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# Interpretations of European Court of Human Rights on Realization of "Legitimate Aim" for Restriction of Right to Freedom of Expression: A Case Study of Turkish Court Decisions\*

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## Abstract

The first paragraph of Article 10 of the European Convention on Human Rights (ECHR) recognizes the right to freedom of expression and prohibits party states from any arbitrary interference. The second paragraph, emphasizing that exercising this right comes with certain duties and responsibilities, authorizes the party states to restrict this right for their citizens if the specified conditions are met. One such condition is achieving one of the legitimate aims listed therein. The courts of Turkey, as a member state bound by the ECHR, have invoked these goals to justify their decisions regarding the restriction of citizens' right to freedom of expression. Nevertheless, convicted individuals who appeal these rulings before the European Court of Human Rights argue that no such legitimate aim existed, and that their right to freedom of expression has been violated. This study investigates the primary challenges faced by Turkish courts in invoking legitimate aims as justifications for restricting freedom of expression. It also elucidates the precise meaning and conditions for the eligibility of these goals based on the interpretation provided by the European Court of Human Rights.

**Keywords:** European Court of Human Rights, European Convention on Human Rights, Freedom of Expression, Legitimate Aims, Turkey

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## 1. Introduction

The right to freedom of expression holds significant importance within the realm of human rights, garnering particular attention in recent international documents. Countries have taken measures to safeguard this principle by embedding it into their domestic laws. This right ensures that all members of society enjoy certain entitlements, including the right to express and disseminate ideas and opinions, as well as the right to access resources and information (Zahedi & Sharifzadeh, 1400 [2021 A. D.], p. 101). However, due to potential conflicts with other individual or collective rights, restrictions have been imposed on this right. All legal systems worldwide acknowledge that under specific and exceptional circumstances, restrictions may be imposed on citizens' enjoyment of this right<sup>1</sup>.

The "Convention for the Protection of Human Rights and Fundamental Freedoms"<sup>2</sup>, also referred to as the "European Convention on Human Rights" (ECHR) for brevity, is one of the documents that extensively addresses this matter. Article 10 of this international document delves into the right to freedom of expression. The first paragraph emphasizes that party states must respect citizens' freedom of expression. It states: "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". Paragraph 2 allows for government intervention in the freedom of expression under specific circumstances. Government intervention is authorized when it (1) is prescribed by the domestic legislation of the respective country, (2) serves a legitimate aim,

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1. For more information on these restrictions, see: Sadurski, 2014.

2. For more information on this document, see: Delmas-Marty, 2021.

and (3) is deemed necessary within a democratic society (Chen, 2018, p. 102).

The majority of member states have incorporated this convention into their national legal frameworks. Consequently, the Convention is part of their domestic legal system and holds binding authority over their internal courts and governmental entities (Rieter et al., 2019, p. 283). The ECHR does recognize the right of individuals to initiate legal proceedings and in such way, allows individuals and organizations to bring forth their grievances against their governments concerning the infringement of rights, as enshrined in this convention to the European Court of Human Rights<sup>1</sup>. This particular feature of the ECHR allows for addressing claims of a potential violation of the provisions outlined in Article 10 of the Convention regarding the restriction of freedom of expression by party states. The rulings of the European Court of Human Rights are of key importance, particularly concerning the interpretation of legitimate aims.

Among the party states, Turkey often faces challenges regarding the right of freedom of expression, and many of the Turkish court decisions have been protested by the defendants. The primary obstacle faced by Turkish courts in such cases is establishing legitimate aims behind the restrictions of this right. As previously mentioned, the ECHR states that justifiable government interference requires having a legitimate aim based on the conditions specified in Article 10. The interpretation of these legitimate aims by Turkish courts has sparked objections and complaints from the defendants, prompting the European Court of Human Rights to provide clarification on these aims while dealing with the complaints.

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1. For more information on the ECHR, see: Nussberger, 2020.

With this background, the objective of the present research is to address the following questions: What are the meaning and instances of legitimate aims outlined in the second paragraph of Article 10 of the ECHR? How are these legitimate aims categorized? What are the main obstacles encountered by Turkish courts in the interpretation and identification of legitimate aims? What approach has the European Court of Human Rights adopted in response to grievances by citizens against Turkish court decisions?

