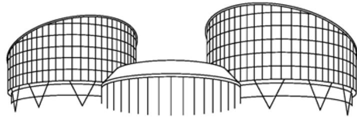

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 066 (2022)
01.03.2022

Judge reprimanded for sharing press article on Facebook: violation of freedom of expression

In today's **Chamber** judgment[1] in the case of Kozan v. Turkey (application no. 16695/19) 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, **and**

a violation of Article 13 (right to an effective remedy) taken together with Article 10.

The case concerned a disciplinary sanction (reprimand) imposed on Mr Kozan, a serving judge, for having shared in May 2015, in a private Facebook group, a press article headed "Judicial rehabilitation for closing the 17 December investigation, dismissal for conducting the investigation", without posting any comment himself.

The Court found that the press article in question was part of a debate of particular interest for members of the judiciary, since it concerned the impartiality and independence of judges *vis-à-vis* the executive with respect to events surrounding proceedings for suspected corruption dating from the period 17-25 December 2013 and the government's opposition to those proceedings. The fact that a judge had shared with his colleagues certain views in the press about the independence of the justice system, and had allowed them to comment in response, had necessarily fallen within his freedom to impart or receive information in a crucial area for his professional life. The Court also observed that the Council of Judges and Prosecutors had not appropriately weighed in the balance the applicant's freedom of expression on the one hand and his duty of discretion as judge on the other. It further reiterated that the Council was a non-judicial organ and that the proceedings before its Chamber and Plenary Assembly did not afford the safeguards of judicial review. Moreover, no judicial remedy had been available to the applicant in respect of the measure taken against him by the Council. The disciplinary sanction imposed on him had not met any pressing social need and, consequently, had not constituted a measure that was "necessary in a democratic society".

Principal facts

The applicant, İbrahim Kozan, is a Turkish national who was born in 1978 and lives in Sivas (Turkey).

On 27 May 2015 a press article headed "Judicial rehabilitation for closing the 17 December investigation, dismissal for conducting the investigation" (*17 Aralık'ı kapatana sicil affı, operasyonu yapana ihraç*) was published on the website www.grihat.com.tr. The article in question criticised certain decisions of the High Council of Judges and Prosecutors (*Hakimler ve Savcılar Yüksek Kurulu* – "the HSYK") and cast doubt on the independence of this institution from the executive.

On 28 May 2015 Mr Kozan shared this article in a private Facebook group, primarily aimed at professionals in the justice system, with the title "*Hukuk Medeniyeti*" (Law-based civilisation). After it was posted the article generated a number of comments from members of the Facebook group.

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.

According to the Government, on 28 May 2015 the Facebook group had 8,859 members; it was not limited to judges and prosecutors but was also open to academics, law-school students, lawyers and all law-school graduates.

In December 2015, following a referral from the Deputy Prosecutor General for Van, the Chair of the HSYK authorised the opening of a disciplinary investigation against Mr Kozan.

In September 2017 the Second Chamber of the Council of Judges and Prosecutors unanimously reprimanded Mr Kozan for sharing the article in question, finding that its content was incompatible with Mr Kozan's duty of loyalty to the State and his judicial obligations. It also stated that, although Mr Kozan had not expressed agreement with the content of the article, he had expressed an intention to disseminate it to a wider audience and to convey a message to those who had supported it. It found that Mr Kozan had behaved in a manner which undermined the dignity and trust required by his office, both inside and outside his professional sphere.

Subsequently Mr Kozan applied for a review of the decision but this was rejected by the Second Chamber of the Council of Judges and Prosecutors. He then lodged an appeal before its General Assembly but his appeal was dismissed on 3 October 2018, at which point the disciplinary sanction became final.

In the meantime, following the attempted coup of 15 July 2016, Mr Kozan was removed from public office by a decision of the General Assembly of the HSYK taken on 24 August 2016. In addition, a criminal case was brought against him for being a member of the FETÖ/PDY organisation[2], and he was sentenced to seven years and six months’ imprisonment for the offence of belonging to an armed terrorist organisation. The appeal proceedings in that case are still pending.

Complaints, procedure and composition of the Court

Under Article 10 (freedom of expression), Mr Kozan submitted that the reprimand had undermined his freedom to receive and impart information. He also relied on his right to an effective remedy (Article 13 of the Convention).

The application was lodged with the European Court of Human Rights on 15 March 2019.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Gilberto **Felici** (San Marino),
Jovan **Ilievski** (North Macedonia),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

Article 10 (freedom of expression)

The Court observed that the disciplinary sanction imposed on Mr Kozan (a reprimand) mainly concerned his freedom to impart and receive information, a key component of freedom of expression. This measure had constituted interference which had a legal basis and pursued at least

[2] “Gülenist terrorist organisation / Parallel State Structure”.

one of the aims recognised as legitimate by the Convention, namely to maintain the authority and impartiality of the judiciary.

