



Criminal conviction of a student on account of his comments about the Prime Minister: breach of the right to freedom of expression

In today's **Chamber judgment**¹ in the case of [Ömür Çağdaş Ersoy v. Turkey](#) (application no. 19165/19) 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 the criminal conviction of a student (Mr Ersoy) of the ODTÜ (*Ortadoğu Teknik Üniversitesi*) who was charged with insulting a public official on account of his functions.

The authorities had accused Mr Ersoy on the basis of statements he had made about the then Prime Minister (Mr Recep Tayyip Erdoğan) in a speech given in front of the Ankara Law Courts on 22 December 2012, during a rally in support of students who had been placed in police custody on 18 December 2012 in the ODTÜ university campus for having protested against a visit by the Prime Minister.

The Court held that Mr Ersoy's remarks were linked to a public-interest debate about the police intervention in the student demonstration of 18 December 2012 and the attitude and policies of the State authorities and the Prime Minister in respect of the ODTÜ students. The comments in question had indicated a certain defiance and hostility against the Prime Minister, in that they condemned the latter's attitude towards the ODTÜ institution and its students, which Mr Ersoy considered outrageous and over-the-top, and his method of governing, described as a dictatorship.

The Court reiterated that the limits of acceptable criticism were wider with regard to a politician, in that capacity, than with regard to a private individual. However, it noted that in convicting Mr Ersoy, the domestic courts had relied on a provision of the Criminal Code which afforded State officials a greater degree of protection than other persons with regard to the disclosure of information or opinions concerning them. In this connection, the Court reiterated its previous finding that providing increased protection by means of a special law on insults was not, as a rule, in keeping with the spirit of the Convention. It also pointed out that, while it was perfectly legitimate for persons representing the institutions of the State, as guarantors of the institutional public order, to be protected by the competent authorities, the dominant position occupied by those institutions required the authorities to display restraint in resorting to criminal proceedings.

In consequence, the national authorities had not conducted an adequate balancing exercise, compatible with the principles set out in the Court's case-law, between Mr Ersoy's right to freedom of expression and the opposing party's right to respect for his private life. In any event, there had been no reasonable relationship of proportionality between the interference with Mr Ersoy's right to freedom of expression and the legitimate aim of protecting the reputation of the individual concerned.

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 applicant, **Ömür Çağdaş Ersoy**, is a Turkish national who was born in 1990 and lives in Ankara. At the relevant time, in 2012, Mr Ersoy was a student at the Middle East Technical University (*Ortadoğu Teknik Üniversitesi – ODTÜ*).

In February 2013 the Prime Minister lodged a complaint against Mr Ersoy on account of statements made by him in a speech in front of the Ankara Law Courts on 22 December 2012. On that date, a group of about 250 students, including Mr Ersoy, had come to voice their support for ODTÜ students who had been placed in police custody following violent scuffles on 18 December 2012 between the security forces and students in the course of the Prime Minister's visit to the university campus for a ceremony.

In April 2016 a court ordered Mr Ersoy to pay a fine of about 2,524 euros, finding that he had insulted the complainant, who held public office as Prime Minister. The court noted, among other points, that Mr Ersoy's statements had been injurious and humiliating, and that he had used the insulting expression "like a rabid dog" about the Prime Minister. It decided, however, to suspend pronouncement of the judgment. Mr Ersoy subsequently lodged an objection against the judgment and submitted an individual application to the Constitutional Court, both of which were unsuccessful.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Ersoy complained about the criminal proceedings brought against him.

The application was lodged with the European Court of Human Rights on 28 March 2019.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Aleš **Pejchal** (the Czech Republic),
Valeriu **Grițco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

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

The Court's role was to review whether, in their decisions, the national courts had struck a fair balance, in accordance with the criteria established by it, between Mr Ersoy's right to freedom of expression and the Prime Minister's right to respect for his private life.

The Court noted that Mr Ersoy's speech primarily concerned the police intervention in the demonstration of 18 December 2012 and the statements subsequently made by the Prime Minister on 21 December 2012, condemning the student demonstrators. Mr Ersoy had criticised the public authorities in general and the Prime Minister in particular, and had encouraged those attending the rally to continue their opposition struggle against the government. In the context in which they were made, these remarks essentially expressed political criticisms, aimed especially at the Turkish Prime Minister, on account of his statements targeting the students who had demonstrated on

18 December 2012 in protest at his visit to the university campus and his position as ultimate hierarchical superior of the security forces who had intervened in that demonstration.