In order to answer these questions, this article is divided into three parts. In the first part, the concept of legitimate aim is explored, and its instances are established within the framework of the ECHR. Then, considering that the legitimate aims accepted in the ECHR to interfere with the right to freedom of expression are divided into two categories: public legitimate aims and individual legitimate aims, and that the Turkish courts have invoked both public and individual aims to justify their decisions to restrict the citizens' freedom of expression, in the second part, we will examine the challenges faced by the Turkish courts in facing legitimate public aims. Then, in the third part, we will examine the challenges faced by the Turkish courts in facing legitimate individual aims. It should be noted that the research method used in this research is the descriptive-analytical method, and the information was collected in a library and documentary manner. Meanwhile, considering the fact that the decisions of the European Court of Human Rights, which were issued in order to deal with the complaints raised by citizens of the Turkish government regarding the violation of their rights listed in Article 10 of the Convention, play an important role in answering the questions raised in this article, special attention has been paid to these decisions. Based on this, most of the information

related to the cases that the courts of Turkey have faced, are extracted from the decisions issued by the European Court of Human Rights. Then, by analyzing these decisions and extracting the common and fundamental points cited by the European Court of Human Rights in them, the author has tried to make a comprehensive analysis of the way in which the European Court of Human Rights interprets the necessity of pursuing "legitimate aims" as a necessary condition for interfering with the right to freedom of expression.

## **2. Concept, Instances, and Categories of Legitimate Aim**

The second paragraph of Article 10 of the ECHR permits party states to intervene in the citizens' right to freedom of expression only if such intervention is justified by a legitimate aim. It states: "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". The Convention explicitly outlines the instances of legitimate aims that authorize party states to restrict the right to freedom of expression.

It is essential to note two significant points. Firstly, the specified items serve as explicit, limitative cases. Therefore, party states can only invoke these instances as legitimate aims and cannot extend their scope of effect to justify any other interference (McGonagle &

Donders, 2015, p. 21). Secondly, the European Court of Human Rights approves invoking these aims only when it is established that such interference genuinely and practically contributes to the realization of legitimate aims. Therefore, the mere conjecture of achieving these aims is not accepted by the European Court of Human Rights as a sufficient justification for intervention. Needless to say, it is the responsibility of party states to prove the realization of such aims (Keane & McKeown, 2020, p. 692).

The legitimate aims specified in Article 10 can be categorized into two groups: public aims, which serve the interests of society as a whole, and individual aims, which protect the interests of natural or legal persons. Therefore, protecting national security, territorial integrity, and public safety, preventing disorder or crime, and safeguarding health and morals fall within the first group, while the second group encompasses protecting the rights and reputation of other people, preventing the disclosure of confidential information, and maintaining the authority and impartiality of the judicial system<sup>1</sup>.

The Turkish courts have invoked both public and individual aims to justify their decisions to restrict the citizens' freedom of expression. These decisions have led to grievances, which were addressed by the European Court of Human Rights, as further explored below.

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1. As for why "maintaining the authority and impartiality of judges" is classified into the second category, it is necessary to note that this particular scenario involves restricting the freedom of speech of individuals whose statements target the authority and impartiality of those involved in the judicial system, such as judges or prosecutors. Therefore, since judges and prosecutors are targeted, this aim can be categorized under the second category.

### 3. General Aims

#### 3. 1. Protecting National Security or Public Safety

In the case of "Görmüş and Others vs. Turkey"<sup>1</sup>, the European Court of Human Rights addressed the issue of interference with the right to freedom of expression on the pretext of national security. In April 2007, the Turkish weekly newspaper "Nokta" published an article in light of documents classified as "confidential" by the Chief of Staff of the Turkish Armed Forces. The documents divulged that journalists were categorized into two groups: those with favorable and those with hostile stances vis-à-vis the armed forces. Subsequently, only journalists with favorable ties were invited to army events and were granted permission to cover their activities. The publication of this article was followed by the complaint of the Turkish Chief of Staff of the Armed Forces. A military court ordered a raid of the magazine's premises, through which all electronic and paper copies of the magazine's files, stored in personal and work computers, archives, and various data storage media, were seized (Erdem, 2018, p. 70).

