**1. Summary and Outcome**

The European Court of Human Rights held that Turkey violated the right to respect for private life of two professors, principal authors of a report on minority and cultural rights, by failing to guarantee them a judicial protection against the verbal attacks of ultranationalist journalists that amounted to hate speech and incitement to violence. The Court concluded that the content of the report prepared by the applicants fell within the exercise of their freedom of expression that did not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.

**2. Facts**

The applicants, Professor İbrahim Özden Kaboğlu and Professor Baskın Oran were nominated members of the Prime Ministry Advisory Council on Human Rights on February 5, 2002. The Advisory Council was charged with providing the government with opinions, recommendations and reports on any question related to the promotion and protection of human rights. During its first meeting on February 26, 2004, the Board elected Professor Kaboğlu its chair and Professor Oran the chair of the Working Committee on questions related to minority and cultural rights. On October 1st, 2004 General Assembly of the Advisory Council adopted its report on minority and cultural rights which essentially focused on the definition and cultural aspect of protection of minorities in Turkey. The report basically identified two principal reasons of the problematic situation of minorities in Turkey: first, a theoretical reason related to the definition of the supra-identity based on the race and religion as Turk (Türk) and not on being citizen of Turkey (Türkiyeli), which resulted in alienating the infra-identities of citizens not belonging to the Turkish “race” or Muslim religion; second, a historical and political reason arising from the paranoia inherited from the disintegration of the country in the recent past, depicted in the report as “syndrome of Sevres”. The Report proposed to review the notion of citizenship and to adopt a multi-identity, multicultural, democratic, liberal and pluralistic social model. It suggested therefore rewriting of the Constitution and relevant laws in order to guarantee the right of people with different identities and cultures to preserve and develop their identities on the basis of an equal citizenship. The Report also emphasized the importance of reforming central and local administration in order to make them more transparent and democratic and of signing and ratifying international conventions of human rights, namely the Framework Convention for the Protection of National Minorities of Council of Europe without any reservation.

As soon as the report was published, Professor Kaboglu and Professor Oran were attacked by the statements of public officials and by several newspaper articles condemning the content of the report and accusing the applicants of betraying their country. During a parliamentary session, a deputy accused the applicants of being “*enrolled intellectuals”, “traitors”, “enemies of Turks”*. The vice Prime minister called the report “*marginal report of the marginalized”*; the Minister of Justice qualified it as “*an intellectual dissension”*. On November 1st, 2004, as Chief of the Advisory Council, Professor Kaboglu organized a press conference to answer the critics over the report, which was interrupted by an ultranationalist unionist, also member of the Advisory Council, who tore the copy of the report held by Professor Kaboglu and said: *“This report is erroneous and illegal, we will not let it be read”.*

The applicants received death threats and were personally attacked in several press articles by the terms such as “*dark people”, “leftists, separatists, subversives, unhappy with the unity of the country, [people] to be condemned to death”, “those who are maintained by the wild west”, “traitors”, “punks”, “poor spy and apostate”, dogs-lower, snakes, toadies, jackals”, “* *stupid and idiots who pretend to be clever”, “Trojan horse”, “miserable people”, “* “*ex-communist apostates”, “little dogs”, “liboş”* (term pejoratively used in Turkey to designate liberals)*.* One of the authors in Yeniçağ Newspaper wrote the following concerning the applicants: *“If these men were beaten, it would calm our nation. (They) deserve a slap,”* and the Head of Public Workers’ trade Union Kamu-Sen said, *“The price for our land is blood. Sometimes it must be spilled”.*

Professor Kaboglu and Oran filed four actions for damages against the authors of the articles and proprietors of the newspapers in question, alleging that the impugned articles contained insults, threats and hate speech against them. Three of the actions were rejected by the courts and in one of the cases, the decision of the High Court of Ankara in favor of the applicants was eventually reversed by the Court of Cassation who concluded that the articles in question constituted a harsh and virulent criticism on the applicants’ attitude and of their report, without gratuitously attacking them. Thereafter, the applicants addressed to the Court, alleging that their right to respect for private life and right to freedom of expression were violated.

**3. Decision Overview**

The applicants alleged before the Court that the public authorities did not take all necessary measures to protect them from the insults and threats of ultranationalist authors who were encouraged, according to them, by critical statements of politicians and civil servants. Contenting that the articles in question did not simply express critical opinions but contained severe insults and threats, the applicants argued that they could not be considered within the scope of freedom of expression. The Government defended that as being members of an official entity, the applicants must have been more opened to criticism and it argued that the critics expressed by the authors did not address them *per se* but rather their position within the Advisory Council. According to the Government, since the content of the report attracted public attention, the articles in question contributed to the public debate on highly debated issues such as citizenship, identity, mother tongue, and equality. [para. 61] the Government further submitted that criticism brought by the authors amounted to a value judgment and that it was not without a factual basis. The factual basis of critical opinions advanced by the articles was, for the Government, the proposals of the report concerning the status of minorities, the definition of citizenship, notions of supra/infra-identity and the question of the official language of the state. [para. 62].

