



Ban on disseminating information on an inquiry into allegations of corruption: violation of a journalist's freedom of expression

Today's Chamber judgment¹ in the case of [Akdeniz and Others v. Turkey](#) (applications nos. 41139/15 and 41146/15) concerned an interim injunction ordered by the domestic courts banning the dissemination and publication (on any medium) of information on a parliamentary inquiry into allegations of corruption against four former ministers, which had been instigated following an operation conducted by the Istanbul police and prosecutor's office on 17 and 25 December 2013.

The applicants, Banu Güven (a well-known journalist), as well as Yaman Akdeniz and Kerem Altıparmak (two academics who are popular users of the social media platforms) requested the lifting of the ban in question, relying on their right to freedom to impart information and ideas, as well as their right to receive information. The Constitutional Court dismissed their request on the grounds of their lack of victim status, since they were not directly or personally affected by the injunction.

The Court pointed out that in itself, a measure consisting in prohibiting the possible publication and dissemination of information by any medium raised a freedom of information issue.

It unanimously declared **Banu Güven's application admissible as regards the complaint under Article 10 (freedom of expression)**. It accepted that Ms Güven, a journalist, political commentator and TV news presenter at the material time, could legitimately claim that the impugned prohibition had infringed her right to freedom of expression. She could therefore claim victim status. In that connection, the Court said that it should not be overlooked that the gathering of information, which was inherent in the freedom of the press, was also considered as a vital precondition for operating as a journalist; and that, in the context of the debate on a matter of public interest, that measure was liable to deter journalists from contributing to public discussions of issues important to community life.

The Court went on to unanimously hold **that there had been a violation of Article 10 (freedom of expression) of the Convention in respect of Banu Güven**. Indeed, the impugned injunction, which had amounted to a preventive measure aimed at prohibiting any future dissemination or publication of information, had had major repercussions on the applicant's exercise of her right to freedom of expression on a topical issue. Such interference had lacked a "legal basis" for the purposes of Article 10, and had therefore prevented Ms Güven from enjoying a sufficient level of protection as required by the rule of law in a democratic society.

Finally, the Court held that Mr Akdeniz and Mr Altıparmak had not demonstrated how the impugned prohibition had affected them directly. They therefore lacked victim status in the instant case. The Court therefore declared their application inadmissible by a majority.

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.

Principal facts

The applicants are three Turkish nationals, Yaman Akdeniz, Kerem Altıparmak and Banu Güven. They were born in 1968, 1973 and 1969 respectively.

At the material time Mr Akdeniz was a professor of law at the Law Faculty of Bilgi University; Mr Altıparmak was an assistant professor of law at the Political Science Faculty of Ankara University and Director of the Human Rights Centre at that university; and Ms Güven was a well-known journalist working for a national private television channel (IMC TV) as a political commentator and TV news presenter.

In May 2014, consequently to a motion introduced by 77 MPs, the Turkish Grand National Assembly decided to instigate a parliamentary inquiry and set up a Parliamentary Commission of Inquiry into allegations of corruption against four former ministers following a large-scale operation conducted by the Istanbul police and prosecutor's office on 17 and 25 December 2013.

The Government submitted that that operation had not been a corruption investigation but an attempted military coup launched by members of the organisation referred to by the Turkish authorities as the "FETÖ/PDY"².

In November 2014, the President of the Commission applied to the Ankara Prosecutor's Office for an interim injunction prohibiting the publication and dissemination in the press, television and radio and on Internet of any information on the parliamentary inquiry.

A few days later the Ankara Justice of the Peace no. 7 allowed the request, ordering the prohibition on publication and dissemination on the grounds that the Commission's work was confidential and that the publication of information was liable to infringe the confidentiality of the investigation and the reputation of the persons concerned. Mr Akdeniz and Mr Altıparmak appealed against that decision, claiming that the ban had infringed their rights to freedom of expression and a fair trial. Their appeal was dismissed.

