



## Reputation of a member of the armed forces damaged by articles that contravened the standards of responsible journalism

In today's **Chamber** judgment<sup>1</sup> in the case of [Sağdıç v. Turkey](#) (application no. 9142/16) the European Court of Human Rights held, by a majority (five votes to two), that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

In this case the applicant alleged a breach of his right to protection of his reputation on account of a series of articles published in the daily newspapers *Taraf* and *Yeni Şafak* in November and December 2009, accusing him of involvement in an action plan codenamed "Cage", allegedly aimed at creating conditions favourable to the overthrow of the government.

The Court held, in particular, that in view of the seriousness of the allegations contained in the impugned articles, which accused Mr Sağdıç of serious criminal acts, the damage to his reputation attained the threshold of gravity required to bring it within the scope of Article 8.

The Court went on to find that the domestic courts had not carried out a proper balancing exercise between Mr Sağdıç's right to respect for his private life on the one hand and freedom of press on the other; that the content of the articles had been incompatible with the standards of responsible journalism; and that the domestic courts should have displayed greater rigour in weighing up the various interests at stake. The courts had not given sufficient consideration to the seriousness of the breach of Mr Sağdıç's right to protection of his reputation resulting from the publication of allegations accusing him of particularly grave acts and liable to expose him to public condemnation.

### Principal facts

The applicant, Kadir Sağdıç, is a Turkish national who was born in 1952. He lives in Istanbul. At the relevant time he was a career officer in the armed forces, occupying the rank of Vice-Admiral within the Turkish naval command.

In November and December 2009 a series of articles was published in the daily newspapers *Taraf* and *Yeni Şafak*, reporting that an action plan codenamed "Cage" had been discovered by the prosecutors who were in charge of the *Ergenekon* case at that time.

According to the articles, the plan had been devised within the Navy by a group of armed forces personnel, including Mr Sağdıç, with the aim of carrying out attacks targeting the country's religious minorities in order to create conditions favourable to the overthrow of the government of the day.

Mr Sağdıç's full name and a photograph of him were published alongside some of the articles, which referred to the applicant as one of the ringleaders of the conspiracy behind the "Cage" plan.

In 2011 Mr Sağdıç brought an action for damages against the two newspapers, but his claims were dismissed by the District Court and the Court of Cassation. He also lodged an individual application

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).

with the Constitutional Court, which in April 2015 delivered a judgment finding that there had been no breach of his right to protection of his reputation.

## Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing), 8 (right to respect for private and family life) and 13 (right to an effective remedy), Mr Sağdıç maintained that the allegations contained in the articles in question were unfounded and slanderous. He complained that the judicial authorities had not ensured respect for his right to protection of his reputation. The Court decided to examine these complaints from the standpoint of Article 8 alone.

The application was lodged with the European Court of Human Rights on 23 January 2016.

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),  
Egidijus **Kūris** (Lithuania),  
Branko **Lubarda** (Serbia),  
Carlo **Ranzoni** (Liechtenstein),  
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 noted that, in view of the seriousness of the allegations contained in the impugned articles, which accused Mr Sağdıç of serious criminal acts, the damage to his reputation attained the threshold of gravity required to bring it within the scope of Article 8.

In the Court's view, although the limits of acceptable criticism were wider in relation to the applicant (who at the time of the events had been a high-ranking officer in the Turkish armed forces) than in relation to private individuals, the fact that he was a public servant meant that he was not subject to the same degree of public scrutiny as politicians, especially since the allegations made against him had not been confined to criticising the way in which he had performed his duties. The articles in question had reported that he had committed serious criminal offences, and hence had been necessarily liable to undermine the public's confidence in him. In view of the nature and importance of his duties, which had concerned a sensitive strategic area, it had been in the general interest for him to enjoy the confidence of the public and to be protected against unfounded accusations.

In this connection the Court stressed that the content of the articles had carried a particular degree of stigma for the applicant, whose full name and photograph had even been published next to some of the articles.

In writing the articles, the journalists had based their claims on documents whose authenticity had not yet been established or declared by the authorities. Those documents had been covered by the secrecy of a judicial investigation and had accused the applicant of serious offences such as the preparation of attacks aimed at overthrowing the government.

The Court considered that the journalists had had no reason to believe, in the situation prevailing at the relevant time, that they could rely on those documents without conducting their own research. The media outlets concerned could not have been unaware of the source of the documents on

which the articles had been based or of the fact that the information published had been confidential. They ought to have known that the disclosure of that information would contravene the prohibition contained in Article 285 of the Criminal Code, which made it an offence to breach the secrecy of a judicial investigation. The Court reiterated that, notwithstanding the vital role of the media in a democratic society, journalists could not, in principle, be released from their duty to obey ordinary criminal law on the basis that Article 10 afforded them protection.

Consequently, the manner in which the subject had been dealt with in the contested articles could not be considered compatible with the standards of responsible journalism.

As to the decisions taken by the national courts, the Court noted that the District Court had found that the articles in question had reflected the apparent reality, given that their content had featured in the bill of indictment. The District Court had also held that they had contributed to a public-interest debate and that they had not been excessive given the seriousness of the allegations and the duties performed by the applicant. The Court of Cassation had upheld that ruling without giving further reasons for its findings, and the Constitutional Court had dismissed the applicant's individual application, finding that the District Court had duly weighed up the competing interests at stake.

In the Court's view, the national courts had not carried out a proper balancing exercise between the applicant's right to respect for his private life on the one hand and freedom of press on the other. The Court considered that, in view of the content of the articles in question, which had been incompatible with the standards of responsible journalism, the domestic courts should have displayed greater rigour in weighing up the various interests at stake. In the present case neither the District Court's judgment, subsequently upheld by the Court of Cassation, nor the judgment of the Constitutional Court following the applicant's individual application appeared to have taken sufficient account of the seriousness of the damage to the applicant's reputation caused by the publication of allegations that had been covered by the secrecy of the judicial investigation at the relevant time, accused the applicant of particularly grave acts, and had been thus liable to expose him to public condemnation.

Consequently, the national courts had failed to protect the applicant's right to respect for his private life against the damage caused by the press articles in question.

**There had therefore been a violation of Article 8 of the Convention.**

#### **Just satisfaction (Article 41)**

The Court held that Turkey was to pay Mr Sağdıç 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

#### **Separate opinion**

Judges Kjølbros and Ranzoni expressed a joint dissenting opinion which is annexed to the judgment.

*The judgment is available only in French.*

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#### **Press contacts**

During the current public health-crisis, journalists can continue to contact the Press Unit via [echrpess@echr.coe.int](mailto:echrpess@echr.coe.int)

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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.