



Violation of the right to respect for private life of two academics who were targeted by threats and hate speech in newspaper articles

In today's **Chamber** judgment¹ in the case of **Kaboğlu and Oran v. Turkey** (application nos. 1759/08, 50766/10 and 50782/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned newspaper articles containing threats and hate speech against the applicants, attacking them for the ideas they had presented in a report addressed to the government concerning questions of minority and cultural rights. The applicants lost their cases before the domestic courts, which took the view that the offending articles fell within legislation protecting freedom of expression.

The Court found in particular that the verbal attacks and threats of physical harm made against the applicants sought to undermine their intellectual personality, causing them feelings of fear, anxiety and vulnerability in order to humiliate them and break their will to defend their ideas.

The Court also found that the domestic courts had not provided a satisfactory answer to the question of whether freedom of the press could justify, in the circumstances of the case, the damage caused to the applicants' right to respect for their private life by passages amounting to hate speech and incitement to violence, thus being likely to expose them to public contempt. The Court concluded that the domestic courts had not struck a fair balance between the applicants' right to respect for their private life and freedom of the press.

Principal facts

The applicants, İbrahim Özden Kaboğlu and Baskın Oran, who were born in 1950 and 1945 respectively, are Turkish nationals residing in Istanbul and Ankara (Turkey). They are university lecturers.

In 2003 Mr Kaboğlu and Mr Oran were respectively elected Chair of the Advisory Council and Chair of the Council's Working Group on questions concerning minority rights and cultural rights. The Advisory Council is a public body under the supervision of the Prime Minister, responsible for providing the government with opinions, recommendations, proposals and reports on any question connected with the promotion and protection of human rights.

In 2004 the Advisory Council's general meeting adopted a report on minority rights and cultural rights, referring to problems with the protection of minorities in Turkey. Following the release of the report, a number of articles condemning it and attacking the applicants were published in the press. Taking the view that those articles contained insults, threats and hate speech against them, the applicants filed four claims for damages against the authors and the proprietors of the daily

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.

newspapers in question. On various dates, their claims were dismissed by the District Court, whose judgments were upheld by the Court of Cassation.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 8 (right to respect for private and family life), 10 (freedom of expression) and 14 (prohibition of discrimination), the applicants complained that the national authorities had not protected them from the insults, threats and hate speech directed against them in the press on account of the ideas they had expressed in a report on minority and cultural rights. The Court decided to examine the complaints concerning Articles 2 and 8 of the Convention solely under Article 8.

The applications were lodged with the European Court of Human Rights on 10 January 2008 and 15 July 2010.

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

Robert **Spano** (Iceland), *President*,
Ledi **Bianku** (Albania),
Işıl **Karakaş** (Turkey),
Valeriu **Griţco** (the Republic of Moldova),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Court noted that the offending articles had been published in the context of a heated public debate on the proposals presented by the report on the effective protection of minority rights in Turkey. This was a sensitive subject capable of raising concerns in nationalist circles about the unity of the Turkish nation and State structure. The statements and press articles attacking the applicants thus fell within the context of a reactionary campaign waged by those circles against the report and its principal authors, the applicants. They had in fact exercised their freedom of expression through this report by presenting their view on the status and position of minorities in a democratic society without, however, using derogatory or insulting language against the advocates of a different perspective on such matters.

The Court took the view that certain passages in the articles at issue were clearly such as to directly or indirectly incite or justify violence. In particular, the following passages: "I swear to you, the price of our land has to be paid in blood and, if necessary, blood will be shed"; "In my opinion, if we had beaten up these individuals, people would have been relieved. These advocates of the Sèvres Treaty deserved a good hiding ...".

In the Court's view, these sentences, together with the stigmatising expressions widely used in the articles, such as "traitor", "subversive individuals ... [who deserve] the death penalty", "Trojan horse infiltrating among us" and "spy", incited hatred against those targeted, namely the authors of the report, including the applicants, and exposed them to a risk of physical violence. In the Court's view, the risk that such writings could encourage acts of violence against the applicants should not be

underestimated. It pointed out, in this regard, that a Turkish journalist, Fırat Dink², had been murdered by an ultra-nationalist following a stigmatisation campaign accompanied by death threats on account of his heterodox views on a question that was deemed to be sensitive in Turkish society.

The Court found that the verbal attacks and threats of physical harm made against the applicants in the offending articles sought to undermine their intellectual personality, causing them feelings of fear, anxiety and vulnerability in order to humiliate them and break their will to defend their ideas. However, the domestic courts, without explicitly classifying the articles in a given category (statement of fact, value judgment or even hate speech or violent speech), had concluded that they were not directly targeting the applicants and that they did not contain gratuitous attacks on them.

They also found that the applicants had to tolerate the harsh criticisms levelled against them, both because of their status and because of their own criticisms in the report against their ideological opponents. The courts lastly ruled that the articles fell within the legislation protecting the freedom of expression of their authors, and paid no particular attention to the threatening and violent expressions contained in them.

In the Court's view, the domestic courts had not properly balanced the applicants' right to respect for their private life and the freedom of the press. Thus, their judgments had not provided a satisfactory answer to the question of whether freedom of the press could justify, in the circumstances of the case, the damage caused to the applicants' right to respect for their private life by passages that constituted hate speech and incitement to violence, thus being likely to expose them to public contempt. The Court therefore concluded that the national courts had not struck a fair balance between the applicants' right to respect for their private life and the freedom of the press. **There had thus been a violation of Article 8 of the Convention.**

Other Articles

Having regard to the finding of a violation under Article 8 of the Convention, the Court took the view that it had examined the principal legal question raised in the application. It thus found that it did not need to rule separately on the complaints under Articles 10 and 14 of the Convention.

Article 41 (just satisfaction)

The Court held that Turkey was to pay the applicants 1,500 euros (EUR) each in respect of non-pecuniary damage and EUR 4,000 jointly for costs and expenses.

The judgment is available only in French.

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² *Dink v. Turkey* (nos. 2668/07 and 4 others, 14 September 2010) §§ 8-17 and 107.

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.