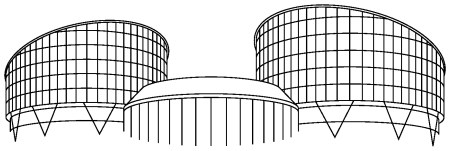

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HASAN YAZICI v. TURKEY

(Application no. 40877/07)

JUDGMENT

STRASBOURG

15 April 2014

FINAL

15/07/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hasan Yazıcı v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 18 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40877/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Hasan Yazıcı ("the applicant"), on 12 September 2007.

2. The applicant was represented by Mr A. Aybay and Mr H. Yazıcı, lawyers practising in İstanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 12 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, a professor of medicine, was born in 1945 and lives in Istanbul.

A. Background of the case

5. On 29 November 1981 a well-known journalist/columnist published an article in the daily newspaper *Cumhuriyet* in which he drew attention to

the similarities between the books *Mother's Book*[1], written by Professor Dr I.D., a prominent academic and president of the Higher Education Council between 1981 and 1992, and that of Dr Benjamin Spock entitled *Baby and Childcare*[2]. It mentioned, humorously, that the latter must have copied from Professor Dr I.D.'s book.

6. On 14 December 1997 the applicant brought to the attention of the members of the Turkish Academy of Sciences the allegation that Professor Dr I.D. had committed plagiarism in respect of the above-mentioned book.

7. On 9 January 1998 the applicant, acting as the head of the Ethics Committee of the Turkish Academy of Sciences, together with two other members of the Committee, submitted a two-page report in which they took the view that Professor Dr I.D. had committed plagiarism in his book entitled *Mother's Book*. They gave five examples in this connection. They asked the Council of the Academy of Sciences to take various actions in this regard. It appears, however, that no action was taken.

8. Similar allegations were also made by Professor Dr M.T.H. in his book *The History of the University in Turkey*, 2nd edition, 2000.

9. In December 2000 an article written by the applicant entitled 'Ethics of Science and plagiarism' was published in the Turkish Journal of Physical Medicine and Rehabilitation. In this article the applicant renewed his claim that Professor Dr I.D. had committed plagiarism in his book entitled *Mother's Book*.

B. The newspaper article

10. In the meantime, on 15 November 2000, a daily newspaper, *Milliyet*, had published a shortened version of the article that was to be published in the Turkish Journal of Physical Medicine and Rehabilitation. The headline read, in small type, "the YÖK[3] is establishing an ethics committee to examine the ethics of science of docent[4] candidates", and in larger type "D. should first be reprimanded". A photograph of Professor Dr I.D. accompanied the article.

11. In this article the applicant stated, *inter alia*, that there were many ways to deviate from the ethics of science, but that the most primitive and dangerous way was to present the work of others as one's own, that "plagiarism" was, unlike in Turkey, an action frowned upon in Western culture, and those who committed it were seen as common criminals, that such actions were punished by the laws on copyright, and that in developing countries like Turkey creative ideas and their products had not yet reached the sacred untouchable status they had in developed countries. In this

1. The book was first published in 1952. The latest edition was published in 2000.
2. The book was first published in 1946.
3. Higher Education Council.
4. An academic appointment equivalent to associate professor.

connection, the applicant noted that the YÖK had decided to create an ethics committee to examine the publications of docent candidates. He maintained that plagiarism was so common that the YÖK's decision was well-founded, and proposed that the latter should approach its founder, I.D., and ask him to apologise for the plagiarisms he had committed. In this part of the article the applicant claimed that Professor Dr I.D.'s book *Mother's Book* was plagiarised from Dr Benjamin Spock's book *Baby and Childcare*. The applicant congratulated YÖK for the initiative of the ethics committee, but considered that it was not possible to correct "our ethics of science*"* without first dealing with this issue. Later in the article the applicant criticised the application of the statute of limitations to plagiarism and the lack of flexibility of the applicable sanction.

In a small box next to the article the applicant gave an account of his unsuccessful attempt to deal with plagiarism while head of the ethics committee at the Turkish Academy of Sciences. In this connection, he referred to the ethics committee's above-mentioned opinion regarding I.D. and the resistance it had encountered in that respect, prompting the resignation of committee members.

12. On 18 November 2000 the General Assembly of the Turkish Paediatrics Association condemned the above article published in *Milliyet*, considering it an attack on Professor Dr I.D.

C. Compensation proceedings

13. On 29 November 2000 Professor Dr I.D. ("the plaintiff") brought a civil action for compensation against the applicant before the Ankara Civil Court of First Instance on the ground, inter alia, that the applicant's assertion that the book written by the plaintiff entitled Mother's Book was plagiarised from Benjamin Spock's Baby and Childcare constituted an attack on his personality rights.