The plaintiffs (including *Nokta's* director, two editors, and three journalists) filed a complaint against the Turkish government, invoking Article 10 of the ECHR. They argued that the actions taken by the authorities, particularly the raid and confiscation of documents, aimed at identifying their sources, thereby violating their right to freedom of expression, particularly their right to freely receive or impart information as journalists.

During the hearings, the Turkish government justified these actions by citing the protection of national security as its legitimate

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1. Görmüş and Others vs. Turkey, 2016

aim. The government contended that the disclosure of confidential documents by the magazine's articles had damaged public trust in the armed forces, ultimately harming national security. Furthermore, the Turkish government stressed that, according to the Turkish criminal law, it is a crime to prepare, use, possess, or publish information whose disclosure is prohibited so as to protect national security, adding that the journalists were not exempt from criminal liability.

The European Court of Human Rights made several key observations when dealing with this case. Firstly, the protection of journalists' information sources is safeguarded by Article 10 of the ECHR. Preserving the confidentiality of journalists' sources is a fundamental requirement for the freedom of the press. Without such safeguards, sources may be dismayed, thus refraining from assisting the press in matters of public interest. This will also impede the capacity of the press to provide accurate and reliable information (Oster, 2017, p. 53). Therefore, any court order seeking to disclose the identity of journalists' sources is regarded as an infringement of the right to freedom of expression. Meanwhile, the actions of the judicial authorities, such as the unannounced raid and document seizure, thus accessing all documents in the magazine's office, can be construed as going beyond simple attempts to identify the source of the information. Based on this, the European Court of Human Rights came to the conclusion that the military prosecutor's actions in inspecting the workplace of the weekly and seizing all the documents related to the article in question were actually an attempt by the General Staff of the Turkish Armed Forces to identify those who had provided this information to the magazine from within this organization, which would probably lead to the arrest and punishment of these people, and the Turkish



government's reference to the aim of protecting national security was only to justify and legitimize these actions.

Secondly, the European Court of Human Rights highlighted that although certain military documents and information are acceptable to be confidential, the Turkish military courts, in this case, solely relied on the classification of documents by the national armed forces. They failed to conduct an independent investigation to determine whether the classification of the documents as "confidential" was in fact justified or not, with the explanation that in the classification of documents, the meaning of "confidential" documents is those whose unauthorized disclosure causes disruption of the internal affairs of an organization. In this case, the content of the document in question did not include any information whose disclosure would disrupt the internal affairs of the General Staff of the Turkish Armed Forces. However, instead of examining the content of these documents and verifying whether the documents contain confidential information or not, the courts of Turkey only trusted the title of "confidential" on these documents, which were made by the General Staff of the Armed Forces of this country.

Assuming that these documents contained crucial information that warranted their classification as confidential, the European Court of Human Rights postulated that the Turkish government had failed to provide convincing evidence regarding the fact that disclosing such confidential information had threatened Turkey's national security. In other words, according to the European Court of Human Rights, the simple fact that the documents in question were labeled "confidential" did not mean that their disclosure would endanger Turkey's national security. Rather, the Turkish government had to prove that as a result of the disclosure of the

information contained in these documents, significant damage has actually been done to the interests and national security of this country. In this case, not only was the Turkish government not able to prove that the disclosure of the information contained in these documents caused significant and practical damage to the national security of this country, but also due to the fact that the topic discussed in the article, namely the intervention of the armed forces in the general policies of Turkey, has been one of the topics of public interest in this country, the people of this country have the right to receive this information freely, and by publishing this article, the weekly has fulfilled its inherent duty to inform the people.

The European Court of Human Rights also paid attention to the good faith of the journalists in publishing the article with the explanation that the court investigations showed that the journalists did not have any personal problems or enmity with the General Staff of the Turkish Armed Forces, and that the publication of the article did not result in any personal gain for them. In addition, in the discussed article, the opinions of the supporters of the policy of the General Staff of the Armed Forces were also included, which showed their good faith. The article was completely serious and respectful and the authors refrained from expressing defamatory content against the General Staff of the Turkish Armed Forces or mocking this staff. The collection of these cases showed the good faith of the journalists and proved that they had no intention other than to inform the people about a publicly disputed issue.

