



REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECOND SECTION

DECISION

NİLGÜN HALLORAN APPLICATION

(Application Number: 2012/1184)

Date of Decision: 16/7/2014

SECOND SECTION

DECISION

President : Alparslan ALTAN
Members : Serdar ÖZGÜLDÜR
Osman Alifeyyaz PAKSÜT
Recep KÖMÜRCÜ
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Rapporteur : Yunus HEPER
Applicant : Nilgün HALLORAN
Counsel : Att. Kemal VURALDOĞAN

I. SUBJECT OF APPLICATION

1. The applicant asserted that the freedom of expression and dissemination of thought protected under article 26 of the Constitution was violated due to the fact that she was sentenced to pay compensation for the words that she had used in an electronic mail and the right to a fair trial protected under article 36 of the Constitution was violated and filed a request for moral compensation.

II. APPLICATION PROCESS

2. The application was directly lodged to the Constitutional Court on the date of 19/12/2012. As a result of the preliminary examination of the petition and annexes thereof as conducted in terms of administrative aspects, it was found out that there was no deficiency that would prevent referral thereof to the Commission.

3. It was decided by the First Commission of the Second Section on 24/12/2013 that the examination of admissibility be conducted by the Section and the file be sent to the Section.

4. In the session held by the Section on 23/1/2014, it was decided that the examination of admissibility and merits be carried out together.

5. The facts and cases which are the subject matter of the application were notified to the Ministry of Justice on the date of 24/1/2014. The Ministry of Justice presented its opinion to the Constitutional Court on 25/3/2014.

6. The opinion presented by the Ministry of Justice to the Constitutional Court was notified to the applicant on 25/3/2014. The applicant submitted her statements against the opinion of the Ministry to the Constitutional Court on the date of 7/4/2014.

III. FACTS AND CASES

A. Facts

7. As expressed in the application form and the annexes thereof, the facts are summarized as follows:

8. The applicant was working as a Professor and Deputy Rector at Ankara University on the date when the incidents occurred.

9. O.Ö. who was another professor at the same university criticized the practices of the university administration in an electronic mail group of which 2158 persons were members. Criticisms of O.Ö. are as follows:

“A few questions in relation to the removal of turnstiles: 1. Why did the administration always remain silent although it was previously requested by faculty members and students that the turnstiles be removed time after time and disturbances were expressed on this subject? 2. Can the administration explain to us why they have been removed now all of a sudden? 3. Is this action an election investment? In the hope that the questions will be answered.”

10. The applicant sent an electronic mail with the following content to the electronic mail account of O.Ö. as a response to his/her criticisms on the date of 8/2/2011:

“Mr./Mrs. O.Ö, I perceive your interest message as the mirror of your personality. To tell the truth, there are some people who react as the reflection of their feelings of inferiority no matter what is done and this is just what you do. This action is not an election investment. Believe me that nobody cares about which party you will vote for. As the administration, we are doing what needs to be done when necessary.”

11. O.Ö. ensured that all members who were included in the electronic mail group saw the electronic mail that the applicant had only sent to him/her by forwarding it to the group on the date of 9/2/2011.

12. O.Ö. filed an action for compensation against the applicant before the 2nd Civil Court of First Instance of Ankara on the date of 23/2/2011.

13. The 2nd Civil Court of First Instance of Ankara decided that the applicant pay a moral compensation of 3500,00 TL to the plaintiff on the date of 21/6/2011 on the ground ... *“In the response given by the defendant; no compliment was paid to the plaintiff, the discussion was not sustained in a way which was appropriate for the level of academic circle of which the parties were members or which was appropriate for the understanding of moderate people, a libel was made by seeing the thoughts in the discussion in which the plaintiff participated as the mirror of personality in which the feelings of inferiority were reflected. It was not sent as a response in a private correspondence between two persons; on the contrary, it was sent to a communication site which was open to 2158 persons who were the faculty members of Ankara University. A response was given to an unacceptable thought or explanation with a libel. Charging of a person who is a faculty member at the University or any person who does not have any title by an academician who is the deputy rector with the fact that s/he has the feeling of inferiority makes that person unhappy and violates his/her personal rights; it is necessary to rule upon moral compensation according to article 49 of the C.O. by considering the economic situation of the parties”.*

14. Upon appeal, the decision was approved with the writ of the 4th Civil Chamber of the Supreme Court of Appeals dated 16/10/2012.