14. On an unspecified date the applicant brought a civil action for compensation against Professor Dr I.D. on the ground that some of the remarks made by the plaintiff constituted an attack on his own personality rights.

15. In the course of the proceedings before the Ankara Civil Court of First Instance that court decided to obtain an expert report with a view to establishing the veracity of the applicant's assertion that the plaintiff had committed plagiarism. It appointed two professors of paediatrics and one lawyer.

16. On an unspecified date the applicant objected to the appointment of the two professors of paediatrics on the ground that they both had close links with the plaintiff. In this connection, he stated that one of them currently worked and the other one had worked prior to his retirement at Hacettepe University, which had been established by the plaintiff, and that

they were members of the Turkish Paediatrics Association, which was also headed by the plaintiff.

17. On 18 September 2001 the expert report, which concluded that there had been no plagiarism, was submitted to the first-instance court. It held, in brief, that the content of Professor Dr I.D.'s book was "anonymous" information regarding child health and care which organisations such as WHO or UNICEF sought to have disseminated, that the plaintiff in the introduction to the book stated that the book had been compiled on the basis of questions asked by parents and conclusions reached from scientific research and experience of experts in the field, that it was natural for the two books to resemble each other – they were handbooks, and neither of them contained any bibliography or sources. In this connection, it pointed out similarities which existed in other similar handbooks, such as Mayo Clinic Family Health Book and John Hopkins Family Health Book. The experts also noted that the book in question was not a scientific publication. The report also assessed the merits of the complaint, holding that in the present case the plaintiff's personality rights had been violated.

18. On 25 October 2001 the Ankara Civil Court of First Instance (11th Division), relying on the conclusions reached by the expert report of 18 September 2001, held, inter alia, that the applicant's assertion was neither true nor topical. It ordered the applicant to pay compensation to Professor Dr I.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the impugned publication. Counterclaims by the applicant were dismissed, and those decisions subsequently became final, as the applicant did not lodge an appeal in this respect.

19. In his appeal to the Court of Cassation the applicant argued, inter alia, that two of the experts had close ties with the plaintiff and that therefore the expert report was biased. In this connection, the applicant submitted that the first expert was the plaintiff's student and that the second expert was a student of the first expert and that they were both members of the Turkish Paediatrics Association, which had already voiced its opinion on this subject. He maintained that experts should not be chosen from Bilkent University and Hacettepe University, because those universities had been set up by the plaintiff.

The applicant further argued, inter alia, that the domestic court had based its decision on the conclusions of an inadequate and biased report which contained praise for the plaintiff and that the applicant's comments were true, as had been attested to by witness and documentary evidence included in the case file, including a report dated 24 January 2001 and written by Professor Dr J.P., Professor of English Literature and Comparative Literature at Bogazici University. (This report compares the 1968 edition of *Mother's Book* with that of Dr Spock and concludes, *inter alia*, that a number of paragraphs and sentences in the plaintiff's book were copied

from Dr Spock's book by way of word-by-word translation and by using other methods considered as plagiarism. The report contains an annex with some examples.) The applicant further argued, by referring to various examples such as legal changes in domestic law provisions, that the issue of plagiarism was a topical subject.

20. On 14 May 2002 the Court of Cassation (4th Division) held a hearing and quashed the judgment of the first-instance court. In its decision it held that the first-instance court should first determine whether the allegations of plagiarism were well-founded. In this connection the court, inter alia, found the experts' report inadequate and not in compliance with the rules prescribed in Article 276 of the Civil Code of Procedure.

21. On 11 November 2002 the Court of Cassation dismissed the plaintiff's request for rectification of its decision.

22. When the case was remitted back to the first-instance court, the latter appointed as experts Professor Y.A., professor of paediatrics, Professor S.D., professor of paediatrics, and Professor Dr A.E., professor of English. These appointments were made on 4 February 2003. All these experts worked at Gazi University.

23. On 21 April 2003 the experts' report, which concluded that there had been no plagiarism, was submitted to the first-instance court. The experts compared the plaintiff's book with that of Dr Spock as translated into Turkish by Zuhal Avci, and noted, *inter alia*, that there was no similarity between the manner in which the two books were conceptualised and shaped, namely the number of pages, picture on the cover, and section headings. Underlining the differences in each section of the book, the experts also concluded that there were no similarities as regards the contents of the book. The experts noted that it was natural for certain information such as Apgar scales or symptoms of various childhood illnesses to be similar. In this connection, they held that these were not the "original views" of Dr Spock.

24. In the course of the proceedings the applicant objected to the report, particularly on the ground that the first two experts worked with a person close to the plaintiff and that they were themselves members of the Turkish Paediatrics Association.

25. Following objections to the report by the applicant, on 1 October 2003 the first-instance court appointed three new experts for a second report.