Therefore, the European Court of Human Rights concluded that in this case, the government interference and restriction of the journalists' freedom of expression did not satisfy the argument of legitimate aim for protecting national security. Finally, it was

decided that the Turkish government had violated Article 10 of the ECHR (Psychogiopoulou & Sierra, 2022, p. 132).

### 3. 2. Protecting Territorial Integrity

In the case of "Surek and Ozdemir vs. Turkey"<sup>1</sup>, the Turkish government justified its intervention on the basis of protecting the country's territorial integrity. Surek and Odzemir published two interviews with a senior PKK<sup>2</sup> member, in which he criticized the policies of the Turkish government in the southeastern region of the country. He claimed that these policies aimed to expel the Kurds from their lands and to break their resistance. He also claimed that the struggle of the Kurdish people against the Turkish government will continue "until there is only one single individual left on our side". In addition, Surek and Odzemir published a joint statement by four organizations, including PKK, which were not recognized under Turkish law. The statement called for the recognition of the right to self-determination of the Kurdish people and the withdrawal of the Turkish military from Kurdistan (Cameron, 2021, p. 392).

Consequently, the Turkish criminal courts ordered the seizure of printed copies and sentenced both individuals to six months of imprisonment and a fine for publishing separatist propaganda. Surek and Odzemir protested this ruling, arguing the violation of their right to freedom of expression under Article 10 of the ECHR.

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1. Surek and Ozdemir vs. Turkey, 1999.

2. The Kurdistan Workers' Party, or "PKK", is a leftist and armed political organization operating in Turkish Kurdistan. It was established in 1978 and has been engaged in an armed struggle for autonomy against the central government of Turkey since 1984. For more information on its policies, see: Marcus, 2009.

In addressing this case, the European Court of Human Rights emphasized that this court generally allows journalists greater freedom in criticizing the government versus criticizing individuals or other legal entities. Thus, it expects governments to exercise greater tolerance for criticism (Walter, 2004, p. 67).

The Court added that an interview with a senior member of a proscribed organization, even though it contained substantial criticism of the government's official policies, does not justify restricting the plaintiffs' right to freedom of expression. It argued that while Turkish officials paid insignificant attention to the public's right to access diverse perspectives on the situation in the country's southeastern region, these interviews enabled individuals to understand the mindset of the opposition. This awareness would even allow the public to assess the risks associated with the actions of these hostile groups (Frias, 2012, p. 141).

Even though the ECHR found that the grounds provided by the Turkish courts were relevant, it recognized that they did not justify restricting the plaintiffs' freedom of expression. As a result, it concluded that the Turkish government had violated Article 10 of the ECHR.

### **3. 3. Protecting Morality**

Member states of the ECHR, not to mention different regions within each country, may have distinct interpretations of morality and its requirements. In cases of conflict between morality and freedom of expression, the European Court of Human Rights generally grants governments a wide "margin

of appreciation"<sup>1</sup>. An example of such a case is "I.A. v. Turkey"<sup>2</sup>.

Mr. I. A. owned a publishing company that released a novel entitled *The Forbidden Phrases* in November 1993. This book presented the author's viewpoints on philosophical and theological issues through a fictional narrative style. A total of 2,000 copies of this novel were printed in the first run. In an indictment dated April 18, 1994, the Istanbul public Prosecutor pressed charges against Mr. I. A. based on Article 175 (Clauses 3 and 4) of the Turkish Penal Code on account of blasphemy to "God, the Religion, the Prophet, and the Holy Book". The court of first instance found the accused guilty in a ruling dated May 28, 1996, and he was subsequently sentenced to a fine of 3.291.000 Turkish liras, equivalent to 16 USD at that time. Mr. I. A. lodged a complaint with the European Court of Human Rights, claiming that the Turkish courts violated his right to freedom of expression (Ungureanu & Zucca, 2012, p. 205).