B. Relevant Law

15. Article 49 of the Turkish Code of Obligations dated 11/1/2011 and numbered 6098 with the side heading of "*responsibility*" is as follows:

"Those who incur damages on others as a result of negligent and illegal acts shall be responsible for compensating for such damages.

Even though in case of absence of a rule of law that prohibits damaging acts, those who intentionally harm others as a result of unethical deeds and actions shall be responsible for compensating for such acts."

IV. EXAMINATION AND JUSTIFICATION

16. The individual application of the applicant dated 19/12/2012 and numbered 2012/1184 was examined during the session held by the court on the date of 16/7/2014 and the following were ordered and adjudged:

A. Claims of the Applicant

17. The applicant claims that the freedom of expression and dissemination of thought protected under article 26 of the Constitution were violated due to the fact that she was sentenced to pay compensation for the words that she had used in an electronic mail. The applicant also asserted that the Court acted in a biased way against her and interpreted procedural rules against her and that, for this reason, the right to a fair trial was violated.

B. Evaluation

1. In Terms of Admissibility

18. The applicant asserted that the Court of First Instance and the Supreme Court of Appeals interpreted procedural rules against her. By considering the conditions about which the applicant complained and the form of expressing her complaints, it is necessary to examine these complaints within the context of article 26 of the Constitution.

19. Complaints of the applicant as to the effect that the ruling of compensation against her due to the words that she had uttered against her respondent in a discussion between university professors had the quality of a violation of the freedom of expression and dissemination of thought are not clearly devoid of basis. Moreover, it should be decided that the application is admissible as there is no other reason for inadmissibility.

2. In Terms of Merits

a. Claims of the Applicant and Opinion of the Ministry

20. The applicant stated that, in a discussion which started in relation to the removal of security turnstiles which had been present in the entrance to Cebeci Campus of the University for long years and which were used in order to keep entries into the campus under control in an electronic mail group of which lecturers and faculty members of Ankara University were members, Professor O.Ö. who was one of the members criticized the Rector's Office of the University and related what was done to the Rector Elections which would be held two years later, that she, as the deputy Rector, gave a response to Professor O.Ö.

21. The applicant stated that the term "*feeling of inferiority*" included in the electronic mail was a scientific concept, that it was not used in order to make a libel to the defendant, that the author of the theory of the feeling of inferiority was Alfred Adler and that there were

many scientific studies on this subject, that this feeling was present in everyone, that this feeling was a requirement of being a human, that the feeling of inferiority was different from “*inferiority complex*”. The applicant asserted that she and the plaintiff criticized each other, that both parties had the right to criticize each other and the university, that her punishment because she did not express her thoughts like moderate people as specified in the justification of the Court of First Instance was an unfair intervention in the freedom of expression and dissemination of thought.

22. The applicant asserted that she only sent the electronic mail in question to the mail account of O.Ö., that O.Ö. sent it to all group members, that her punishment due to her words which did not contain any intention of insult and had the quality of a response to criticisms in the discussion which started within the framework of activities of the university administration had the quality of a violation of the freedom of expression and dissemination of thought stipulated in article 26 of the Constitution.

23. In opinion of the Ministry against the claims of the applicants, the case-law of the European Court of Human Rights (ECtHR) was reminded and it was stated that the complaints of the applicant as to the effect that an intervention was made in her freedom of expression and dissemination of thought needed to be evaluated in terms of whether or not a fair balance was struck between the freedom of expression and dissemination of thought of the applicant and the private life of others.

