



## Civil judgment against leader of main opposition party, Kemal Kılıçdaroğlu: violation of his freedom of expression

In today's **Chamber** judgment<sup>1</sup> in the case of [Kılıçdaroğlu v. Turkey](#) (application no. 16558/18) 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 a civil judgment ordering Kemal Kılıçdaroğlu, leader of the main opposition party, to pay compensation for tarnishing the reputation of the then Prime Minister, Recep Tayyip Erdoğan, on account of remarks made by him in two speeches delivered in 2012 on the parliamentary estate.

The two speeches concerned matters of general interest which were related, in particular, to court cases dealing with allegations of abuse of trust, a human tragedy caused by Turkish air-force bombing and the construction of hydroelectric power stations. It had thus been natural for the Prime Minister, as a high-ranking politician, to have his words and deeds closely scrutinised by one of his main political rivals. Moreover, the two speeches concerned topical issues; they had not directly targeted the Prime Minister's private life; and they had been based on certain factual elements. Mr Kılıçdaroğlu had given the speeches as a member of parliament within the parliamentary precincts. In this connection the Court reiterated that, while being precious for everyone, freedom of expression was particularly important for an elected representative of the people.

The Court found that some of the expressions used by Mr Kılıçdaroğlu in the context of his opposition to the Prime Minister consisted of harsh attacks with an antagonistic tone. Even though the "contempt" contained in certain remarks could not be overlooked, those remarks could rather be seen as provocative, intended to foster controversy about the political position allegedly adopted by the Prime Minister. They could also be recognised as the type of political invective used by politicians in the course of their debates. The Court took the view that the role of the domestic courts in such proceedings was not to tell the applicant what style he should have adopted in exercising his right to criticise, however caustic his remarks, but rather to examine whether the context of the case, the public interest and the intention of the person who made the remarks justified the possible use of a degree of provocation or exaggeration.

The Court lastly noted that the amount of the compensation that the applicant had been ordered to pay was significant and capable of deterring others from criticising politicians in the context of a debate on a question of public interest.

The Court thus found that the domestic courts had not given due consideration to the principles and criteria set out in the Court's case-law in order to strike a fair balance between the Prime Minister's right to respect for his private life, on the one hand, and Mr Kılıçdaroğlu's right to freedom of expression, on the other.

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).

## Principal facts

The applicant, Kemal Kılıçdaroğlu, is a Turkish national who was born in 1948 and lives in Ankara. He is the Chairman of the main opposition party (Cumhuriyet Halk Partisi (CHP): Republican People's Party).

On 31 January and 7 February 2012 Mr Kılıçdaroğlu, in his capacity as Chairman of the CHP, made speeches at a meeting of his party's parliamentary group in a room on the parliamentary estate.

Those speeches dealt with various topical issues, including court decisions convicting protesters who had staged actions against the Tortum hydroelectric power station projects (Erzurum district, Turkey), the Deniz Feneri court case, the event of Uludere, and a case before the Supreme Administrative Court. In his two speeches Mr Kılıçdaroğlu criticised the then Prime Minister.

On 1 March 2012 the Prime Minister brought two civil actions for damages against Mr Kılıçdaroğlu, claiming that his personal and professional honour and reputation had been tarnished.

On 23 October 2012 the Ankara District Court handed down two judgments ordering Mr Kılıçdaroğlu to pay 5,000 Turkish liras in each set of proceedings for the non-pecuniary damage caused to the Prime Minister's reputation. Mr Kılıçdaroğlu's appeal on points of law was rejected and his individual application to the Constitutional Court resulted in a ruling that his right to freedom of expression had not been violated.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Kılıçdaroğlu complained that he had been ordered to pay compensation for damage to the then Prime Minister's reputation in two speeches he had made on the parliamentary estate when, in his opinion, the remarks in question were based on established facts.

The application was lodged with the European Court of Human Rights on 28 March 2018.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Marko **Bošnjak** (Slovenia),  
Valeriu **Grițco** (the Republic of Moldova),  
Arnfinn **Bårdsen** (Norway),  
Darian **Pavli** (Albania),  
Saadet **Yüksel** (Turkey),  
Peeter **Roosma** (Estonia),

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

## Decision of the Court

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

The Court found that the civil judgment against Mr Kılıçdaroğlu had constituted an interference with his right to freedom of expression. The interference was prescribed by law (Articles 24 and 25 of the Civil Code and Article 58 of the Code of Obligations) and pursued a legitimate aim: the protection of the reputation or rights of others.

