



A person convicted on account of a speech was not afforded the procedural guarantees required by freedom of expression: violation

In today's **Chamber** judgment¹ in the case of **Hatice Çoban v. Turkey** (application no. 36226/11) 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 Ms Çoban's criminal conviction for disseminating propaganda in favour of a terrorist organisation on account of a speech she had given.

The Court reiterated that the fairness of proceedings and the procedural guarantees afforded were factors to be taken into account when assessing the proportionality of an interference with freedom of expression.

The Court went on to find that the national courts had not addressed the relevant arguments raised by Ms Çoban, who had challenged the reliability and accuracy of the main item of evidence used in support of her conviction. The Court of Cassation had endorsed the Assize Court's findings in a summary fashion, without giving any further consideration to the arguments submitted by Ms Çoban in her appeal on points of law. The domestic courts had therefore not performed their task of weighing up the various interests at stake for the purposes of Article 10 of the Convention.

Principal facts

The applicant, Hatice Çoban, is a Turkish national who was born in 1965 and lives in Ankara. At the material time, she was a member of the board of the Party for a Democratic Society (DTP, *Demokratik Toplum Partisi*).

In 2007 Ms Çoban was charged with disseminating propaganda in favour of a terrorist organisation on account of a speech she had given during a "World Peace Day" demonstration held by the DTP.

In 2008 the Assize Court sentenced Ms Çoban to a prison term of two years and one month. It found, in particular, that she had supported a statement by the PKK (Kurdistan Workers' Party, an illegal armed organisation); that she had called for the Republic of Turkey to enter into talks with the PKK; and that she had stated that the PKK was engaged in an honourable campaign for identity and freedom in the name of the Kurds, that this terrorist organisation's existence was necessary and that its members should never surrender to the security forces.

Ms Çoban appealed on points of law. She alleged, among other points, that the police officers who had monitored the demonstration had not related the full contents of her speech in their report dated 2 September 2006; that, not having made a recording of her speech, they had distorted her words; and that in any event they could not have lawfully monitored the demonstration and taken notes in the absence of a decision by a judge. Moreover, Ms Çoban argued that the version of her speech reported in the press differed from that recounted by the police, and that the Assize Court had not sought to elucidate this discrepancy or to obtain recordings of her speech. Lastly, she

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.

explained that the speech had concerned the need to resolve the Kurdish problem by democratic and peaceful means. Her appeal was rejected.

In 2014 the Assize Court, pursuant to a new law, decided to stay the execution of her sentence, which had not yet begun.

Complaints, procedure and composition of the Court

Relying in particular on Article 10 (freedom of expression), Ms Çoban complained about her conviction, arguing that the criminal proceedings had been unfair and had breached her right to freedom of expression.

The application was lodged with the European Court of Human Rights on 18 April 2011.

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

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Valeriu **Grițco** (Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Ivana **Jelić** (Montenegro),
Darian **Pavli** (Albania),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

Article 10 (freedom of expression)

The question arising was whether the criminal proceedings against Ms Çoban had been fair as a whole, including the way in which evidence had been taken for the establishment of the facts. The Court reiterated in that connection that the fairness of proceedings and the procedural guarantees afforded were factors to be taken into account when assessing the proportionality of an interference with freedom of expression.

In the present case, it noted that the Assize Court had not sought to ascertain whether the only incriminating evidence it had against Ms Çoban, namely the report dated 2 September 2006 as presented by the prosecution and subsequently confirmed by the police officers who had drawn it up, was corroborated by other evidence, such as statements by independent witnesses or any recordings that might have been made by media outlets. Nor had the Assize Court explained why it had found the defence statement by Ms Çoban, who had denied making the offending comments, to be “evasive”.

In her appeal on points of law Ms Çoban had pointed out the divergence between the contents of her speech as reported in press articles and as recounted in the police report. She had also submitted that the precise contents of her speech could have been established by calling as witnesses the individuals whom she had named as having been present at the demonstration.

In the Court’s view, since Ms Çoban had put forward arguments in her appeal on points of law that could have cast doubt on the accuracy of the main item of evidence used in support of her conviction, had contended that the Assize Court’s reasoning had been devoid of any factual basis, and had asked for new evidence to be produced, the Court of Cassation should not simply have relied on the single item of evidence in question (the police report of 2 September 2006) without examining the grounds of appeal submitted by Ms Çoban in that regard. It had therefore been

required to provide reasons in addressing her arguments. However, Ms Çoban's argument that there were discrepancies between the contents of the respective documents reporting her speech – namely the police report and the press articles published on the subject – had been dismissed by the Court of Cassation as irrelevant, as had her request for defence witnesses to be called in order to establish the precise contents of the speech.

However, the Court found that the articles reporting on Ms Çoban's speech or recordings of the speech by the media and statements by witnesses other than the police officers who had drawn up the report could arguably have strengthened the position of the defence or even led to Ms Çoban's acquittal. Yet the Court of Cassation had endorsed the Assize Court's findings in a summary fashion, without giving any further consideration to the arguments submitted by Ms Çoban in her appeal on points of law. While such an approach was in principle acceptable for an appellate court, in the circumstances of the present case, where the factual basis for the Assize Court's reasoning had been called into question by sound arguments, it had failed to satisfy the requirements of a fair trial.

Consequently, the domestic courts had not addressed the relevant arguments put forward by Ms Çoban regarding the reliability and accuracy of the main item of evidence on which they had relied in support of her conviction, and had not performed their task of weighing up the various interests at stake for the purposes of Article 10 of the Convention. The national courts could therefore not be said to have applied standards conforming to the principles embodied in Article 10 of the Convention, or to have based their decisions on an acceptable assessment of the relevant facts. **There had been a violation of Article 10 of the Convention.**

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

The Court held that Turkey was to pay Ms Çoban 2,500 euros in respect of non-pecuniary damage.

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.