26. On various dates two of the court-appointed experts, namely Professor Dr D.B. and Professor Dr B.E., both professors of English language and literature at Hacettepe University, resigned because of a potential conflict of interest.

27. On 22 December 2003 the experts' report prepared by Professor Dr N.A., professor of paediatrics at the Ankara University School of Medicine, Professor Dr S.A., professor of paediatrics at the Ankara

University School of Medicine, and Professor Dr G.C., professor of English language and literature at Atılım University, was submitted to the court[1].

28. In this report, the experts submitted that they had compared the first edition of the plaintiff's book, published in 1952, with a copy of Dr Spock's book as originally published. In sum, the experts held that the plaintiff's book was a popular health book, that it was not a word-for-word translation or citation from Dr Spock's book, that in the first edition of his book the plaintiff referred at the end of his book to Dr Spock and J.H. Kenyon as regards the methodology he had followed, that there were sections in the book which did not exist in Dr Spock's book, and that the plaintiff's book contained national-specific matters and various laws and customs, but that in certain parts of the book there were paragraphs where the translation method had been used and which were similar to Dr Spock. As regards this last point the experts considered that these parts did not concern scientific information but anonymous information known to all paediatricians, and that following these paragraphs the plaintiff had referred to national-specific matters. They further considered that certain conditions required for scientific books, such as citation of sources, were not required for books published at that time, and that an acknowledgement only in the form of thanks sufficed.

The experts concluded that the book written by the plaintiff was a popular health book, that in its first edition he had thanked those whose books had inspired him, and that the book was in conformity with the rules of the time of its publication. In this connection, they noted that even today reference by full citation was mostly applicable only to scientific and academic books, and that even if such ethical rules should be held to be applicable to popular health books a book written in 1952 should not be judged by current standards.

29. On 29 December 2003 the applicant lodged a criminal complaint with the Ankara public prosecutor's office, claiming that the transcript of the court decision of 1 October 2003 regarding the appointment of experts, namely Professor Dr G.C., had been tampered with.

30. On 25 February 2004 the Ankara Civil Court of First Instance (11th Division) ordered the applicant to pay compensation to Professor Dr I.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the impugned publication.

In its decision, the court began by stating that, after the parties had asked the court to appoint experts, it had requested a list of qualified experts from all universities in Ankara and that it had appointed experts who had not taken part in the academic debate between the parties. It further added that

1. In the expert report Prof. Dr. G.C. represents herself as professor of English language and literature at Atılım University. However, it seems she was also working at Hacettepe University at the material time, as attested to by the official document submitted by that University suggesting her to the first-instance court.

following the applicant's objection to the first report the court had commissioned a second expert's report.

The court, referring to the evidence in the case file, held that the book written by the plaintiff was not a copy of the book written by Dr Spock, that it was a genuine publication, and that therefore the applicant's assertion was not correct. It found therefore that there had been an unlawful attack on the plaintiff's personality rights and scientific career.

31. The applicant appealed, complaining, inter alia, that one of the experts, Professor Dr G.C., was working at Hacettepe University, which gave rise to concerns as to her impartiality.

32. On 19 October 2004 the Court of Cassation (4th Division) held a hearing and quashed the judgment of the first-instance court. The court, after referring to the importance of citation of sources in publications, especially scientific publications, held, relying on the information provided in the experts' report, that a mere reference to Dr Spock, as regards the methodology followed in the book, in the original edition, was not sufficient to consider that the plaintiff had made a proper reference and that, in addition, in subsequent editions there was no such reference in the book in question. It therefore found no unlawfulness in the applicant's remarks and held that the case should be dismissed.

33. On 8 November 2005 the Ankara Civil Court of First Instance (11th Division) decided not to abide by the decision of the Court of Cassation, and ordered the applicant to pay compensation to Professor Dr I.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the impugned publication. In its decision, it held, inter alia, that experts had been appointed in accordance with the previous decision of the Court of Cassation, that these experts had concluded that there had been no plagiarism, and that the court could not draw conclusions which were contrary to the assessment of the experts. The court held that the applicant had suggested that the plaintiff had committed plagiarism, which under the disciplinary regulation of the YÖK required the heavy sanction of expulsion from the university. It underlined in this connection that everyone had the right to criticise a person exercising a public function. However, criticism which overstepped objective boundaries and became unjust vilification or belittling in bad faith was unlawful. In the circumstances of the present case, the court considered that the plaintiff's personality rights had been infringed.