In the Court's view, Mr Ersoy's remarks were indisputably linked to a public-interest debate about the police intervention in the student demonstration of 18 December 2012 and the attitude and policies of the State authorities and the Prime Minister in respect of the ODTÜ students. In this connection, the Court reiterated that there was little scope under Article 10 of the Convention for restrictions on political speech or on debates on questions of public interest. It also pointed out that the limits of acceptable criticism were wider with regard to a politician, in that capacity, than with regard to a private individual. Politicians inevitably and knowingly laid themselves open to close scrutiny of their every word and deed by both journalists and the public at large, and they had therefore to display a greater degree of tolerance.

The Court also noted that Mr Ersoy's remarks consisted in harsh criticism of the then Prime Minister, conveyed through crude and metaphorical expressions. Mr Ersoy described the demonstration by students on the ODTÜ campus, protesting against the Prime Minister's visit, as a slap in the latter's face and the police response to their demonstration as an attack by the Prime Minister, acting like "a rabid dog". Those comments had indicated a certain defiance and hostility against the Prime Minister, in so far as they condemned the latter's attitude towards the ODTÜ institution and its students, which Mr Ersoy considered outrageous and over-the-top, and his method of governing, described as dictatorship.

The Court also noted that Mr Ersoy's remarks had all the hallmarks of value judgments in the area of political criticism. In this connection, it noted that the remarks seemed to have been provoked by the violent incidents which had taken place at the student demonstration of 18 December 2012, leading to injuries and arrests among the demonstrators, as well as the Prime Minister's statements of 21 December 2012 criticising the students who had taken part in the protest. In consequence, it found that the value judgment contained in those remarks could not be regarded as lacking an adequate factual basis.

It held that, having regard to the subject of Mr Ersoy's speech, the context in which it was delivered and to its factual basis, the provocative and somewhat offensive style and content of those remarks could not be considered as being wantonly insulting in the context of the public debate in which they had been made.

In convicting Mr Ersoy, the domestic courts had relied on Article 125 § 3 (a) of the Criminal Code, which afforded State officials a greater degree of protection than other persons with regard to the disclosure of information or opinions concerning them. This Article also applied when the defamatory comments were made against elected politicians occupying posts of responsibility, such as a Prime Minister, considered by those authorities as State officials within the meaning of this provision. This practice did not seem to be in conformity with the Court's case-law, which stated that the limits of acceptable criticism were wider with regard to a politician, in that capacity, than with regard to a private individual. In this connection, the Court reiterated its previous conclusion that providing increased protection by means of a special law on insults was not, as a rule, in keeping with the spirit of the Convention. It also pointed out that, while it was perfectly legitimate for persons representing the institutions of the State, as guarantors of the institutional public order, to be protected by the competent authorities, the dominant position occupied by those institutions required the authorities to display restraint in resorting to criminal proceedings.

In addition, the nature and severity of the penalties imposed were further factors to be taken into account when assessing the proportionality of an interference. The Court considered that there was nothing in this case to justify the imposition of a criminal-law penalty, even if it was a fine. Such a sanction, by its very nature, would inevitably have a chilling effect, notwithstanding the relatively low amount, particularly bearing in mind the effects of a conviction. Moreover, although the delivery of the conviction and sentence had been suspended and although this judgment was due to be set

aside, together with all its consequences, after the five-year suspension period, the Court took the view that maintaining criminal proceedings for a considerable length of time, on the basis of serious criminal charges that were subject to a prison sentence, had had a chilling effect on Mr Ersoy's desire to express his views on matters of public interest.

Lastly, the Court stated that it could not endorse the assessments and conclusions of the domestic courts, which had held that Mr Ersoy's remarks had amounted to the offence of insulting a State official on account of his or her duties, particularly with regard to the proportionality of the criminal-law sanction imposed on the applicant and this sanction's potentially chilling effect on his freedom of expression.

In consequence, the national authorities had not conducted an adequate balancing exercise, compatible with the principles set out in its case-law, between Mr Ersoy's right to freedom of expression and the opposing party's right to respect for his private life. In any event, there had been no reasonable relationship of proportionality between the interference with Mr Ersoy's right to freedom of expression and the legitimate aim of protecting the reputation of the individual concerned. **It followed that there had been a violation of Article 10 of the Convention.**

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

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

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.