In this case, the European Court of Human Rights examined the conflict between two fundamental freedoms, i.e., the plaintiff's right to publicly express his opinions on religious doctrine and others' right to have their freedom of thought, conscience, and religion respected. The European Court emphasized that while

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1. When determining the compatibility of state actions with the provisions of the Convention, a certain level of decision-making authority and recognition has been granted to governments, which is known as the "margin of appreciation". However, it should be noted that this doctrine does not confer unlimited discretion to the party states. The European Court of Human Rights has repeatedly emphasized that the ultimate responsibility for ensuring compliance with the obligations arising from the Convention lies with the Court itself. Thus, it is the European Court of Human Rights that ultimately renders the final judgment on whether the provisions of the Convention have been violated or not. For more information on margin of appreciation, see: Yourow, 2021.

2. I.A. v. Turkey, 2005.

freedom of expression is a cornerstone of a democratic society and essential for social advancement and individual self-fulfillment, it involves certain duties and responsibilities (as specified in paragraph two of Article 10), including refraining from insulting the religious beliefs of others (Gordley, 2021, p. 348).

The European Court of Human Rights initially pointed to pluralism, tolerance, and open-mindedness as major characteristics of a "democratic society," and individuals within such a society should not expect their beliefs to be immune from criticism. They must tolerate and accept the denial of their religious beliefs by others and the propagation of doctrines that may go contrary to their faith. The European Court of Human Rights, however, stressed that, in this case, the expressions used in the book went beyond simple criticism and insulted Islamic beliefs. Hence, Turkish Muslims justifiably found themselves victims of unlawful and offensive attacks by this book. Therefore, the Turkish government deemed necessary to adopt measures against the dissemination of information and ideas that disrespected the freedom of thought, conscience, and religion of a significant number of this country's population (Elbahtimy, 2021, p. 119).

Therefore, the European Court of Human Rights determined that the grounds provided by Turkish courts were acceptable and justified the government's legal action against the plaintiff, particularly considering that the books were not confiscated and the imposed fine was not heavy. The Court ultimately decided that Article 10 of the ECHR was not breached in this case.

## 4. Individual Aims

### 4. 1. Protecting the Rights and Reputations of Others

Safeguarding the reputation or rights of individuals is considered a legitimate aim, frequently invoked by governments to justify restricting the right to freedom of expression. Consequently, the European Court of Human Rights has to address a substantial caseload in this regard. When addressing these cases, the Court typically considers two points: firstly, whether the contended expressions genuinely damaged the reputation or rights of others, and secondly, if such damage has indeed occurred, what is the tradeoff between the public interest in the published materials and the infringed reputation of the individual (Steele, 2007, p. 812).

In a case titled "Tusalp vs. Turkey"<sup>1</sup>, Mr. Tusalp published two articles in the newspaper *BirGün* in December 2005 and May 2006, criticizing the then-prime minister of Turkey, Mr. Recep Tayyip Erdogan. The first article, titled "Stability", contained statements such as "The Prime Minister and his men are continuing to be stable in creating their absurdities," and that the Prime Minister was "lying about matters from national income to inflation to the budget". The second article, titled "Get Well Soon", alleged that the prime minister responded "to criticisms with swearing" and concluded that he was "suffering from a psychopathic aggressive illness" (Erdem, 2018, pp. 199-200).

The Prime Minister filed a lawsuit against Mr. Tushalp and his publishing company on this ground. In both cases, Mr. Tusalp maintained that his intention was not to insult, but rather to criticize the Prime Minister. In September and December 2006, the Ankara

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1. Tusalp vs. Turkey, 2012.

Court ordered Mr. Tusalp and his publishing company to pay 10,000 Turkish Liras to the Prime Minister as compensation, arguing that statements made in the articles exceeded the bounds of acceptable criticism and targeted the reputation of the Prime Minister. Mr. Tusalp initiated a lawsuit, claiming a violation of his right to freedom of expression, envisioned under Article 10 of the ECHR.

Upon careful examination of the case, the European Court of Human Rights concluded that, firstly, there was no compelling evidence that these articles damaged Mr. Erdogan's reputation or undermined his political career or private life. Secondly, the European Court has emphasized in numerous cases<sup>1</sup> that when the published materials pertain to public and political matters of public interest, governments have limited "margin of appreciation" in restricting their publication (Vaques, 2021, p. 307). The European Court of Human Rights highlighted that, in this case, the content of the articles constituted the author's analysis of issues such as the unlawful conduct of high-ranking politicians in Turkey and the aggressive reactions of the Prime Minister to criticism and inquiries. These materials were undoubtedly significant matters in a democratic society that piqued public interest and fell within the realm of political discourse. Consequently, they enjoyed full protection under Article 10 of the ECHR.