34. In his appeal to the Plenary Session of the Court of Cassation, the applicant underlined, *inter alia*, that the first-instance court had failed to properly assess the decision of the Court of Cassation. In particular, the court had failed to address the fact that there were parts of the book which were translations, and that a reference to Dr Spock in the first edition, which in any event does not figure in later editions, could not be considered a proper citation. In this connection, the applicant underlined that using a

methodology adopted in another book and repeating the same words and paragraphs cannot be considered provision of anonymous information, and that there was no scientific basis for the first-instance court's view that plagiarism only applied to original ideas.

The applicant repeated, *inter alia*, that there was no unlawfulness in his assertion that the plaintiff had in his book plagiarised from Dr Spock's book by way of translation and quotations without providing proper references, that this fact was already known by the public as such allegations had been previously made by others and the plaintiff had failed to sue them, and that the voicing of this fact was in the public interest.

The applicant further criticised the wording of the decision, in particular the use of capital letters to emphasise certain words, and others.

35. On 10 May 2006 the Court of Cassation (plenary session), by a majority, upheld the judgment of the first-instance court. In its decision, the court held, *inter alia*, that all the experts' reports included in the case file since the beginning had insistently underlined that both books were handbooks, that they contained anonymous information and not original ideas developed by the authors, and that therefore it was not necessary to provide references therein. It further considered that, contrary to the experts' reports, the applicant had since 1998 brought similar criticisms against the plaintiff, leading sometimes, as in the present case, to unlawful attacks on the plaintiff's personality rights. In the present case the applicant in the article in question had insulted the plaintiff and attacked his personality rights instead of assessing the establishment of the ethics committee by the YÖK. The court considered that there was not even the smallest connection between the subject of the article and the plaintiff. It therefore found that the subject was not topical. The court maintained that there was no reason why the applicant would include the plaintiff in this subject. It therefore held that the incident, as established by experts' reports, was not only false but also not topical.

The court further noted that when it had first quashed the decision of the first-instance court, the Court of Cassation (4th Division) had held that the veracity of the allegation was to be established by a report written by experts on the subject and that the first-instance court should make its decision on the basis of that report. It therefore held that if the report concluded that there had been no plagiarism, the applicant's article - as it was not topical - would constitute an attack on personality rights and an award of compensation would be required.

It considered that since the first-instance court had decided to abide by the above decision of the Court of Cassation there was an acquired procedural right in favour of the plaintiff. It considered, however, that the 4th Division, in its second decision to quash the first-instance court judgment, had revised its view and, contrary to the experts' report, had taken the view that the book was a scientific publication. In this connection,

the court referred to its case-law in which it had previously held that where an issue required expertise judges could not rule on it on the basis of their own personal views and opinions. It underlined that this case-law was also applicable to the Court of Cassation. Otherwise, the acquired procedural right would be violated.

The court underlined the conditions that must be met for compensation to be awarded for an attack on personality rights in the press: unlawfulness, fault, damage and interconnectedness between reason and conclusion. It further held that for a published criticism or news item to be held unlawful there must be a violation under one of the following criteria: truthfulness, topicality, public interest, public good and interconnectedness between the subject, form and idea.

The court noted that in the present case, according to experts' reports, the article published in *Milliyet* was not true, that the article was not topical, and the opinions expressed in the article exceeded the limits of criticism and insulted the plaintiff.

It further found that the 4th Division's assessment referred to above was contrary to its case-law regarding the assessment of experts' reports.

The court therefore found that the first-instance court's decision to resist the 4th Division's judgment was justified. It transferred the case back to the 4th Division of the Court of Cassation for determination of the amount of compensation.

Two dissenting members (judges sitting on the bench of the 4th Division) considered, *inter alia*, that in the instant case the conditions of public interest, topicality and veracity had been met, and that the form and the words used by the applicant in his criticism of an important public figure and academic was not contrary to law.

36. On 27 September 2006 the Court of Cassation (plenary session) dismissed a request by the applicant for rectification of its decision.

37. On 16 November 2006 the Court of Cassation (4th Division), finding the amount awarded to the plaintiff excessive, reduced the amount of compensation to 2,500 new Turkish liras (TRY).

38. On 14 March 2007 the Court of Cassation (4th Division) dismissed the parties' request for rectification of its decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. A description of the relevant domestic law at the material time can be found in *Sapan v. Turkey*, no. 44102/04, §§ 24-25, 8 June 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6, 10 AND 14 OF THE CONVENTION

40. The applicant complained that there had been an unjustified interference with his freedom of expression, in breach of Article 10 of the Convention. In addition, in the application form, the applicant made lengthy and detailed submissions criticising the manner in which the proceedings had been conducted before the first-instance court, especially the appointment of experts and admission of evidence and the manner in which the first-instance court and the Court of Cassation had assessed the evidence and the applicable procedural rules. In this connection, the applicant emphasised what he described as the inappropriate way in which the domestic courts had praised the plaintiff in their decisions. In his view these flaws in the proceedings demonstrated that the domestic courts lacked the requisite impartiality *vis-à-vis* the plaintiff, and that they had been unduly influenced by his status. He claimed a violation of his rights under Articles 6 and 14 of the Convention.

