

Summary and Outcome

The European Court of Human Rights found that sometimes limiting the right of expression can be done if it affects the stability of the political and social aspects in a country. This, due to the analysis carried out by the Court because of an academic publication that criticizes the actual regim in Turkey and the government confiscated all the publications and sentenced the publisher and te writer. The Court finds that limitig the right of expression can be considered if it means maintaining the stability of a country.

Facts

- European Commission of Human Rights reffered the case to the Court
- Turkish nationals, Mr Fikret Başkaya (professor of economics and journalist) and Mr Mehemet Selim Okçuoğlu (owner of Doz Basın Yayın Ltd Sti publishing house), as *plaintiff* against the government of Turkey as the *defendant*
- Turkey recognised the Courts jurisdiction
- Law enforcement or not of the Articles 6.1 to 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“Convention”)¹
- The process started at Istanbul National Security Court
- The first applicant published an academic essay through the publication house of the secod applicant named “Westernisation, Modernisation, Development – Collapse of a Paradigm/An Introduction to the Critique of the Official Ideology.
- The essay talked about the regim, the socio-economic conditions, and other related topics. Analizing if the independence war is actually an independence movement or not considering the situation of 4 states, Turkey, Iran, Iraq, Syria.
- Criticized the official ideology of the Kurds republic (founded in 1923) as fascist, promoting racist policies. The author said that the relation between Kurdish state and Turkey is based on oppression.
- The public prosecutor at the Istanbul National Security Court charged the author of the book under section 8(1)² of the Prevention of Terrorism Act 1991 (“the 1991 Act”) with

¹ 6.1 free trial “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”

² Whoever provides or raises funds with knowledge and intent that these will entirely or partially be used in the commission of terrorist offences shall be punished as a member of the organisation. The perpetrator shall be punished accordingly, even if the funds have not been used

disseminating propaganda against the indivisibility of the State and the second under section 8(2)³.

- The author did not accept charges and said that it was an academic publication that cannot be seen as propaganda against the government. The owner of the publication house said that a whole publication can't be judged only by one chapter and that judging it is a way of violating Turkey's international obligations of freedom of expression.
- All copies of the book were confiscated
- Istanbul National Security Court found the applicants guilty, having to pay 2 years of prison and 50,000,000 Turkish liras
- The process continued and ended with The applicants served their sentences in prison and paid the fines
- Mr Başkaya and Mr Okçuoğlu applied to the Commission on 22 February and 9 June 1994 respectively. Both applicants alleged violations of Articles 9⁴ and 10 of the Convention: violations of Article 7 (prohibition of retrospective punishment) and of Article 6.1 (right to a hearing before an independent and impartial tribunal).
- The commission considered that there were violation of article 10⁵ but not of 6 and the others.
- The applicants requested the court to analyse the violation of articles 6, 1,⁶ 7⁷, 9 and invited the court to also analyse the 3 and 14 articles, while the government invited the court to dismiss the applicants complaints.

³ The term "funds" as mentioned under paragraph 1 of this article signifies any goods, rights, claims, revenues, benefits, or benefits and values derived from the conversion of those.

⁴ Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

⁵ Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

⁶ The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention

⁷ No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. 2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

María Llano

CASE OF BAŞKAYA AND OKÇUOĞLU v. TURKEY

Columbia Global Freedom of Expression

- 7 just the law can determine a crime and a punishment in prison, knowing the crime by it as been written down. The court concludes there has been no violation of this article
- First applicant: 8.1 was sufficient to know that he was incurring in broking the law, but is the contrar case for the second applicant
- 8.2 considered by the court as the ley specialis so it must be applied rather than 8.1 for the scond, the first obtained the lowest sentence.
- The laws applied for articles 9 and 10 of the convention are not prescribed
- The court considers that due to the lack of security and stability situation in Turkey, forbidding this kind of expressions happens to be necessary
- The court considered that the sentence is not proportional with the act

Decision Overview

1. Judge: Mr L. WILDHABER, President, Mrs E. PALM, Mr A. PASTOR RIDRUEJO, Mr G. BONELLO, Mr J. MAKARCZYK, Mr P. KÜRIS, Mr J.-P. COSTA, Mrs F. TULKENS, Mrs V. STRÁŽNICKÁ, Mr M. FISCHBACH, Mr V. BUTKEVYCH, Mr J. CASADEVALL, Mrs H.S. GREVE, Mr A.B. BAKA, Mr R. MARUSTE, Mr K. TRAJA, Mr F. GÖLCÜKLÜ, ad hoc judge, and also of Mr P.J. MAHONEY and Mrs M. DE BOER-BUQUICCHIO, Deputy Registrars.
2. The main issue before the Court was that the applicants considered they were judged by a non-fair trial which concluded with their sentence.
3. The parties' arguments: the applicants considered that they were not judged by a fair trial and that the whole confiscation and process made by the government against them violated different international obligations of Turkey, based in the Convention. The government of Turkey, on the other hand, arguments that the reason of the confiscation and of the process against them is due to the danger for the social conditions and the political stability.
4. The applicable laws are the Convention and the Act 1991.
 - The main issues the court considered were: 1. The applicable law used to sentence the applicants as not proportional with the committed acts and 2. The freedom of expression can be limited if it puts in danger the stability of the country.
 - "The President of the Court, Mr L. Wildhaber, decided that, in the interests of the proper administration of justice, a single Grand Chamber should be constituted to hear the instant case and twelve other cases against Turkey". There were more cases like this one in the Court,

5. Conclusion: The court's findings and final orders are going to be described in this paragraph. The first finding was that the sentence applied to the applicants was not proportional and the second find was that even if the right of expression is a right that has to be protected in all ways, it can be limited if the expression is putting in danger the national security ando socio-political conditions.

María Llano

CASE OF BAŞKAYA AND OKÇUOĞLU v. TURKEY

Columbia Global Freedom of Expression

Decision Direction

The decision has a mixed outcome based on international human rights standards. This because recognizes the importance of protecting the right of expression, but also the importance of limiting this right if it means protecting the national stability in terms of social and political conditions. This can be analyzed as an objective vision of the Court, but in a democratic society, to limit the right of expression, cannot be considered, even more if it is about political figures and the political regim.

Global Perspective

The Court only references its own national case law, it has a “national perspective. It does not refers to case law from other countries or regional courts, or cites international standards. In these terms, there was no global perspective. In this way, other laws or other cases cannot be quoted.