The court also stressed that although the articles had a provocative tone, and that certain expressions could be deemed offensive, both articles centered around the Prime Minister as a highly-ranked politician who had consciously and voluntarily assumed a political position, which is subject to scrutiny and

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1. For instance, see "Castells v. Spain", "Wingrove v. the United Kingdom" and "Editions Plon v. France".



criticism. Therefore, a higher degree of tolerance and criticism is expected, compared to cases involving ordinary citizens (Loveland, 2021, p. 482). The Court added that the amount of compensation imposed on Mr. Tusalp and his publishing company was substantial, which could potentially dissuade others from political criticism and impede the free flow of information and ideas. Taking these factors into account, the European Court of Human Rights concluded that the Turkish government had violated Article 10 of the Convention.

#### **4.2. Maintaining the Authority and Impartiality of the Judiciary**

In certain instances, Turkish courts have justified the restriction of the freedom of expression of individuals related to the judiciary, including judges, lawyers, and defendants, invoking the legitimate aim of maintaining the authority and impartiality of the judicial system.

In the case "Kozan vs. Turkey"<sup>1</sup>, dated May 28, 2015, Mr. Kozan shared an article in a Facebook group with 8,859 members, the majority of whom were individuals connected to the judicial system, including judges, lawyers, law students, and the like. The article criticized certain decisions made by Turkey's "High Council of Judges and Prosecutors" and raised doubts about the independence of this institution from the executive branch. It is important to note that during December 17–25, 2013, the Turkish judicial system investigated allegations of financial corruption involving certain governmental bodies. This investigation faced opposition from the Turkish government. Following the conclusion

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1. Kozan vs. Turkey, 2022.

of this investigation, several individuals with close ties to the government were convicted, while others were acquitted. The article in question alleged that judges who had rendered verdicts against individuals with close ties to the government were subsequently found guilty of disciplinary infractions by the "High Council of Judges and Prosecutors." In contrast, the disciplinary proceedings against judges who had acquitted such individuals were terminated. Consequently, the article in question concluded that the "High Council of Judges and Prosecutors" is influenced by the government and lacks independence in its decisions.

In December 2015, the "High Council of Judges and Prosecutors" initiated a disciplinary investigation against Mr. Kozan. In September 2017, the council reproached Mr. Kozan for sharing the article, contending that its content went against his duty of loyalty to the government as well as his judicial obligations. The council also asserted that although he had not personally endorsed the article's content, the act of sharing it indicated his support and intention of finding a greater audience. It concluded that Mr. Kozan's conduct had undermined the authority and credibility of the judicial system. Mr. Kozan's objection to this decision was dismissed on October 3, 2018, resulting in disciplinary sanctions against him.

Subsequently, Mr. Kozan lodged a complaint with the European Court of Human Rights regarding a violation of his right to freedom of expression, protected by Article 10 of the ECHR. The Turkish government justified this action by citing the necessity of upholding the authority and impartiality of its judicial system.

The European Court of Human Rights initially recognized that the disciplinary penalty imposed on Mr. Kozan restricted his right to impart information, which is an integral aspect of the freedom of

expression (Munoz & Tella, 2021, p. 325). Then, the Court addressed whether the article's content was consistent with reality. The Court stressed that if the article's content corresponded to reality and the decisions of the "High Council of Judges and Prosecutors" were indeed triggered by the rulings of the judges handling the corruption case, then the article not only does not undermine the authority of the judicial system, but it rather shows its independence from the executive branch. After examining Mr. Kozan's case proceedings, the European Court concluded that none of the disciplinary bodies that convicted him had claimed that the article's content was false.