24. The applicant repeated her statements in the application petition against the opinion of the Ministry on the merits of the application.

b. Evaluation

25. In the defamation case which is the subject matter of the present application, the applicant was sentenced to pay a compensation of 3.500,00 TL by accepting that the words which she had used contained insult. Then, an intervention was made in the freedom of expression and dissemination of thought of the applicant through the court decision in question.

26. On the other hand, there is no dispute as to the effect that the intervention in question was “*prescribed by code*” in terms of article 13 of the Constitution and “*pursued a legitimate aim*” in the form of “*the protection of the reputation or rights of others*” within the framework of paragraph two of article 26 of the Constitution. In this case, it should be evaluated whether or not the intervention in question is “*necessary in a democratic society*” and “*proportionate*”.

27. In the decision related to the sentencing of the applicant to moral compensation due to the words that she had used in a public discussion in which the lecturers and faculty members of Ankara University were included, it should be evaluated whether or not a reasonable balance was pursued between the freedom of expression and dissemination of thought of the applicant and the protection of the reputation or rights of others in a democratic society.

28. Article 26 of the Constitution with the side heading of “*Freedom of expression and dissemination of thought*” is as follows:

“*Everyone has the right to express and disseminate their thoughts and convictions orally, in writing, in pictures or through other means individually or collectively. This freedom also*

includes the liberty of receiving or giving information or ideas without the intervention of official authorities. ...

The exercise of these freedoms may be restricted for the purposes of national security, public order, public security, protecting the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing offending, punishing offenders, not revealing information duly classified as a State secret, protecting the reputation or rights and private and family lives of others or protecting professional secrets set forth in the code or duly performing the duty of hearing cases.

Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts on the condition that the transmission of information and thoughts is not prevented.

Forms, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought are regulated by code.”

29. As per the mentioned regulation, the freedom of expression and dissemination of thought covers not only the freedom of “*having a thought and conviction*” but also the existing freedom of “*expressing and disseminating thought and conviction (opinion)*” and the associated freedom of “*receiving and giving information or opinion*”. In this framework, the freedom of expression and dissemination of thought means that a human can freely have access to news and information and others' thoughts, that he/she cannot be condemned for the thoughts and convictions he/she has and that he/she can freely express, tell, defend, convey and disseminate to these to others through various methods by himself/herself or together with others (App. No: 2013/2602, 23/1/2014, § 40).

30. The presence of social and political pluralism is dependent on the expression of all kinds of thoughts in a peaceful fashion and freely. In the same manner, an individual can realize his/her unique personality in an environment where he/she can freely express his/her thoughts and engage in discussion. Freedom of expression is a value that we need in defining, understanding and perceiving ourselves and others and, in this framework, in determining our relations with others (App. No: 2013/2602, 23/1/2014, § 41).

31. The European Court of Human Rights (ECtHR) frequently emphasizes that freedom of expression constitutes “*one of the main bases of a democratic society which is one of the essential conditions for the progress of society and the improvement of each person*”. According to the ECtHR, “*In accordance with paragraph 2 of article 10, the freedom of expression applies not only for information and thoughts which are accepted to be in favor or are not considered to be harmless or not worthy of attention, but also for information and thoughts which are aggressive, shocking or disturbing for a part of the state or the society. These are the requirements of pluralism, tolerance and open mindedness; there cannot be any democratic society without these. (see Handyside v. the United Kingdom, App. No. 5493/72, 7/12/1976, § 49).*

32. The state has positive and negative liabilities in relation to the freedom of expression of thought. Within the scope of negative liability, public bodies should not ban the expression and dissemination of thought as long as this is not compulsory within the scope of articles 13 and 26 of the Constitution whereas, within the scope of positive liability, they should take the measures necessary for the actual and effective protection of the freedom of expression of thought (for a similar opinion of the ECtHR, see *Özgür Gündem v. Turkey*, App. No: 23144/93, 16/3/2000, § 43).