The Court began by recalling that the concept of private life was a broad term which covered aspects relating to personal identity, such as a person’s name, a person’s picture, a person’s physical and psychological integrity. In this sense, a person’s reputation also makes a part of his/her personal identity and his/her moral integrity even tough this person becomes subject to criticism as part of a public debate. However, according to the Court, in order for Article 8 to come into play, an attack on a person’s reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life. [para. 65].

Reiterating the fundamental role of the press in a democratic society and its function of disseminating information and ideas on any subject of public interest, the Court however emphasized the responsibility of the journalists to act in good faith, on the basis of accurate facts, and provide "reliable and accurate" information in accordance with journalistic ethics. [para. 66] The Court also noted that when it was required to rule on a conflict between two rights equally guaranteed by the Convention, it must strike a balance between different interests in question. In this sense, the right to respect to private life and the right to freedom of expression deserve *a priori* equal respect. [para. 69] The Court finally noted that in the present case, the applicants were allegedly subject to attacks on their right to respect for private life due to the exercise of their freedom of expression. In this respect, the Court recalled that effective exercise of this freedom did not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In fact, the State is under a positive obligation to protect the right to freedom of expression, even against the attacks of private persons. [para. 71]

As to the instant case, the Court first recognized that, taking into consideration the virulent criticism faced by the applicants, the attack on their reputation attained the level of seriousness required for the application of Article 8 of the Convention. [para. 72] The Court further examined whether the national courts failed or not to protect the applicants against the alleged attacks.

Recognizing that the impugned articles were undeniably part of the public debate triggered by the report on the position and rights of minorities in the organization of the society, the Court recalled that in the context of a public debate, journalists could resort to a certain degree of exaggeration and even to provocation while respecting certain limits, notably reputation and rights of other persons. [para. 79] The scathing terms employed in the articles clearly manifested reaction and indignation of the authors against the report of the Advisory Council and aimed to discredit the applicants in the public eye. Accordingly, the Court considered that in the context of a heated debate on the report focusing on essential questions of Turkish society, the provocative, agitated and somewhat offensive style and content of the articles could not considered as being globally devoid of sufficient factual basis and gratuitously insulting. [para. 81] The statements and press articles criticizing the applicants fell within the context of a reactionary campaign waged by those circles against the report and its principal authors, the applicants. The Court also noted that the applicants had in fact exercised their freedom of expression through this report by declaring their point of view on the status and position of minorities in a democratic society without, however, using a denigrating or insulting language against the advocates of a different perspective on these matters. [para. 83]

As regards to the terms employed in the impugned articles, the Court took the view that some passages were ambiguous in the sense that they appeared to be stereotyped sentences falling within an ideologically nationalist language but that they could be considered as well as an apology of violence, at least by some readers who did not have sufficient knowledge of this jargon and who were likely to take the terms in question to the first degree. According to the Court, the following passages fell within this category: “*if [the Turkish majority of the country] begins to growl, exclaim and roar, the traitors will not find a place to breathe”; “I am telling this to those who [push too hard] certain things: do not play with the fire”; “This report is a real treason, those who prepared this report want to see it put in pieces on their heads”; Those who want to see the Turkish nation as a minority in this country will deal with us”.* [para. 84].

However the Court considered other passages in the articles clearly such as to directly or indirectly incite to violence or to justify violence. The Court put the following sentences in this category: "*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 (...)”.* According to the Court, these sentences, coupled with the stigmatizing expressions widely used in the disputed articles, such as "*traitor"*, "*subversive people (...) to be sentenced to death*", "*Trojan horse infiltrated among us*" and "*spy*", fueled hatred against the persons concerned, namely the authors of the report, including the applicants, and exposed them to a risk of physical violence, especially since they were published in national newspapers. [para. 85]

The Court considered that the risk that such writings could push for commission of violent acts against the applicants should not be underestimated. In this regard, it pointed to the case of Fırat Dink, a Turkish journalist who had been murdered by an ultranationalist following a stigmatizing campaign accompanied by death threats because of his heterodox opinions on a subject deemed to be sensitive in Turkish society. [para. 86] The Court estimated therefore that the verbal attacks and physical threats uttered in the impugned articles against the applicants sought to repress their intellectual personality, causing them feelings of fear, anguish and vulnerability that would humiliate them and break their will to defend their ideas. [para. 87]