Furthermore, the European Court of Human Rights noted that while judiciary members should exercise restraint when exercising their freedom of expression in cases where the authority and impartiality of the judiciary may be questioned (Miron et al., 2021, p. 95), this does not authorize the Turkish courts to presume that the simple act of sharing the article in a Facebook group proves Mr. Kozan's confirmation and support of its content. This is especially the case since, firstly, Mr. Kozan shared the article not to the general public but to a closed discussion group whose members were judicial professionals, and secondly, he had not made any positive or negative statements about its content.

The European Court of Human Rights also highlighted that in the case of Mr. Kozan, the entity responsible for prosecuting and judging him was the same (the High Council of Judges and Prosecutors), leaving him no option for protesting the Council's decisions. Mr. Kozan's case deserved the opportunity to be investigated by an independent and impartial body to judge his actions. Failure to adhere to such procedures not only infringed upon Mr. Kozan's rights, but may also dissuade other judges who

were willing to engage in public discussions concerning the performance of judicial institutions (Cliquennois, 2020, p. 131).

Taking all these factors into account, the European Court affirmed that Article 10 of the Convention on Freedom of Expression was violated.

## 5. Conclusion

Freedom of speech is recognized as a fundamental right for all citizens across societies, with established international instruments dedicated to safeguarding it. The ECHR is one such leading instrument, addressing human rights matters, specifically in Article 10. The initial paragraph of this article emphasizes the obligation of party states to uphold citizens' freedom of expression. The second paragraph acknowledges that this right involves certain duties and responsibilities and allows governments to restrict their citizens' freedom of expression under specific conditions and requirements.

This paragraph examines the attainment of a legitimate aim as a prerequisite for such an intervention. The Convention then outlines these legitimate aims: to protect national security, territorial integrity, or public safety; to prevent disorder or crime; to protect health or morals; to protect the rights and reputations of other people; to prevent the disclosure of information received in confidence; and to maintain the authority and impartiality of the judiciary system.

Turkey is among the governments facing challenges concerning the right to freedom of expression. The decisions made by Turkish courts to restrict this right have led the defendants to approach the European Court of Human Rights in protest. These defendants

argued that since none of the legitimate objectives mentioned in Article 10's second paragraph of the ECHR were achieved in these rulings, the actions taken by the Turkish government violated their right to freedom of expression.

It seems that the most important factor that has prevented the correct interpretation and identification of legitimate aims by Turkish courts in these cases is the political orientation of these courts by explaining that in cases where the Turkish government or ruling politicians have been criticized, the Turkish courts have convicted the critics by providing a broad interpretation of the legitimate aims accepted in the ECHR. In these cases, the European Court of Human Rights has confirmed the violation of Article 10 of the ECHR by the courts of Turkey, and due to the violation of the convention by Turkey as a member state, firstly, the decisions issued by the courts of this country in these cases are considered invalid, and secondly, according to the authority given to this court by Article 41 of the ECHR, it convicted the Turkish government to compensate the material and moral damages caused to defendants. According to this article: "If the Court finds that there has been a violation of the convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, If necessary, afford just satisfaction to the injured party".

A review of the rulings made by the European Court of Human Rights while addressing these complaints shows that, according to its perspective, party states should account for the following when attempting to restrict their citizens' right to freedom of expression by invoking the legitimate aims specified in paragraph two of Article 10 of the ECHR:

1. The right to freely receive and share information is an integral aspect of freedom of expression. Restrictions on this right are contrary to the principle and should only be accepted in exceptional cases that genuinely satisfy achieving a legitimate aim. Moreover, it is the responsibility of the party states to provide evidence substantiating the existence of this legitimate aim.

2. The status of individuals who have been subjected to criticism should be taken into account. Therefore, the European Court of Human Rights expects politicians and governments to show a higher level of tolerance to criticism than ordinary individuals.

3. The essence of the content is also of significance. Therefore, if the contested content is of public interest and concern, while the government asserts that its restriction satisfies a legitimate aim as stipulated in paragraph 2 of Article 10 of the Convention, the European Court of Human Rights places a greater emphasis on the former.

4. Taking into account the range of instruments at the government's disposal to restrict the right to freedom of expression, the European Court of Human Rights maintains that criminal convictions and the imposition of severe penalties such as imprisonment or heavy fines should only be a last resort. Hence, the European Court does not accept the legitimate aims alleged by governments to justify their imposition of criminal convictions and severe punishments.

