and implemented by the Court in cases concerning freedom of expression, or that they had not carried out an adequate balancing exercise in conformity with the criteria laid down its case-law between the applicant's right to freedom of expression and the legitimate aims sought to be achieved.

In *Hatice Çoban v. Turkey*[3], the Court had also considered that, having failed to answer the relevant arguments put forward by the applicant concerning the reliability and accuracy of the content of the main piece of evidence which they had used to support her criminal conviction, the domestic courts had failed in their duty to balance the competing interests for the purposes of Article 10 of the Convention.

Finally, in other cases the Court had delivered judgments finding no violation or had declared the application inadmissible as being manifestly ill-founded, having noted that the impugned documents, statements or acts had fuelled or condoned violence, hatred and intolerance.

As regards the present case, the Court noted an interference with Mr Özer's right to freedom of expression on account of the chilling effect which the criminal proceedings, which had lasted four years and eleven months, might have had on him; the fact of sentencing him to one year and three months in prison; and the decision to suspend the execution of his sentence for three years. This interference had been covered by section 7(2) of Law No. 3713 and had pursued legitimate aims (protecting national security and public safety, and preventing disorder and crime).

As regards the necessity of the interference, the Court decided not to examine the reasoning set out by the Turkish courts in support of their conviction of the applicant. It noted that the assessment carried out by the domestic courts had not taken into account all the principles established in its case-law under Article 10 of the Convention concerning spoken or written comments presented as fuelling or condoning violence, hatred or intolerance, since that assessment did not answer the question whether the impugned passages of the impugned article could – having regard to their content, context and capacity to lead to harmful consequences – be considered as comprising incitement to the use of violence, armed resistance or rebellion, or as amounting to hate speech.

Consequently, the domestic authorities had failed to conduct an appropriate analysis having regard to all the criteria set out and implemented by the Court in cases concerning freedom of expression; and the Government had failed to demonstrate that the impugned measure had met a pressing social need, had been proportionate to the legitimate aims sought to be achieved and had been necessary in a democratic society. **There had therefore been a violation of Article 10 of the Convention.**

[3] See *Hatice Çoban v. Turkey*, no. 36226/11, 29 October 2019.

Just satisfaction (Article 41)

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

The judgment is available only in French.

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)