As to whether the interference was necessary in a democratic society, the Court observed that the two speeches concerned subjects of general interest related, in particular, to court cases dealing with allegations of abuse of trust, a human tragedy caused by Turkish air-force bombing and the

construction of hydroelectric power stations. As the Constitutional Court had found, these subjects were of political relevance. It had thus been natural for the Prime Minister, as a high-ranking politician, to have his words and deeds stringently scrutinised by one of his main political rivals.

In addition, Mr Kılıçdaroğlu had given the speeches as a member of parliament within the parliamentary precincts. While being precious for everyone, freedom of expression was particularly important for an elected representative of the people. The Court reiterated that politicians inevitably and knowingly laid themselves open to close scrutiny of their every word and deed, and that there was little scope under Article 10 of the Convention for restrictions on freedom of expression in political speech or debate or in matters of general interest.

Moreover, the two speeches had concerned topical issues; they had not directly targeted the Prime Minister's private life. The domestic courts had nevertheless taken the view that, even though the speeches at issue were political in nature, the applicant's "style" – which was seen as offensive – did not fall within the protection of the law and that certain remarks had constituted an attack on the Prime Minister's personal reputation.

The Court went on to observe that, even assuming, as the domestic courts had done, that the language and expressions used in the two speeches had been provocative and coarse, and that some of the expressions could legitimately be described as offensive, they nevertheless essentially consisted of value judgments and not concrete statements of fact. However, this aspect had not been taken into consideration by the civil courts, which had not examined the question whether the expressions had a sufficient factual basis.

Those expressions had been directly related to the many topical issues addressed by Mr Kılıçdaroğlu in his two speeches and it could thus be observed that there was some factual basis for them. The Court attached weight to the fact that he had argued before the domestic courts that these remarks had a factual basis; however, that point had not been debated at national level.

The Court further observed that Mr Kılıçdaroğlu had chosen to convey his strong criticism, coloured by his own political opinions and perceptions, by using a rather antagonistic style, which, according to him, was a response to remarks that had been made by the plaintiff (the Prime Minister) in the proceedings against him.

According to the Court's settled case-law, whilst an individual taking part in a public debate on a matter of general concern was required to show respect for the reputation and rights of others, he or she could nevertheless have recourse to a degree of exaggeration or even provocation. The Court found that the expressions used by Mr Kılıçdaroğlu were to be regarded as part of his political style and contributed to a debate of general interest concerning various current issues. They could also be recognised as the type of political invective used by politicians in the course of their debates.

Thus the domestic courts had failed to examine the offending remarks within the context and the form in which they had been made, in particular failing to make a distinction between "facts" and "value judgments". They had merely considered whether the expressions used in the speeches were capable of causing damage to the Prime Minister's personality rights and reputation. The role of the domestic courts in such proceedings did not consist in indicating what style should have been adopted by the applicant in exercising his right to criticise, however caustic his remarks. They were required rather to examine whether the context of the case, the public interest and the intention of the person who made the remarks justified the possible use of a degree of provocation or exaggeration.

Lastly, Mr Kılıçdaroğlu had been ordered to pay a significant amount in compensation that was capable of deterring others from criticising politicians in the context of a debate on a matter of public interest.

The Court thus found that the domestic courts had not taken due consideration of the principles and criteria set out in the Court's case-law in order to strike a fair balance between the Prime Minister's right to respect for his private life, on the one hand, and Mr Kılıçdaroğlu's right to freedom of expression, on the other. **There had therefore been a violation of Article 10 of the Convention.**

#### [Just satisfaction \(Article 41\)](#)

The Court held, by six votes to one, that Turkey was to pay Mr Kılıçdaroğlu 6,385 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 1,662 for costs and expenses.

#### Separate opinion

Judge Yüksel expressed a partly concurring and partly dissenting opinion which is annexed to the judgment.

*The judgment is available in English and 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.