41. The Court considers that the applicant's complaints should be examined under Article 10 alone, the relevant parts of which read:

> "1. 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 ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ..."

A. Admissibility

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The Government maintained that there had been no breach of the applicant's right to freedom of expression in the instant case. In this connection, they submitted that interference with the exercise of the applicant's right to freedom of expression had been in accordance with the

second paragraph of Article 10. The Government submitted that the impugned interference had been based on Article 24 of the Civil Code and pursued the legitimate aim of protecting the reputation and rights of others. They referred to various passages of the domestic court decisions to underline that the applicant had made a serious accusation against a public official and that this accusation had been examined by the domestic courts and found to be unfounded. The outcome of the proceedings was therefore necessary and proportionate to the legitimate aim pursued, including the amount of compensation awarded.

44. The applicant maintained his allegations. In particular, by referring to a number of Court judgments, notably *Sorguç v. Turkey* (no. 17089/03, § 35, 23 June 2009), *Başkaya and Okçuoğlu v. Turkey* ([GC], nos. 23536/94 and 24408/94, § 65, ECHR 1999-IV), *Oberschlick v. Austria* (no. 1) (23May 1991, § 57, Series A no. 204) and *Lingens v. Austria* (8 July 1986, §§ 41-42, Series A no. 103), he underlined that he was an academic who had exercised his freedom of expression in the area of freedom of the press, and that he was acting in the public interest by informing the public about a public figure. In this connection, the applicant emphasised that the plaintiff had been the founder of the Turkish Paediatrics Association and the Higher Education Council, and that his accusations had previously been brought to the attention of the public by a prominent journalist and confirmed by the Ethics Committee of the Turkish Academy of Sciences, which had been headed by the applicant. In addition, he submitted that the book contained outdated information on baby sleeping positions (Dr Spock had updated this part in his 1998 edition but the plaintiff had not) which demonstrated that plagiarism, apart from being unethical, also constituted a public threat. The applicant asserted the truthfulness of his accusation regarding plagiarism and considered that he had not been given the opportunity to prove it because of the biased expert reports. He further criticised the domestic courts' assessment that citations were not necessary as the book was a handbook, and lamented that the domestic courts had sacrificed his freedom of expression for the sake of protecting the plaintiff's reputation.

2. The Court's assessment

45. The Court considers that the final judgment given in the compensation case brought by Mr I.D. for the protection of his personal rights interfered with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

a) Prescribed by law and legitimate aim

46. It accepts that the interference in question was prescribed by law, namely, Article 24 of the Civil Code, and that it pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

b) Necessary in a democratic society

47. In the present case what is in issue is whether the interference was "necessary in a democratic society".

48. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among others, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and the references cited therein).

49. The test of "necessary in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 41, 21 February 2012).

50. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts, but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued". In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV, and *Mengi v. Turkey*, nos. 13471/05, and 38787/07, § 48, 27 November 2012).

51. In this connection, the Court reiterates that in order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part

of the right secured by Article 10. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

52. Moreover, when called upon to examine the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011).

53. Various factors, such as the contribution made by the article to a debate of general interest, how well known the person is and the subject of the publication, the previous conduct of the person concerned, the content, form and consequences of the publication, and the severity of the sanction imposed, are taken into account by the Court in its balancing exercise (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012, and *Mengi*, cited above, § 52).

54. Finally, the Court reiterates that the procedural guarantees afforded to the defendants in defamation proceedings are among the factors to be taken into account in assessing the proportionality of the interference under Article 10. In particular, it is important that the defendant is afforded a realistic chance to prove that the factual basis for his allegations was true. A lack of procedural fairness and equality may give rise to a breach of Article 10 (see, for example, *Andrushko v. Russia*, no. 4260/04, § 53, 14 October 2010, and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II).

55. Turning to the facts of the case, the Court notes that the applicant was an academic who was also the former head of the ethics committee of the Turkish Academy of Sciences. The subject of plagiarism therefore was of particular interest to him, and, as his previous attempts before the Turkish Academy of Sciences attest, the applicant firmly believed that the plaintiff has committed plagiarism in his book *Mother's Book* (see paragraphs 6 and 7 above). In this connection, the Court underlines the importance of academic freedom, which enshrines academics' freedom to freely express their opinion about the institution or system in which they work, and freedom to distribute knowledge and truth without restriction (see *Sorguç v. Turkey*, no. 17089/03, § 35, 23 June 2009).