The Court also noted that the press article in question fell within a debate of particular interest to members of the judiciary, since it concerned the impartiality and independence of the judiciary *vis-à-vis* the executive in relation to the events surrounding proceedings for suspected corruption dating from the period 17-25 December 2013 and the government's opposition to those proceedings. The article had expressed value judgments to the effect that some of the HSYK's decisions could be seen as favourable to the political authorities, in that members of the judiciary who had taken part in the prosecution of the 17-25 December 2013 events and had charged suspects close to the government had been disciplined, while those who had acquitted the suspects had been rewarded by the discontinuance of the disciplinary proceedings against them for alleged misconduct.

As to the question whether the "factual basis" for these value judgments had been sufficient, the Court took the view that this condition had been met in the present case. None of the disciplinary bodies which had conducted proceedings against the applicant for sharing the article had stated that the facts it referred to – namely disciplinary decisions against certain members of the judiciary and in favour of others – had not occurred. The various organs of the Council of Judges and Prosecutors had merely challenged the value judgment that the various disciplinary outcomes could have been influenced by the decisions taken by the judges or prosecutors concerned regarding suspicions against certain government figures.

The Court therefore considered that, placed in context, the value judgments expressed in the article shared by the applicant were part of a debate on the independence of the HSYK from the executive and, consequently, on the protection of the independence and impartiality of judges. In this connection, the fact that a judge had shared with his colleagues certain views in the press about the independence of the justice system, and had allowed them to comment, had necessarily fallen within his freedom to impart or receive information in a crucial area for his professional life.

The Court also noted that the applicant had shared the article not with the general public but in a discussion group reserved for judicial professionals and closed to the general public. It rejected the assumption of the disciplinary authorities and the Government that the applicant had shown an intention to convey a message to the public that he approved of the content of the impugned article by sharing it, even though he had not made any comments indicating that he agreed with it. In this connection, the implication of such an assumption, which would mean that judges belonging to a private group could only share articles praising the higher administrative and judicial authorities and would be required to ignore articles disapproving of the acts and decisions of those same authorities, would lead to unnecessary self-censorship in their discussions on matters going to the heart of their profession.

Furthermore, it could not be overlooked that the imposition of a disciplinary sanction on a civil servant belonging to the judiciary had, by its very nature, a chilling effect, not only on the person concerned, but also on the profession as a whole. This was particularly the case when judges and prosecutors exchanged ideas and opinions among themselves on decisions of the HSYK that might have an effect on their independence from other State authorities.

As regards procedural safeguards, the Court observed that the Council of Judges and Prosecutors had not adequately weighed in the balance the applicant's right to freedom of expression on the one hand and his duty of discretion as judge on the other. It further reiterated that the Council of Judges and Prosecutors was a non-judicial organ and that the proceedings followed before the Chamber and Plenary Assembly did not afford the safeguards of judicial review. Moreover, no judicial remedy had been available to the applicant in respect of the measure taken against him by the Council. It had acted in the present case both as a prosecuting authority and as a final decision-making authority, in a case in which some of its own decisions were at issue. It could not be overlooked that when disciplinary proceedings were initiated against a judge, public confidence in the functioning of

the judiciary was at stake. Any judge who was the subject of disciplinary proceedings must therefore be afforded safeguards against arbitrariness. In particular, the person concerned must have the possibility of having the measure in question reviewed by an independent and impartial body with the competence to rule on the lawfulness of the measure and determine any improper action by the authorities. The Court noted that this had not been the case in the proceedings at issue.

In the light of the above considerations, and having regard to the overriding importance of freedom of expression on matters of public interest, the Court concluded that the disciplinary sanction imposed on the applicant had not met any pressing social need and, consequently, had not constituted a measure that was "necessary in a democratic society" within the meaning of Article 10. There had therefore been a violation of that provision.

Article 13 (right to an effective remedy) in conjunction with Article 10

The Court took the view that its case-law, as established in *Kayasu v. Turkey* and *Özpınar v. Turkey*[3] as to the lack of impartiality of the Council of Judges and Prosecutors, in its formations which examined appeals by those concerned, also applied in the present case. The six members of the Chamber which had imposed the disciplinary sanction in question also sat in the Plenary Assembly which had heard his appeal. Moreover, the applicant had not had any other remedy against this final decision of the Plenary Assembly. These elements were sufficient for the Court to conclude that the applicant had not had any remedy at his disposal which met the minimum requirements of Article 13 in order to submit his complaint under Article 10 of the Convention. There had thus been a violation of Article 13 of the Convention in conjunction with Article 10.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Kozan 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter @ECHR_CEDH.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel : + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)
Denis Lambert (tel : + 33 3 90 21 41 09)
Neil Connolly (tel : + 33 3 90 21 48 05)
Jane Swift (tel : + 33 3 88 41 29 04)

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.

[3] *Kayasu v. Turkey* (nos. 64119/00 and 76292/01, § 121, 13 November 2008), and *Özpınar v. Turkey* (no. 20999/04, §§ 84-85, 19 October 2010).