Finally, the Court examined the decisions of the domestic courts that rejected the actions for damages of the applicants. Without explicitly qualifying the articles as statement of fact, value judgment or even hate speech or violent speech, domestic courts had concluded that the impugned articles were not directly targeting the applicants and did not contain gratuitous attacks against them. The Court also noted that the domestic courts did not pay particular attention to the threatening and violent expressions contained in the articles. [para. 88]

The Court ultimately decided that the domestic courts did not adequately balance the applicants’ right to respect for their private life and the freedom of press. In the Court’s view, their decisions did not provide a satisfactory answer to the question whether freedom of press could justify, in the circumstances of the case, the infringement of the applicants’ right to respect for their private life by passages that constituted hate speech and call to violence, thus being likely to expose them to public aversion. [para. 89].

Accordingly, The Court held that the national courts had not struck a fair balance between the applicants’ right to respect for their private life and the freedom of press. Therefore there had been a violation of Article 8 of the Convention.

Estimating that it had examined the principal legal question raised by the instant application, The Court did not deem necessary to decide separately on the complaints under Articles 10 and 14 of the Convention.

**3. Global Perspective: National (ECtHR)**

*Király and Dömötör v. Hungary*, App. no. 10851/13 (2017)

*Von Hannover v. Germany*, App. no 59320/00 (2004)

*Axel Springer AG v. Germany* [GC], App. no 39954/08 (2012)

*Delfi AS v. Estonia* [GC], App. no 64569/09 (2015)

*Bédat v. Switzerland* [GC], App. no 56925/08 (2016)

*Medžlis Islamske Zajednice Brčko and al. v. Bosnia-Herzegovina* [GC]*,* App.no 17224/11 (2017)

*Pfeifer c. Austria*, App. no 12556/03 (2007)

*Petrie v. Italy*, App. no 25322/12 (2017)

*Sanchez Cardenas v. Norway*, App. no 12148/03 (2007)

*Bladet Tromsø and Stensaas v. Norway* [GC], App. no 21980/93 (1999)

*Thoma v. Luxembourg*, App. no 38432/97 (2001)

*Amorim Giestas and Jesus Costa Bordalo v. Portugal,* App. no. 37840/10 (2014)

*Fressoz and Roire v. France* [GC], App. no 29183/95 (1999)

*Radio France et al. v. France*, App. no 53984/00 (2004)

*July and Sarl Libération v. France*, App. no20893/03 (2008)

*Falakaoğlu and Saygılı v. Turkey*, App. no 11461/03 (2006)

*Hachette Filipacchi Associés (*ICI PARIS*) v. France*, App. no 12268/03 (2009)

*Timciuc v. Romania* (dec.), App. no 28999/03 (2010)

*Palomo Sánchez and al v. Spain* [GC], App. nos 28955/06, 28957/06, 28959/06 and 28964/06 (2011)

*Appleby and al v. United Kingdom*, App. no 44306/98 (2003)

*Kuliś v. Polony*, App. no 15601/02 (2008)

*Tuşalp v. Turkey*, App. nos 32131/08 and 41617/08 (2012)

*Zana v. Turkey*, (1997),

*Soulas and al. v. France*, App. no 15948/03 (2008)

*Balsytė- Lideikienė v. Lithuania*, App. no 72596/01 (2008)

*Özgür Gündem v. Turkey*, App*.* no 23144/93 (2000)

*Féret v. Belgium,* App. no 15615/07 (2009)

*Fáber v. Hungary* App. no 40721/08 (2012)

*Karataş v. Turkey* ([GC], App. no 23168/94 (1999)

*Vejdeland and al. v. Suede*, App. no 1813/07 (2012)

*Perinçek v. Switzerland* [GC], App. no 27510/08, (2015)

*Sürek v. Turkey (no 1)* [GC], App. no 26682/95, (1999)

*Dink c. Turkey*, App. nos. 2668/07 and 4 others (2010)

*Ülke c. Turkey,* App. no 39437/98 (2006)

*Mater v. Turkey*, App. no 54997/08 (2013)

**4. Expands expression**

This case expands freedom of expression by recognizing that the State must effectively protect those who express their opinions on controversial issues from verbal attacks that amounted to hate speech and incitement to violence. Even tough the Court examined the case under the right to respect for private life guaranteed by Article 8 of the Convention on account that the verbal attacks aimed at undermining the dignity and reputation of the applicants, the judgment eventually strengthens freedom of expression of political actors speaking out on sensitive social issues. The judgment also clearly draws the boundaries of freedom of press, definitely excluding hate speech and incitement to violence from the scope of the freedom of expression.