33. It should be noted that the state and public bodies have discretion over the restrictions in relation to the freedom of expression of thought. However, this sphere of discretion is also subject to the scrutiny of the Constitutional Court. During the scrutiny which will be conducted within the framework of the criteria of conforming to the requirements of the democratic order of the society, proportionality and not infringing upon the essence, instead of a general or abstract evaluation, there is a requirement to conduct a detailed evaluation which differs according to various elements such as the type, form and contents of the expression, the time when it is expressed, the quality of the reasons for restriction (App. No: 2013/2602, 23/1/2014, § 48).

34. The Constitutional Court defined democratic society as follows in its case-law: “*Democracies are regimes in which fundamental rights and freedoms are ensured and guaranteed in the broadest manner. The limitations which bear prejudice against the essence of fundamental rights and freedoms and render them completely non-exercisable cannot be considered to be in harmony with the requirements of a democratic social order. For this reason, fundamental rights and freedoms may be limited exceptionally and only without prejudice to their essence to the extent that it is compulsory for the continuation of democratic social order and only by law.*” (CC, M.2006/142, D.2008/148, D.D. 24/9/2008). In other words, if the limitation which is introduced halts or renders extremely difficult the exercise of the right and freedom by bearing prejudice against its essence, renders it ineffective or if the balance between the means and objective of the limitation is disrupted in violation of the principle of proportionality, it will be against the democratic social order (See CC, M.2009/59, D.2011/69, D.D. 28/4/2011; CC, M.2006/142, D.2008/148, D.D. 17/4/2008).

35. The criteria of not infringing upon the essence or conformity with the requirements of the democratic society require that restrictions on the freedom of expression and dissemination of thought should primarily be in the form of a compulsory or exceptional measure and that they should be considered to be the last remedy to be resorted to or the last measure to be taken. As a matter of fact, the ECtHR concretizes being a requirement in the democratic society as a “*pressing social need*”. According to this, if the restrictive measure is not in the form of meeting a pressing social need or is not the last remedy to resort to, it cannot be considered as a measure which is in conformity with the requirements of the democratic order of the society (For the decisions of the ECtHR on this subject, see *Axel Springer AG v. Germany*, [BD], App. No: 39954/08, 7/2/2012; *Von Hannover v. Germany* (no.2) [BD], 40660/08 and 60641/08, 7/2/2012).

36. According to the conclusion made out of this, the freedom of expression and dissemination of thought which constitutes one of the main pillars of the society, applies not only for thoughts which are accepted to be in favor or considered to be harmless or not worthy of attention, but also for thoughts which are against a part of the State or the society, which are striking for them or which disturb them. Because, these are the requirements of pluralism, tolerance and open mindedness (see *Handyside v. the United Kingdom*, App. No: 5493/72, 7/12/1976, § 49).

37. Another guarantee which will intervene in all kinds of limitations to be introduced to rights and freedoms is the “*principle of proportionality*” expressed under article 13 of the Constitution. This principle is a guarantee which needs to be taken into consideration with priority in applications regarding the limitation of fundamental rights and freedoms. Although the requirements of a democratic social order and the principles of proportionality are regulated as two separate criteria under article 13 of the Constitution, there is an inseparable relation between these two criteria. Indeed, the Constitutional Court drew attention to this

relationship between being necessary for a democratic societal order and proportionality in its previous decisions and decided that the means which would ensure that fundamental rights would be accessed with the least intervention by stating that "*[Each limitation aimed at fundamental rights and freedoms] needs to be examined to see whether it is of the necessary quality for the democratic societal order, in other words, whether it fulfills the objective of public interest which is sought while serving as a proportionate limitation allowing for the least amount of intervention to fundamental rights...*" (CC, M.2007/4, D.2007/81, D.D. 18/10/2007).