## References

- Cameron, I. (2021). *National Security and the European Convention on Human Rights*. Brill.
- Chen, I-C. (2018). *Government Internet Censorship Measures and International Law*. Lit Verlag.
- Cliquennois, G. (2020). *European Human Rights Justice and Privatisation: The Growing Influence of Foreign Private Funds*. Cambridge University Press.
- Delmas-Marty, M. (2021). *The European Convention for the Protection of Human Rights: International Protection Versus National Restrictions*. Brill.
- Elbahtimy, M. (2021). *The Right to Protection from Incitement to Hatred: An Unsettled Right*. Cambridge University Press.
- Erdem, B. (2018). *The Ordeal of the Turkish Press*. Cinius Yayinlai.
- Frias, A. (2012). *Counter-Terrorism and Human Rights in the Case Law of the European Court of Human Rights*. Council of European.
- Gordley, J., Jiang, H., & Taylor von Mehren, A. (2021). *An Introduction to the Comparative Study of Private Law*. Cambridge University Press.
- Görmüş and Others vs. Turkey. (2016). Application 49085/07. ECHR. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-11024%22%5D%7D>
- I. A. vs. Turkey. (2005). Application 42571/98. ECHR. <http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-70113%22%5D%7D>
- Keane, A., & McKeown, P. (2020). *The Modern Law of Evidence*. Oxford University Press.

- Kozan vs. Turkey. (2022). Application 16695/19. ECHR. <http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-216271%22%5D%7D>
- Loveland, I. (2021). *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*. Oxford University Press.
- Marcus, A. (2009). *Blood and Belief: The PKK and the Kurdish Fight for Independence*. NYU Press.
- McGonagle, T., & Donders, Y. (2015). *The United Nations and Freedom of Expression and Information: Critical Perspectives*. Cambridge University Press.
- Miron, A., Motoc, I., & Elosegui, M. (2021). *The Rule of Law in Europe: Recent Challenges and Judicial Responses*. Springer International Publishing.
- Munoz, J., & Tella, M. (2021). *Challenges to Legal Theory: Essays in Honour of Professor Jose Iturmendi Morales*. Brill.
- Nussberger, A. (2020). *The European Court of Human Rights*. OUP Oxford.
- Oster, J. (2017). *European and International Media Law*. Cambridge University Press.
- Psychogiopoulou, E., & Sierra, S. (2022). *Digital Media Governance and Supranational Courts: Selected Issues and Insights from the European Judiciary*. Edward Elgar Publishing.
- Rieter, E., Kadelbach, S., & Rensmann, T. (2019). *Judging International Human Rights: Courts of General Jurisdiction as Human Rights Courts*. Springer International Publishing.
- Sadurski, W. (2014). *Freedom of Speech and Its Limits*. Springer.



- Steele, J. (2007). *Tort Law: Text, Cases, and Materials*. Oxford University Press.
- Surek and Ozdemir vs. Turkey. (1999). Application 23927/94. ECHR. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58298%22%5D%7D>
- Tusalp vs. Turkey. (2012). Application 32131/08. ECHR. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-109189%22%5D%7D>
- Ungureanu, C., & Zucca, L. (2012). *Law, State and Religion in the New Europe: Debates and Dilemmas*. Cambridge University Press.
- Vaqués, M. A. (2021). *Rights and Freedoms: Cases*. Publicacions i Edicions de la Universitat de Barcelona.
- Walter, C. (2004). *Terrorism as a Challenge for National and International Law: Security Versus Liberty?*. Springer Berlin Heidelberg
- Yourow, H. (2021). *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence*. Brill.
- Zahedi, M., & Sharifzadeh, S. (1400 [2021 A. D.]). Azādi bayān va asl-e dogānegi-ye ide va bayān [Freedom of Expression and Idea-Expression Dichotomy]. *The Quarterly Journal of Public Law Research*, 23(71), 95-127. [https://qjpl.atu.ac.ir/article\\_13519\\_dbb1e35a84e09a078bc0f4e621f8ee28.pdf](https://qjpl.atu.ac.ir/article_13519_dbb1e35a84e09a078bc0f4e621f8ee28.pdf)