56. It observes that the plaintiff in question was a highly renowned academic who had assumed an important public function in the field of education by heading the Higher Education Council between 1981 and 1992 and had set up two important universities in Turkey. Therefore, at the time of the publication of the article he was well known as a public figure. He was thus expected to tolerate a greater degree of public scrutiny which may have a negative impact on his honour and reputation, particularly within the context of the subject matter at issue, than any private individual.

57. The applicant was ordered to pay damages for defamation on account of an article published in *Milliyet* on 15 November 2000 in which he had alleged that the plaintiff had committed plagiarism in his book entitled *Mother's Book*. The allegation in question was raised by the applicant in the course of the debate regarding the introduction of an ethics committee by the Higher Education Council. The Court finds that the subject matter of the article in question, including the applicant's view that the efforts of the Higher Education Council would be fruitless if they did not tackle the plagiarism committed by its former head, concerned important issues in a democratic society which the public had a legitimate interest in being informed about and in particular having regard to the position of the plaintiff vis-à-vis the institution concerned, the Court finds that the applicant's allegation of plagiarism committed by him was of public interest. In this connection, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 102, ECHR 2013 (extracts)).

58. The Court notes that, in the course of the domestic proceedings, the first-instance court repeatedly found that there had been an unlawful attack on the plaintiff's personality rights. In this connection, it emphasised that the applicant's allegation was untrue (see paragraphs 18, 30 and 33 above). Conversely, in its decision on 19 October 2004, the 4th Division of the Court of Cassation quashed the first-instance court judgment on the ground that the remarks made by the applicant in the article in question were not unlawful (see paragraph 32 above). The issue was examined by the Plenary Session of the Court of Cassation, which concluded that the applicant's allegations in the article published by *Milliyet* were untrue and that the article was not topical, and that the opinions expressed in the article exceeded the limits of criticism and amounted to insult (see paragraph 35 above).

59. At the outset, the Court observes that the Plenary Session of the Court of Cassation did not, in its analysis, attach any importance to the applicant's right to freedom of expression, nor did it balance it in any considered way against the plaintiff's right to reputation. In particular, the court did not distinguish statements of fact from value judgments, nor did it give any proper consideration as to the public interest in the publication of

the article in question, including the allegation of plagiarism directed at the plaintiff. Other considerations, such as the impact of the article on the plaintiff's personal and private life and the fact that similar allegations akin to the one voiced by the applicant had already been made in the public domain, were also absent from the reasoning of the judgment of the Plenary Session of the Court of Cassation.

60. Rather, the Court notes that the central issue before the Plenary Session of the Court of Cassation was the truthfulness of the applicant's allegation of plagiarism and whether this allegation was topical.

61. As regards the first issue the Court notes that the statements made by the applicant so far as they concerned the allegation that the plaintiff had plagiarised in his book *Mother's Book* from Dr Spock's book *Baby and Childcare* were clearly allegations of fact and not value judgments, and as such susceptible to proof. This is not contested by the parties. In fact, the applicant complains that he was not given the opportunity to prove the truth of his statements because of biased expert reports.

62. The Court reiterates that people prosecuted as a result of comments they make about a topic of general interest must have an opportunity to absolve themselves of liability by establishing that they acted in good faith and, in the case of factual allegations, by proving they are true (see *Mamère v. France*, no. 12697/03, § 23, ECHR 2006-XIII, and the cases referred to therein).

63. In this connection, the Court notes that, in various contexts, it has held that a lack of neutrality on the part of a court-appointed expert may in certain circumstances give rise to a breach of the principle of equality of arms inherent in the concept of a fair trial (see, for example the Court's considerations under Article 6 in *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47 et seq, 5 July 2007; under Article 8 in *Lashin v. Russia*, no. 33117/02, § 87 et seq, 22 January 2013; and under Article 2 in *Bajić v. Croatia*, no. 41108/10, § 95 et seq, 13 November 2012). Likewise, it considers that where the opinion of an expert is likely to play a decisive role in the proceedings the expert's neutrality becomes an important requirement which should be given due consideration in the Court's assessment as to the procedural guarantees afforded under Article 10 to defendants in defamation proceedings.

64. In the present case, there is no doubt that the domestic courts relied exclusively on court-appointed experts' opinions, the neutrality of which was challenged by the applicant, when deciding on the truthfulness of the applicant's allegations.

65. The Court notes that, in the course of the proceedings, the first-instance court commissioned three expert reports. As regards the first experts' report the Court underlines that both the composition of the panel and the quality of the report were criticised by the Court of Cassation and this led to the quashing of the first-instance court's decision on 14 May

2002 (see paragraph 20 above). As regards the second expert report, it was set aside by the first-instance court following objections from the applicant (see paragraph 25 above). Despite the above, the Court observes that the Plenary Session of the Court of Cassation relied on the conclusions of those reports in its judgment (see paragraph 35 above).