38. According to the decisions of the Constitutional Court, proportionality reflects the relationship between the objectives and means of limiting fundamental rights and freedoms. The inspection for proportionality is the inspection of the means selected based on the sought objective in order to reach this objective. For this reason, in interventions introduced in the field of the freedom of expression and dissemination of thought, whether or not the intervention selected in order to achieve the targeted objective is suitable, necessary and proportionate needs to be evaluated.

39. In this context, the main axis for the evaluations to be carried out with regard to the facts which are the subject of the application will be whether or not the courts of instance which caused the intervention could convincingly put forward that the justifications they relied on in their decisions are in line with "*necessity in a democratic society*" and "*the principle of proportionality*" with a view to restricting the freedom of expression and dissemination of thought.

40. On the other hand, according to article 26 of the Constitution, one of the reasons for the restriction of the freedom of expression is the protection of the reputation or rights, private and family lives of others or their professional secrets prescribed by code.

41. The honor and reputation of an individual is included within the scope of "*spiritual existence*" which is stipulated in article 17 of the Constitution. The state is obliged not to intervene in honor and reputation which are a part of the spiritual existence of an individual and to prevent the attacks of third parties (App. No: 2013/1123, 2/10/2013, § 35) The intervention of third parties in honor and reputation may also be made through means of communication such as electronic mails as well as many possibilities. Even if a person is criticized within the framework of a public debate through means of communication, the honor and reputation of that person should be considered as a part of his/her spiritual integrity.

42. The positive liability of the State within the framework of establishing effective mechanisms against the interventions of third parties on the material and spiritual existence of individuals shall not necessarily entail the performance of a criminal investigation and prosecution. It is also possible to protect an individual against the unjust interventions of third parties through civil procedure. As a matter of fact, both criminal and legal protection have been envisaged in our country for the interventions which are made by third parties in honor and reputation. Libel is considered as a crime in terms of criminal law, as an unjust act in terms of private law and can be subjected to an action for compensation. Therefore, it is also possible for an individual to ensure a remedy through a civil case with the claim that an intervention has been made by third parties in his/her honor and reputation (App. No: 2013/1123, 2/10/2013, § 35).

43. Within the framework of its positive liabilities in relation to the protection of the material and spiritual existence of individuals, the state needs to strike a balance between the right to the protection of honor and reputation and the right of the other party to exercise the freedom of expression and dissemination of thought which is enshrined in the Constitution (For the decision of the ECtHR in the same vein, see. *Von Hannover v. Germany* (no.2) [BD], App. No: 40660/08 and 60641/08, 7/2/2012, § 99).

44. The ECtHR, in *Axel Springer AG* case, developed some criteria towards determining whether or not conflicting interests are balanced in the event that there is a conflict between the freedom of expression and dissemination of thought and the reputations of others and accordingly, whether or not the intervention is necessary and proportionate in a democratic society. These criteria were stated as a) contribution of reports or expressions in the press to a debate of general interest which concerns public, b) how well known is the person targeted and what is the subject of the report, c) prior conduct of the person concerned, d) method of obtaining the information and its veracity, e) content, form and consequences of the publication and f) severity of the sanction imposed (see *Axel Springer AG v. Germany*, [BD], App. No: 39954/08, 7/2/2012).

45. Among these criteria, especially “*how well known is the person targeted and what is the subject of the report*” has special importance. Because, the ECtHR makes evaluations by making a differentiation between simple citizens and public figures, between public officers and politicians in terms of the necessity of an intervention in the freedom of expression and dissemination of thought in democratic societies within the scope of the protection of rights and reputation of others. Politicians and people who are known by public have to stand more criticism due to the function that they serve. For this reason, it is inevitable that politicians and officials who exercise public authority are more open to criticism when compared to simple citizens.