In December 2014 the three applicants lodged an individual application with the Constitutional Court, which dismissed it on the grounds that the applicants lacked victim status to contest the impugned decision inasmuch as they were not concerned by the criminal investigation and were neither personally nor directly affected by the measure.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained that the interim injunction issued by a justice of the peace prohibiting the publication and dissemination of information on the parliamentary inquiry had amounted to an unjustified breach of their right to the freedom to receive and impart information and ideas.

Relying on Article 6 (right to a fair trial) and Article 13 (right to an effective remedy), the applicants complained of the unfairness of the proceedings.

The applications were lodged with the European Court of Human Rights on 10 August 2015.

The Organisation "Media Legal Defence Initiative" was given leave to intervene in the written proceedings as a third party.

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

Jon Fridrik Kjølbros (Denmark), *President*,
Aleš Pejchal (the Czech Republic),
Valeriu Gritco (the Republic of Moldova),

² "Fetullahist Terrorist Organisation/Parallel structure".

Egidijus Kūris (Lithuania),
Branko Lubarda (Serbia),
Carlo Ranzoni (Liechtenstein),
Saadet Yüksel (Turkey),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\): the applicants' victim status](#)

Nature and scope of the injunction

The Government argued that the subject matter of the present case was the confidential conduct of a criminal investigation. They submitted that the principle of the secrecy of judicial investigations was set out in international law and that the impugned measure had been geared to ensuring the observance of that principle. They argued that the case did not involve any issue regarding freedom of expression or freedom of the press.

The Court emphasised that the need to protect the secrecy of investigations was not ignored in its case-law. It pointed out that it disagreed with the Government's argument. Indeed, it considered that in itself, a measure consisting in prohibiting the possible publication and dissemination of information via any medium raised an issue under the freedom of expression.

It noted that the impugned injunction, which had had a very broad scope, covering not only printed and visual material but also any type of information published on Internet, had amounted to a preventive measure adopted in the framework of a parliamentary inquiry intended to prevent the possible publication and dissemination of information. It observed that that measure had covered virtually all the aspects of the ongoing parliamentary inquiry.

The Court noted that the confidentiality of the investigation as a principle applicable to the investigation stage did not automatically entail such a prohibition, but that that principle did impose a general obligation not to disclose confidential facts concerning an investigation. Indeed, in Turkish law, Article 285 of the Penal Code punished *ex post facto* violations of the secrecy of investigations, albeit without imposing any general ban on publishing the content of the measures adopted during an individual investigation. Thus that provision guaranteed the right to publish information on a live criminal investigation, respecting the boundaries on the right to impart information.

Consequences of the injunction in terms of the applicants' rights

The applicants asserted that the impugned prohibition had prevented them from imparting and sharing their ideas and information on the inquiry, which had been widely publicised and was highly topical. They considered that the Court should consider them as "public watchdogs", and should also acknowledge their "victim" status. They also submitted that their own right to receive information had been infringed in so far as they had been prevented from obtaining it.

As regards the journalist Banu Güven, the Court could accept that her freedom to impart information and ideas had been affected by the impugned decision inasmuch as she had been unable, even for a fairly short period, to publish or disseminate information or to share her ideas on a topical issue which must have attracted considerable public attention. In reaching that conclusion it attached weight, in particular, to the fact that at the material time Ms Güven had been a political commentator and a news presenter on a national television channel. Furthermore, it should be remembered that the gathering of information, which was inherent in the freedom of the press, was also considered as a vital precondition for operating as a journalist. The Court had already held on many occasions that obstacles designed to restrict publication of information were liable to deter persons working in the media or related fields from investigating certain subjects of public interest.

In the context of the debate on a matter of public interest, that type of measure was liable to deter journalists from contributing to public discussions of issues important to community life.

As regards Mr Akdeniz and Mr Altıparmak, the Court considered that the mere fact that those two applicants – like all other Turkish citizens – had sustained the indirect effects of the impugned measure was insufficient to claim “victim” status within the meaning of Article 34 of the Convention. Clearly, in view of the fact that the decision to issue an interim injunction had been aimed not only at traditional media professionals but also at Internet users, such as bloggers and popular social media users, Mr Akdeniz and Mr Altıparmak could legitimately claim to have sustained the indirect effects of the impugned measure. Nevertheless, the Court reiterated that “purely hypothetical risks” of an applicant suffering a deterrent effect were insufficient to amount to an interference within the meaning of Article 10 of the Convention. In the present case, over the brief period when the measure had been in force, the two applicants had never been forbidden to comment on the live inquiry via any medium, which fact they did not contest.

