



**CHILLING EFFECTS** – ECtHR *Cumhuriyet Vakfı and Others v. Turkey* and *Ricci v. Italy* Article 10 (freedom of expression) of the Convention

In a legal context, a chilling effect is the inhibition or discouragement of the legitimate exercise of legal rights by the threat of legal sanction. The right that is most often described as being suppressed by a chilling effect is the right to free speech. The term chilling effect had been in use in the United States since as early as 1950. A chilling effect may be caused by legal actions such as the passing of a law, the decision of a court, or the threat of a lawsuit; any legal action that would cause people to hesitate to exercise a legitimate right (freedom of speech or otherwise) for fear of legal repercussions

In 1996 the European Court of Human Rights used the term 'chilling effect' in the context of Article 10 in the case of [Goodwin v. the United Kingdom](#). The case dealt with the protection of journalistic sources and the Court held:

“39. (-) that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance (-). Protection of journalistic sources is one of the basic conditions for press freedom, as is reflected in the laws and the professional codes of conduct in a number of Contracting States and is affirmed in several international instruments on journalistic freedoms (-). Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 (art. 10) of the Convention unless it is justified by an overriding requirement in the public interest. These considerations are to be taken into account in applying to the facts of the present case the test of necessity in a democratic society under paragraph 2 of Article 10 (art. 10-2).”

But also outside the field of protection of journalistic sources the Court often refers to the potential chilling effects of measures, as in this week's cases of *Cumhuriyet Vakfı and Others v. Turkey* and *Ricci v. Italy* Article 10 (freedom of expression) of the Convention. In the case of [Cumhuriyet Vakfı and Others v. Turkey](#) the Court held that there had been a violation of Article 10 of the Convention. The case concerned an injunction issued in May 2007 against the daily national newspaper, Cumhuriyet (“the Republic”), preventing further publication of a political advertisement allegedly quoting an interview given by the current Turkish President, Mr Abdullah Gül, to The Guardian newspaper in 1995. The paper's publisher, its owner and two of its journalists complained that the injunction was a violation of their right to freedom of expression. The Court held that the interference with the applicants' freedom of expression caused by the injunction had not been proportionate to the legitimate aims pursued and necessary in a democratic society, due to procedural deficiencies in the interim injunction proceedings. In particular, it was not made clear in the injunction what exactly Cumhuriyet had been banned from publishing.

“62. The Court takes note, in the first place, of the sheer scope of the interim injunction imposed by the domestic court, particularly as regards its second prong, which set out in very general and unqualified terms that the applicants could not publish any news whatsoever that might be subject to the court proceedings. The Court considers that there is lack of clarity as to what material could and could not be published under the interim injunction: hypothetically, the ban could extend to any political opinion uttered by the claimant Mr Gül, in the past or at the material time, as regards the principle of secularity or its application in Turkey, or certain institutions of the Republic. In the Court's opinion, this ambiguity surrounding the interim injunction decision fell foul of the principle of legal certainty and rendered that decision vulnerable to abuse.

63. The Court considers it quite possible that this lack of certainty may have also had a general chilling effect on the reporting of these matters at a period of intense political debate regarding the Presidential elections, thereby affecting not only Cumhuriyet as the measure's direct addressee but all media outlets in the country. The applicants in fact claim that neither Cumhuriyet nor the other major newspapers in Turkey had even reported on the interim injunction order obtained by Mr Gül."

The Court further held that that the injunction that had stayed in force for over 10 months, Cumhuriyet had been seriously hampered from contributing to public debate at a key point in Turkish political history, namely the run up to the presidential elections.

**ALSO IN THE CASE OF [Ricci v. Italy](#)** the Court found, on account of the nature and quantum of the sentence imposed on Mr Ricci, that the interference with his right to freedom of expression had not remained proportionate to the legitimate aims pursued. The Court thus found that there had been a violation of Article 10. The case concerned the conviction and sentencing of the presenter/producer of a satirical television programme for disclosing confidential images that had been recorded for the internal use of a public television station (the RAI). The Court took the view that, taking into account in particular the applicant's failure to observe the ethics of journalism, his conviction did not itself entail a violation of his right to freedom of expression. However, the nature and severity of the penalty imposed on him, in particular the suspended prison sentence, constituted a disproportionate interference with the legitimate aims of the protection of the reputation of others and the prohibition on disclosing information received in confidence: Mr Ricci had been sentenced to four months and five days and even though it had been a suspended sentence and the Court of Cassation had found the offence to be time-barred, the fact that a prison sentence had been handed down must have had a significant chilling effect. In addition, the case in question, which concerned the broadcasting of a video whose content was not likely to cause significant damage, was not marked by any exceptional circumstance justifying recourse to such a harsh sanction.

"59. Il n'en demeure pas moins que, comme rappelé au paragraphe 52 ci-dessus, la nature et la lourdeur des peines infligées sont aussi des éléments à prendre en considération lorsqu'il s'agit de mesurer la proportionnalité de l'ingérence. Or, en l'espèce, en plus de la réparation des dommages, le requérant a été condamné à quatre mois et cinq jours d'emprisonnement (paragraphe 13 ci-dessus). Bien qu'il y ait eu sursis à l'exécution de cette sanction et bien que la Cour de cassation ait déclaré l'infraction prescrite (paragraphe 21 ci-dessus), la Cour considère que l'infliction en particulier d'une peine de prison a pu avoir un effet dissuasif significatif. Par ailleurs, le cas d'espèce, qui portait sur la diffusion d'une vidéo dont le contenu n'était pas de nature à provoquer un préjudice important, n'était marqué par aucune circonstance exceptionnelle justifiant le recours à une sanction aussi sévère.

60. La Cour estime que, de par la nature et le quantum de la sanction imposée au requérant, l'ingérence dans le droit à la liberté d'expression de ce dernier n'est pas restée proportionnée aux buts légitimes poursuivis."