46. The Constitutional Court will evaluate, depending on the unique characteristics of each incident, whether or not an intervention is necessary in a democratic society, whether or not the essence of a right is infringed upon while the intervention is made, whether or not intervention is proportionate and whether or not a fair balance is struck between the freedom of expression and dissemination of thought and the right to the protection of honor and reputation of others in the event that they are in conflict with each other.

47. Therefore, in the event that it is accepted that the ruling of compensation against the applicant due to the words that she had uttered in response to the criticisms directed to her in public as the Deputy Rector of Ankara University is proportionate, it can be concluded that justifications of the intervention made in the freedom of expression and dissemination of thought are convincing or, in other words, relevant and sufficient.

48. The applicant defended that her statements as to the effect that “*I perceive your interest message as the mirror of your personality. To tell the truth, there are some people who react as the reflection of their feelings of inferiority no matter what is done and this is just what you do*” which resulted in compensation having been sentenced against her were made in response to the statements of the plaintiff which saw the practice of removal of security turnstiles as an election investment in the electronic mail group and that she did not have any intention of insult. According to the applicant, the idiom in question “*feeling of inferiority*” is a scientific definition and this feeling is present in everyone without any exception. In order to evidence her claims, the applicant relied upon the papers on this subject of Alfred Adler who is the founder of the School of Individual Psychology and put forth the

definition in question “*feeling of inferiority*” and a book named “*Aşağılık Duygusu ve Karakter*” (Feeling of Inferiority and Character) which is written on this subject, a master's thesis written on this subject and some internet articles.

49. The applicant relied upon these views expressed in the works in question:

“the most important reason for a common resistance shown against innovations is envy which is one of the indications of the feeling of inferiority. As soon as an idea is put forth, the old, the young, literate, illiterate always hear the same thing and performs the same actions; try to reduce the importance of and lower the value of the idea put forth. This state which is present in all of us is natural and is the result of the feeling of inferiority.”

“Each child brings about this or, in other words, the seeds of the feeling of inferiority while coming to the world.”

“People whose physical, mental structure is completely intact, social status is suitable and who are brought up through a very good education should not have had the feeling of inferiority. However, it is not the case and we see that people who grow up in a perfect way in all aspects are under the influence of the feeling of inferiority.”

“All people like being praised, loved, respected. Because, each person is under the influence of the feeling of inferiority in various degrees.”

50. According to the applicant, the feeling of inferiority in question is at the same time a feeling which makes people stronger, makes life more bearable and has positive aspects.

“According to Adler... it is the feeling of inferiority ... which forces people to become stronger creatures... and which compels them to strive in this or that way in order to ensure security. This feeling is a desire which is felt in order to find an appropriate aim so as to render life bearable by creating security and peace and which is not possible to prevent.”

51. The 2nd Civil Court of First Instance of Ankara before which the applicant was tried accepted that the applicant did not praise the plaintiff, that she did not participate in the discussion in a way which was appropriate for the level of the academic circle of which the parties were members or which was appropriate for the understanding of moderate people, the words “*feeling of inferiority*” that the applicant had used contained libel in a way which would leave no room for doubt. Moreover, the Court accepted that the mail which was the subject matter of the case was not sent as a response in a private correspondence between two persons and, on the contrary, was sent to a communication site which was open to 2158 persons who were the faculty members of Ankara University by falling into error in the acceptance of the incident (see § 13).

52. It cannot be sufficient to handle only the decisions issued by the courts of instance in the examination of the concrete individual application. Firstly, it should be taken into consideration that the words uttered by the applicant were only expressed in an electronic mail which was sent to the electronic mail address of the plaintiff. Secondly, the expression “*reflection of the feelings of inferiority*” which was the subject matter of the trial should be evaluated within the holism of the incident together with the entire speech in which it was used and without separating it from the context in which it was uttered.