As regards the right of access to information, the Court repeated that university researchers and the authors of works on matters of public interest also benefited from a high level of protection. Moreover, academic freedom was not confined to university or scientific research, but extended to the right of academics freely to express their viewpoints and opinions, even controversial or unpopular ones, in their fields of research, professional expertise and competence. However, the applicants in the present case did not complain of having been refused access to any specific information they might have required. Furthermore, there was nothing to suggest that the impugned measure had targeted or infringed the applicants’ academic freedom.

Mr Akdeniz and Mr Altıparmak were therefore complaining about a general measure preventing the press and the other media from communicating information concerning specific aspects of the parliamentary inquiry. The Court took the view that the mere fact that Mr Akdeniz and Mr Altıparmak – as academics and popular users of the social media platforms – had sustained the indirect effects of the measure in issue was insufficient to characterise them as “victims” within the meaning of Article 34 of the Convention. Indeed, those applicants failed to demonstrate the extent to which the impugned prohibition had directly affected them.

[Article 10: freedom of expression of the applicant Banu Güven](#)

The Court pointed out that the impugned injunction, which had amounted to a preventive measure aimed at prohibiting the future dissemination and publication of any information, had had major repercussions on Ms Güven’s exercise of her right to freedom of expression on a topical issue.

It observed that the legal basis of the impugned measure as ordered by the Ankara Justice of the Peace had been Rule 110 § 2 of the Rules of Procedure and section 3(2) of the Press Act. It added that the issue arising in the present case was whether, at the time of implementation of the impugned measure, there had been a clear and precise provision on which the applicant could have based her conduct in this sphere.

The Court noted that by judgment of 11 July 2019, published in the Official Gazette on 17 September 2019, the Constitutional Court had examined the legal basis of the prohibition of publication ordered by the Justices of the Peace, and found a violation of the right to freedom of expression and freedom of the press on the grounds that the interference in question had not met the requirement of lawfulness.

The Constitutional Court’s judgment had pointed out that *“section 3(2) of the [Press] Act lists the preventive measures on freedom of the press. It is undisputed that that provision formally constitutes a law. Yet the section in question contains no provision authorising recourse to a prohibition of publication as a preventive measure. Consequently, where a prohibition of publication is ordered in the framework of criminal proceedings, the legal consequences of the actions and facts, as well as the extent of the authorities’ powers, cannot be deemed to have been defined with any degree of*

certainty. It follows that the second paragraph of section 3 of the [Press] Act did not satisfy the ‘foreseeability’ and ‘clarity’ criteria as regards the prohibition of publication in the framework of a criminal investigation ...”.

Furthermore, the Constitutional Court had considered whether Article 28 § 5 of the Constitution, which authorised recourse to prohibition of publication, could have provided the legal basis for the impugned measure, and had come to the conclusion that it could not.

Consequently, the Court endorsed the Constitutional Court’s conclusion as regards the legal basis of the impugned measure. It held that under those circumstances, the impugned interference had lacked a “legal basis” for the purposes of Article 10 and had therefore prevented Ms Güven from enjoying a sufficient level of protection as required by the rule of law in a democratic society. **There had consequently been a violation of Article 10 of the Convention in respect of Ms Güven.**

Other articles

As regards Mr Akdeniz and Mr Altıparmak, the Court considered that those applicants’ lack of victim status for the purposes of Article 10 of the Convention also affected the complaint under Article 6 of the Convention. It found that those applicants also had no arguable claim under Article 13 of the Convention.

As regards Ms Güven, having regard to its finding under Article 10 of the Convention, the Court considered that there was no need to consider separately the admissibility or the merits of the other complaints under Articles 6 and 13.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Banu Güven 1,500 euros (EUR) in respect of costs and expenses. She had entered no claim for damages.

Separate opinion

Judge Kūris expressed a separate opinion, which is annexed to the judgment.

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.