



Criminal proceedings against two university professors: violation of right to freedom of expression

In today's Chamber judgment¹ in the case of [Kaboğlu and Oran v. Turkey \(no. 2\)](#) (application no. 36944/07) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and

a violation of Article 10 (freedom of expression) of the Convention, in respect of the criminal proceedings against Mr Kaboğlu and Mr Oran.

The case concerned two university professors (Mr Kaboğlu and Mr Oran) who had been the target of various reactions following the publication of a report on minority and cultural rights prepared by a public body in which they held positions of responsibility.

The applicants complained first that there had been a violation of their right to respect for their private life as a result of a speech given by an MP in the National Assembly. Secondly, they alleged a breach of their right to freedom of expression as criminal proceedings had been brought against them. They were ultimately acquitted of the charges.

As to the complaint under Article 8, the Court found that the domestic courts had struck an acceptable balance between the applicants' right to the protection of their reputation and the freedom of expression of the MP in question.

As regards the complaint under Article 10, the Court found that the bringing of criminal proceedings against the applicants could be seen as a reaction by the competent authorities which criminalised the expression of opinions by the applicants in their report, whereas those opinions had contributed to a public debate on the status and situation of minorities in Turkey. Consequently, the impugned measure (i.e., the opening and prolonging, for a considerable time, of criminal proceedings against the applicants on the basis of serious charges) had not met a pressing social need and was not proportionate to the legitimate aims pursued (protection of national security, territorial integrity or public safety), or necessary in a democratic society.

Principal facts

The applicants, İbrahim Özden Kaboğlu and Baskın Oran, who were born in 1950 and 1945 respectively, are Turkish nationals. They reside in Istanbul (Turkey). They are university professors.

In 2003 Mr Kaboğlu and Mr Oran were respectively elected Chair of the Advisory Council for Human Rights (a public body under the Prime Minister, responsible for providing the Government with opinions, recommendations, proposals and reports on any issue related to the promotion and protection of human rights) and Chair of the Working Group on minority and cultural rights issues within this Advisory Council.

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 2004 the general assembly of the Advisory Council adopted a report on minority and cultural rights, which identified problems related to the protection of minorities in Turkey. Subsequently, a number of articles describing the report and criticising the applicants were published in various newspapers. Several politicians and senior officials also criticised the report and its authors. In this context, Mr Kaboğlu and Mr Oran received death threats from ultra-nationalist groups and individuals.

In the same year, a member of parliament (S.S.) gave a speech in the National Assembly in which he described the applicants using expressions such as “intellectual turncoats”, “those who drool poisoned spit”, “those who receive instructions from abroad” and “traitors”. Mr Kaboğlu and Mr Oran brought a private prosecution and civil proceedings against the MP, alleging infringement of their personality rights. These actions were unsuccessful.

In 2005 the Ankara public prosecutor’s office charged Mr Kaboğlu and Mr Oran with inciting hatred and hostility and denigrating the State’s judicial bodies by the content of the report. The applicants were acquitted on the charge of inciting hatred and hostility, as the Ankara Criminal Court found that they had expressed personal opinions covered by the right to freedom of expression. This judgment was upheld by the Plenary Criminal Divisions of the Court of Cassation in 2008. The court subsequently decided to strike the case out of its list as to the charge of denigrating State judicial bodies.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Kaboğlu and Mr Oran complained that their reputation had been tarnished by the statements of the MP S.S. and that the State had not afforded them any protection of their private life in this connection.

Under Article 10 (freedom of expression), Mr Kaboğlu and Mr Oran complained about the criminal proceedings against them. They also alleged that the authorities had taken no preventive measures to counter the death threats and aggressive criticisms against them.

The application was lodged with the European Court of Human Rights on 20 August 2007.

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

Jon Fridrik **Kjølbrot** (Denmark), *President*,
Marko **Bošnjak** (Slovenia),
Valeriu **Grițco** (the Republic of Moldova),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Court took the view that in his speech S.S., a member of parliament, had used caustic language to express his reaction and indignation regarding the Advisory Council’s report and to publicly discredit its authors (among whom were the applicants), together with those who had commissioned the report. The Court nevertheless found that the style and content of the remarks in question, while provocative, polemical and somewhat offensive, could not on the whole be regarded

as lacking a sufficient factual basis or as gratuitously insulting in the context of a heated public debate on the report, which dealt with issues of fundamental importance to Turkish society.

