European Court of Human Rights: Kaos GL v. Turkey

IRIS 2017-2:1/1

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

The case of Kaos GL v. Turkey is an example of a case whose findings breach Article 10 of the European Convention on Human Rights (ECHR) on the right to freedom of expression of a particular kind. The case concerns the seizure of all the copies of a magazine published by Kaos GL, a cultural research and solidarity association for lesbian, gay, bisexual, and transgender people ("LGBT"). The European Court of Human Rights (ECtHR) found that the aim of protecting public morals relied upon by the Turkish authorities had been insufficient to justify the prior-censorship of the LGBT-magazine for more than five years. The judgment also shows the European Court's willingness to extend the protection of Article 10 ECHR to sexually explicit expression, while demonstrating the need for proportionate interferences with the right to freedom of expression in the light of the protection of minors against sexually explicit content. In 2006, the Criminal Court of First Instance of Ankara, at the request of the Chief Prosecutor, ordered the seizure of the 375 copies of issue 28 of the magazine Kaos GL with a view to launching criminal investigations. The issue in question contained articles and interviews on pornography related to homosexuality, illustrated with explicit images. The Criminal Court considered that the content of some of the articles and some of the images published were contrary to the principle of protection of public morals. An appeal against this decision was dismissed, while the president and editor-in-chief of Kaos GL magazine, Mr Güner, was subsequently charged with publishing obscene images via the press, an offence punishable under Article 226 § 2 of the Turkish Penal Code. In particular, a painting reproduced in the magazine, which showed a sexual act between two men whose sexual organs were visible, was considered obscene and pornographic. In 2007, however, the Ankara Criminal Court acquitted Mr Güner of the charge against him. It held that not all the factors constituting the offence were present. It also ordered the return of all the copies of the magazine seized, although the execution of this order was not implemented by the Turkish authorities. In 2012, the Court of Cassation upheld the judgment of the Ankara Criminal Court. In the meantime, relying on its right to freedom of expression, Kaos GL lodged an application before the ECtHR, complaining of the seizure and continued confiscation of its issue 28 and the criminal proceedings brought against Mr Güner.

While the European Court decided that Kaos GL's complaint about the criminal proceedings against Mr Güner was inadmissible ratione personae, it substantially evaluated whether the seizure and confiscation of the magazine amounted to a justified interference with the magazine's right to freedom of expression

© European Audiovisual Observatory (Council of Europe) 2026

guaranteed by Article 10 ECHR. While there was no doubt that the seizure of all copies of the magazine was prescribed by law and pursued the legitimate aim of protecting morals, the European Court considered that the reasons given by the domestic court were not convincing with regard to the necessity and the proportionate character of their seizure and confiscation. According to the Court, there was nothing in the decision of the Criminal Court to seize the magazines to suggest that the judge had examined in detail the compatibility of the magazine's content with the principle of protection of public morals. Nor did the Criminal Court's decision to dismiss the appeal against the seizure decision set out any further relevant details or reasoning. The European Court accordingly considered that the protection of public morals argument, advanced in such a broad, unreasoned manner, had been insufficient to justify the decision to seize and confiscate all the copies of issue 28 of Kaos GL for over five years. Based on its own analysis of the impugned publication, having regard to the content of the articles and referring to the explicit nature of some of the images in the magazine at issue, the Court expressed the opinion that issue 28 of Kaos GL could be considered as a publication specifically aimed at a certain social category. Despite its intellectual and artistic characteristics, some of the content could indeed be considered as possibly offending the sensitivities of a non-warned public. The Court accepted that the measures taken to prevent access by specific groups of individuals - including minors - to this publication might have met a pressing social need. However, it emphasised that the domestic authorities had not attempted to implement a less harsh preventive measure than the seizure of all the copies of the magazine, for example by prohibiting its sale to persons under the age of 18 or requiring special packaging with a warning for minors. Even if the issue seized, accompanied by a warning for persons under the age of 18, could have been distributed after the return of the confiscated copies, that is to say after the Court of Cassation judgment of 29 February 2012, the Court held that the confiscation of the copies of the magazine and the delay of five years and seven months in distributing the publication could not be considered as proportionate to the aim pursued. The Court therefore held that the seizure of all the copies of issue 28 of the magazine Kaos GL amounted to a disproportionate interference with the exercise of Kaos GL's right to freedom of expression and had not been "necessary in a democratic society". The Court is unanimous in finding that therefore there has been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, affaire Kaos GL c. Turquie, requête n° 4982/07, 22 novembre 2016

Judgment by the European Court of Human Rights, Second Section, case of Kaos GL v. Turkey, Application no. 4982/07, 22 November 2016

https://hudoc.echr.coe.int/eng?i=001-168765

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026