53. In essence, criticisms of the plaintiff were responded in the electronic mail in question. The plaintiff stated that although it was previously requested that the security turnstiles which were present in the entrance to the campus be removed time and again, the university administration remained silent about these requests and implied that the removal of

turnstiles all of a sudden could be an election investment. Against this criticism, the applicant asserted that they, as the administration, did what should have been done at the university, that this was not an election investment, that the criticism of the removal of security turnstiles, which was requested by everyone, could only be based on psychological reasons and stated that the criticism of the plaintiff was “*a reflection of the feeling of inferiority*” as it was a reaction given no matter what was done by the university administration and criticized the plaintiff in this context.

54. According to the applicant, the feeling of inferiority is the most important reason for a common resistance shown against innovations and stated that when an idea was put forth or a behavior was exhibited, those who had this feeling tried to reduce the importance of, lower the value of the idea put forth and asserted that this state which was present in each person was natural.

55. These expressions should be characterized as value judgments which contain assessments against the criticisms of the plaintiff. The accuracy of a value judgment is not provable and as it is not possible to prove value judgments as they are composed of the views and opinions of a person, requesting that they be proved will mean the violation of the freedom of expression and dissemination of thought.

56. That being the case, under the conditions of the current case, the claim that the value judgment which the applicant expressed did not constitute a libel can at least be partially supported with the defenses of the applicant and the academic articles that she placed in the file as evidence (for similar assessments, see *Sorguç v. Turkey*, App. No: 17089/03, 23/9/2009, § 32). On the other hand, even if a statement is completely composed of a value judgment, the proportionality of an intervention should be determined depending on whether or not the statement under dispute is sufficiently supported with concrete elements. Because, if a value judgment is not supported with concrete elements, it may be disproportionate (see *Sorguç v. Turkey*, App. No: 17089/03, 23/9/2009, § 29).

57. In the concrete incident, a discussion started among academic personnel around the removal of the security turnstiles which had been present in the entrances to the campus of Ankara University for long years. According to the information reflected on the file, it is thought that the security turnstiles in question are in conflict with the liberal appearance of universities and there has been a request for the removal of these turnstiles for a long time. Moreover, the removal of the turnstiles in question and the loosening of stringent security procedures applied during entries to- and exits from universities is considered as a positive practice by academic personnel including the plaintiff. However, the plaintiff made a criticism as to why the practice had been delayed up to that day, the applicant sent the electronic mail which is the subject matter of the application to the plaintiff by thinking that the value of the positive practice performed was tried to be lowered.

58. When the aforementioned incidents are taken into consideration, there is a public interest in the discussion which occurred around the removal of the security turnstiles which were present in the entrances to the university. Although the discussion in question was made in the electronic mail group of the faculty members of the university and the plaintiff expressed his/her criticisms against the university administration in this mail group, the applicant made her statements which disturbed the plaintiff through an electronic mail that she sent to the electronic mail address of the plaintiff. The applicant made a criticism on behalf of the university administration against the criticisms of the plaintiff through her own personal account and in a way that only the plaintiff was able to see rather than making a statement to

which everyone were able to access. The Court of First Instance considered that the applicant sent the electronic mail in question to the entire mail group. However, it should be noted that the applicant only sent the electronic mail which was the subject matter of the case to the plaintiff.

59. In order for a person to be able to exercise the right to the protection of his/her spiritual existence stipulated in paragraph one of article 17 of the Constitution, the attack towards the reputation of the person must reach a certain level of severity and have a quality of damaging the exercise by the person of the right to the protection and development of spiritual existence (for a similar assessment, see *A. v. Norway*, App. No: 2807006/, 9/7/2009, § 64). In the concrete case, the applicant only sent her electronic mail to the plaintiff, but the plaintiff ensured that the statements of the applicant were disseminated in a way which everyone who was the member of the mail group was able to read by sending to the entire mail group the electronic mail which he/she asserted to have had a insult in its content and to have damaged his/her honor and reputation. While striking a fair balance between interests, this matter should also be taken into consideration.