As regards the criminal proceedings brought by the applicants in respect of the speech in question, the Court noted that they had been suspended and closed on procedural grounds, in particular because of the MP's parliamentary immunity. In that connection, it had previously held that immunity covering statements made by MPs in the course of parliamentary debates was compatible with the Convention under certain conditions.

As regards the civil proceedings brought by the applicants alleging damage to their reputation, the Court noted that the civil courts had dismissed their claim for damages. The Court of Cassation had held that the speech by S.S. fell within the scope of the exercise by an MP – who did not share the views expressed in the applicants' report – of his freedom of expression; that the speech had not exceeded the limits of permissible criticism, particularly as it had been delivered in the National Assembly; and that the issues addressed in the report had been important and sensitive. It had further taken the view that some of the expressions in the speech had not been directed at the applicants themselves and that, in any event, the remarks made about them had remained within the limits of permissible criticism.

In the Court's view, the civil courts had stressed both the importance of the exercise of freedom of expression by a member of the National Assembly on a matter of importance to Turkish society and the existence of a debate of general interest, to which the exchange of ideas between the applicants and S.S. had contributed, before concluding that the expressions directed at the applicants in the speech had not exceeded the limits of permissible criticism. Consequently, it concluded that the national authorities had struck an acceptable balance between the applicants' right to protection of their reputation and the freedom of expression of S.S. **Thus there had been no violation of Article 8 of the Convention.**

Article 10 (freedom of expression)

The Court began by finding that the criminal proceedings brought against the applicants had constituted interference with their right to freedom of expression. Although those proceedings had ultimately resulted in their acquittal and the case had been struck out, they had remained pending for a considerable period (three years, four months and sixteen days). In addition, the criminal investigation had lasted for nine months.

In the Court's view, the fear of being convicted during these proceedings had inevitably created pressure on the applicants and had led them, as university professors dealing with sensitive human rights issues, to self-censorship. The criminal proceedings themselves had thus represented a real and effective constraint; and the acquittal and strike-out decisions had not detracted from the fact that these proceedings had put pressure on the applicants for a period of time and had been of such a nature as to intimidate and discourage them from speaking out on matters of public interest.

The Court went on to note that the interference was provided for in Articles 216 and 301 of the New Criminal Code. In that connection, it reiterated a previous finding that serious doubts might arise as to whether the applicants could have foreseen criminal proceedings under Article 301 on account of the broad scope of the wording used in that provision. It also noted that the legitimate aims pursued had been the protection of national security, territorial integrity or public safety.

As regards the necessity of the interference, the Court observed that the report had dealt with the sensitive issue of minority and cultural rights in Turkey. It had criticised policies previously adopted by the authorities on these matters and had made suggestions for improving the situation of minorities in the country.

The judicial authorities had brought proceedings against the applicants on the grounds that the report in question had been directed against the fundamental elements of the Republic of Turkey

and had triggered indignation and hostile reactions in public opinion. However, they had not carried out any proper analysis of the content of the report or of the context in which it had been drawn up in the light of the criteria laid down and applied by the Court in cases concerning freedom of expression.

Nor had the judicial authorities alleged that the report in question contained a call to violence, armed resistance or uprising, or that it constituted hate speech, or that it was “gratuitously offensive” or insulting, this being, in the Court’s view, the essential factor to be considered.

Accordingly, the Court found that the bringing of criminal proceedings against the applicants could be seen as a reaction by the competent authorities which had the effect of criminalising the expression of opinions by the applicants in their report, whereas those opinions had contributed to a public debate on the status and situation of minorities in Turkey, which were questions of general interest. Consequently, the impugned measure, i.e. the opening and prolonging, for a considerable time, of criminal proceedings against the applicants on the basis of serious charges, had not met a pressing social need and was not proportionate to the legitimate aims pursued or 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 each applicant 2,000 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.