



Upholding of defamation claim against MP, for remarks about medical care of Prime Minister, was in breach of her freedom of expression

In today's **Chamber** judgment¹ in the case of **[Erdener v. Turkey](#)** (application no. 23497/05) 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 upholding of a civil defamation claim against Ms Erdener, who at the time was a Member of the Turkish Parliament, on account of her remarks, reported in the press, criticising the medical care given to the Prime Minister, Bülent Ecevit, in a private university hospital.

The Court found in particular that the judgment against Ms Erdener had been disproportionate as her remarks, made in private conversation with a journalist about a subject discussed widely in the media and among parliamentarians, amounted to a personal opinion with a sufficient factual basis.

Principal facts

The applicant, Yücel Erdener, is a Turkish national who was born in 1941 and lives in Ankara (Turkey).

On 13 August 2002 an article reporting on rumours in the National Assembly concerning the health problems of the then Turkish Prime Minister appeared in the daily newspaper *Milliyet*. The article was based on a discussion between the journalist and two MPs, one of whom was Ms Erdener, an MP with the DSP (Party of the Democratic Left) at the time. According to the article, the Prime Minister had discontinued his treatment at Başkent University Hospital and had decided not to attend his last check-up after being warned in advance that the doctors were preparing a report finding him unfit to work.

The Administration of Başkent University initially lodged a criminal complaint against Ms Erdener and the other MP for defamation, but on 29 August 2002 the Ankara public prosecutor issued a decision not to prosecute, taking the view that the mere fact of reporting on rumours in the National Assembly concerning the Prime Minister's health did not constitute a criminal offence. However, the Assize Court overturned that decision and Ms Erdener and the other MP were committed for trial in the Criminal Court. They were acquitted on 29 April 2003.

In parallel proceedings, the Administration of Başkent University filed a civil suit against Ms Erdener and the other MP seeking compensation for damage to its reputation. The District Court ordered Ms Erdener alone to pay compensation and to repay the court costs and claimant's lawyer's fees, taking the view that, unlike the other MP, she had also expressed a personal view that was damaging to the hospital's reputation by stating: "They nearly drove him to his death".

An appeal on points of law lodged by Ms Erdener was dismissed.

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.

Complaints, procedure and composition of the Court

Relying on Articles 9 (right to freedom of thought, conscience and religion) and 10 (freedom of expression), Ms Erdener complained of being ordered to pay damages on account of her remarks concerning the Prime Minister's health. Under Article 6 (right to a fair hearing), she complained of being ordered to pay damages to the claimant, even though the domestic courts had dismissed the action brought against another MP for similar remarks. The Court, which was master of the legal characterisation to be given in law to the facts of the case, considered that the application should be examined under Article 10 (freedom of expression) of the Convention.

The application was lodged with the European Court of Human Rights on 7 June 2005.

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

Julia Laffranque (Estonia),
İşıl Karakaş (Turkey),
Paul Lemmens (Belgium),
Valeriu Griţco (the Republic of Moldova),
Ksenija Turković (Croatia),
Stéphanie Mourou-Vikström (Monaco),
Georges Ravarani (Luxembourg),

and also Abel Campos, *Deputy Section Registrar*.

Decision of the Court

Article 10 (freedom of expression)

The Court noted that the Ankara District Court had ordered Ms Erdener to pay compensation for damaging the reputation of Başkent University, finding that her remarks, in particular "*They nearly drove him to his death*", exceeded the permissible limits under domestic law and damaged the reputation of Başkent University Hospital.

The Court observed that the events giving rise to this case had received broad media coverage in Turkey; the manner in which the Prime Minister had been treated had been criticised not only by the media but also among parliamentarians. It also noted that Ms Erdener had made her remarks during a private conversation with a journalist, in her capacity as both MP and member of the Prime Minister's Party, concerning rumours circulating in a climate of political tension in the National Assembly. In the Court's view Ms Erdener's remarks amounted to a personal opinion criticising the Prime Minister's medical treatment, and they had a sufficient factual basis.

The Court found that Başkent University had enjoyed the right to defend itself against those allegations, and that as a public entity its reputation-related interests were devoid of any moral dimension, unlike those of private individuals. Accordingly, the court should have weighed up the competing interests of Ms Erdener on the one hand and the university on the other. However, the Court observed that the domestic courts had not verified whether the offending remark had, in itself, particularly damaged the university's reputation and had not duly taken into consideration Ms Erdener's defence arguments to the effect that her remarks had a sufficient factual basis and had been made in her capacity as MP. The courts had preferred to consider the remark out of its context, concluding that it had, in itself, been sufficient to damage the reputation of Başkent University. In the Court's view, the judicial authorities had not struck a fair balance between the need to protect Ms Erdener's right to freedom of expression and the need to safeguard the university's reputation, as the reasoning given had not been sufficient to justify the interference with Ms Erdener's freedom of expression. Moreover, the Court found that, even though the damages awarded against

Ms Erdener had ultimately not been very high, the judgment had certainly had a deterrent effect on the free public discussion of questions which were of interest to the wider community.

Consequently, the Court found that the upholding of the defamation claim against Ms Erdener was a disproportionate interference with her right to freedom of expression and was not necessary in a democratic society. It held that there had been a violation of Article 10 of the Convention.

Other articles

It was not necessary to examine separately the admissibility and merits of the Article 6 complaint.

Article 41 (just satisfaction)

The Court held that Turkey was to pay Ms Erdener 2,340 euros (EUR) in respect of pecuniary damage, EUR 7,500 in respect of non-pecuniary damage and EUR 1,000 for 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.