60. According to the defense of the applicant, she used the idiom “*feeling of inferiority*” both in order to draw attention to how disproportionate the plaintiff’s criticisms were and as it was an idiom which could summarize her own criticism. However, in any case, it cannot be expected from the plaintiff to know the meaning to which the applicant assigns to the words that she used.

61. Identities of the parties to the discussion in question should also be taken into consideration. While the applicant is a faculty member who is the deputy rector, the plaintiff is a faculty member who does not have any administrative duty. In the event that the freedom of expression and dissemination of thought and the protection of the fame and reputation of others are in conflict, if the person whose fame is in question is a public official, the public duty that this person assumes should be taken into consideration during balancing (App. No: 2013/5574, 30/6/2014, § 71; for a decision of the ECtHR on the fact that protection will be more flexible for persons who are recognized by the public, see *Minelli v. Switzerland (s.d.)*, App. No: 14991/02, 14/6/2005). Nevertheless, if the person whose fame is in question is a simple citizen as in the current application, protection should be made from a high level and this situation should be taken into consideration during balancing.

62. In conclusion, in the discussion which occurred between the faculty members and lecturers of the university around the removal of the security turnstiles which were present in the entrances to the university and in which there was a public interest, the applicant who was the deputy rector of the university responded to the plaintiff in a harsh and stinging manner against the criticisms of the plaintiff by thinking that the value of the positive practice performed was tried to be lowered. While the applicant, as a senior public official, needed to show more tolerance against the criticisms of the plaintiff as to the effect that the timing of the removal of security turnstiles was meaningful, she responded against the criticisms of the plaintiff which did not contain any insult and were not harsh either in a much harsher way and in the way as to the effect that these words were “*the reflection of the his/her feelings of inferiority*”.

63. The word “*inferiority*” included in the words of the applicant which were the subject matter of the case is used to have the meanings of “*having a low quality*” such as

“coarseness”, “commonness” today. Statements of the applicant as to the effect that the criticisms of the applicant resulted from the feeling of inferiority and this feeling was present in each human, that people who grew up in a perfect way in all aspects were also under the influence of this feeling do not remove the negative feelings that the plaintiff had when he/she read the electronic mail in question. Moreover, the fact that the applicant only sent her critical statements to the plaintiff does not remove the “defamation” stipulated in these statements.

64. The Court of First Instance ruled that the applicant pay a compensation of 3500,00-TL by considering that the plaintiff suffered a libel and the Supreme Court of Appeals approved this judgment. In the examination of individual application, the Constitutional Court does not intervene in the fact that courts evaluate the cases which are the subject matter of an action and interpret the law as long as the constitutional rights of individuals are not violated. When the aforementioned matters are taken into account, it cannot be said that the intervention as to the effect that the plaintiff was sentenced to pay a compensation of 3500,00-TL in the action for compensation filed against her due to the words that she had used against the criticisms which the plaintiff directed to the administration of Ankara University constituted a disproportionate intervention in the freedom of expression of the applicant and disturbed the balance which needs to be struck between the plaintiff's right to request the protection of his/her right to reputation and the applicant's freedom of expression against the applicant. For this reason, it should be decided that the freedom of expression and dissemination of thought guaranteed in article 26 of the Constitution was not violated.

V. JUDGMENT

In the light of the reasons explained, it is **UNANIMOUSLY** decided on the date of 16/7/2014;

A. That the application **WAS ADMISSIBLE** in terms of the freedom of expression and dissemination of thought,

B. That, in relation to the claim of the applicant as to the effect that the freedom of expression and dissemination of thought was violated, paragraph one of article 26 of the Constitution **WAS NOT VIOLATED**,

C. That the trial expenses be charged on the applicant.

President
Alparslan ALTAN

Member
Serdar ÖZGÜLDÜR

Member
Osman Alifeyyaz PAKSÜT

Member
Recep KÖMÜRCÜ

Member
Engin YILDIRIM