66. As regards the third expert report, the first-instance court ended up appointing a staff member from Hacettepe University, one of the universities founded by the plaintiff (see paragraph 31 above), and this following the resignation of two previously appointed experts both working at the same university (see paragraph 26 above). The Court observes that this report found that various parts of the book were translated parts of Dr Spock's book. However, the Plenary Session of the Court of Cassation failed to assess whether this fact, namely that certain parts of the book were translated from Dr Spock's book was sufficient for the purposes of establishing the applicant's good faith or truthfulness of his assertion. It underlines, in this respect, that it is not the Court's task to rule on the issue of the veracity of the applicant's allegations of plagiarism. Rather, its examination of the issue is essentially from the standpoint of the relevance and sufficiency of the reasons given by the domestic courts in the proceedings in question and whether the standards applied, including procedural guarantees, were in conformity with the principles embodied in Article 10. For the Court, there is a lack of clarity in the decision of the Plenary Session of the Court of Cassation as to what is considered as plagiarism under domestic law and practice and the standard of proof the domestic courts require under Turkish law to prove such allegations before the domestic courts.

67. In this connection, the Court also takes note that the evidence submitted by the applicant with a view to proving his allegations, in particular the private expert report (see paragraph 19 above), was not assessed by the Plenary Session of the Court of Cassation, and no reason was provided as to why this was so.

68. In so far as the Plenary Session of the Court of Cassation attached some importance in its examination to the question of whether the applicant's statements were topical, the Court observes that undue weight was given to the fact that the applicant had previously voiced similar allegations against the plaintiff. In its opinion this cannot alter the fact that the applicant's allegation, that the former head of the Higher Education Council had committed plagiarism in one of his books, was closely linked to the subject matter of the article, namely the establishment of an ethics committee by the Higher Education Council in order to tackle plagiarism in academia, and was thus topical.

69. In the light of the above considerations, and notwithstanding the national authorities' margin of appreciation, the Court, given the disregard by the Plenary Session of the Court of Cassation of elements that should be

taken into account in the balancing exercise in a case which involves a conflict between the right to freedom of expression and the protection of the reputation or rights of others, as well as the lack of procedural guarantees, considers that the interference with the applicant's freedom of expression was not based on sufficient reasons to show that the interference complained of was necessary in a democratic society for the protection of the reputation and rights of others. This finding makes it unnecessary for the Court to pursue an examination in order to determine whether the amount of compensation which the applicant was ordered to pay was proportionate to the aim pursued. It follows that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

70. The applicant further complained that the length of the compensation proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

71. The Court observes, at the outset, that a new domestic remedy has been established in Turkey since the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). The Court observes that in its decision in the case of *Turgut and Others v. Turke*y (no. 4860/09, 26 March 2013), it declared a new application inadmissible on the ground that the applicants had failed to exhaust the domestic remedies, as a new domestic remedy had been set up. In so doing, the Court in particular considered that this new remedy was, *a priori*, accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

72. The Court further notes that in its decision in the case of *Ümmühan Kaplan* (cited above, § 77) it stressed that it could pursue the examination of applications of this type which have already been communicated to the Government. It further notes that in the present case the Government did not raise an objection in respect of the new domestic remedy.

73. In view of the above, the Court decides to pursue the examination of the present application. However, it notes that this conclusion is without prejudice to an exception that may ultimately be raised by the Government in the context of other communicated applications (see *İbrahim Güler v. Turkey*, no. 1942/08, § 39, 15 October 2013).

74. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

75. The Government claimed that the proceedings in question started on 25 October 2001 and ended on 14 March 2007, and thus lasted five years and five months. In particular, they argued that the case was a complex one, concerning accusations of plagiarism from a medical book written in English, and required meticulous examination by the domestic courts. In this connection, they submitted that a certain amount of time had elapsed when the panel of experts was being set up, especially as the applicant had contested the composition of that panel. The Government considered that there was no period of inactivity attributable to the domestic courts.

76. The applicant maintained his allegations. In particular, he underlined that the proceedings had lasted for six years and five months, and that the main reason for its length had been the attitude of the first-instance court in favour of the plaintiff, and not the complex nature of the case claimed by the Government.

2. The Court's assessment

a) Period to be taken into consideration

77. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable time" requirement laid down by Article 6 § 1 began on 29 November 2000, when Mr I.D. lodged an action for compensation against the applicant before the Ankara Civil Court of First Instance, and ended on 14 March 2007, when the Court of Cassation dismissed the applicant's request for rectification of its judgment. They therefore lasted approximately six years and a little over three months at two levels of jurisdiction, which examined the case several times each.

b) Reasonableness of the length of the proceedings

78. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Oyal v. Turkey*, no. 4864/05, § 85, 23 March 2010, and the cases referred to therein).

79. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, in particular, *Ümmühan Kaplan* (cited above, §§ 46-48)).

80. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

81. There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

> "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. Damage

83. The applicant claimed to have suffered pecuniary damage. In this connection, he submitted that he had paid 8,365 Turkish liras (TRY) (approximately 4,682 Euros (EUR)) to the plaintiff, and that he had been deprived of legal interest on this amount since that time. The applicant further claimed TRY 15,000 (approximately EUR 6,886) in respect of non-pecuniary damage.

84. The Government contested the claims. In particular, they considered that there was no causal link between the pecuniary damage claimed and the alleged violation of the Convention. The Government further found the amount claimed in respect of non-pecuniary damage exorbitant.

85. The Court is satisfied that there is a causal link between the pecuniary damage referred to by the applicant and the violation of the Convention found above. Therefore, the Court finds that the reimbursement by the Government of the compensation paid by the applicant, plus the statutory interest applicable under domestic law, running from the date when the applicant paid it, would satisfy his claim in respect of pecuniary damage (see *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 57, 21 February 2012).

86. It further accepts that the applicant suffered distress and frustration as a result of the violations of the Convention which cannot be adequately compensated by the findings in this respect. Making an assessment on an equitable basis, the Court awards the applicant 6,500 euros (EUR) under this head.

B. Costs and expenses

87. The applicant also claimed TRY 4,199.039 (approximately EUR 1,928) for costs and expenses incurred before the domestic courts. This sum included court expenses, postage fees and travelling expenses. Relevant receipts have been provided to the Court. The applicant made no specific claims for costs and expenses incurred before the Court.

88. The Government contested the claims. In particular, they considered that there was no evidence to demonstrate that the travel expenses claimed were incurred in connection with the case.

89. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for costs and expenses in the domestic proceedings.

90. It makes no award, in the absence of any specific claim or supporting documents, in respect of costs and expenses incurred before the Court.

C. Default interest

91. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by 6 votes to 1, that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the compensation paid by him, plus the statutory interest applicable under domestic law, running from the date of that payment, and to pay the applicant within the same period

EUR 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on these amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge R. Spano is annexed to this judgment.

G.R.A.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE SPANO

I.

1. I agree with the Court that the applicant's right to freedom of expression under Article 10 has been violated on the facts of this case. However, as regards his complaint under Article 6 § 1, that the length of the domestic proceedings was unreasonable, I respectfully dissent.

2. According to the well-established case-law of the Court, when examining complaints of this kind under Article 6 § 1, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France*, [GC], 30979/96, § 43, 27 June 2000).

3. In many cases dealt with by the Court, it is evident right at the outset that the length of proceedings at domestic level has been excessive and no reasonable justification can be provided by the respondent Government. This applies especially in those contracting States where the Court has previously found systemic and structural problems within the judicial systems in relation to the length of proceedings (see paragraph 79 of the judgment and the case cited therein). In such cases, the Court is justified in applying the *Frydlender* criteria in a way that takes account of the effective and expeditious use of the Court's limited resources, thus limiting somewhat its reasoning in the light of the particular facts of the case.

4. However, the Court must, in my view, always be mindful that the test to be applied under Article 6 § 1 demands, in principle, a case-by-case approach. If the Government can, in a particular case, provide plausible justifications for the length of the proceedings in question, it is incumbent on the Court to examine on the basis of the above-mentioned criteria (see paragraph 2 above) whether there has been a violation of Article 6 § 1 on the facts. This applies, at least, where the total period to be taken into consideration does not, *prima facie*, lead to the conclusion that it is evident that the length of the domestic proceedings has been excessive. Hence, a more in-depth examination of the facts is warranted.

In my view, this is such a case.

II.

5. The Court correctly concludes (see paragraph 77) that the proceedings in this case lasted approximately six years and a little over three months. As can be inferred from the lack of reasoning in paragraph 79, the Court held that this time frame, in and of itself, warranted the conclusion that an Article 6 § 1 violation had occurred, taking into account similar cases previously decided involving complaints of this type against the respondent Government.

6. The time-line of the judicial proceedings in this case is described in detail in paragraphs 13-38. In my view, the following chronological summary of events will demonstrate that if one examines the facts on the basis of the *Frydlender* criteria, as mentioned in paragraph 2 above, one should conclude that the length of the proceedings, examined in their entirety and in context, was *reasonable* within the meaning of Article 6 § 1 of the Convention.

III.

7. The plaintiff in this case brought a civil action against the applicant for compensation on 29 November 2000. In examining the length of the ensuing proceedings it is important under the applicable test to note that in the present case the plaintiff's personality rights and the applicant's freedom of expression were implicated. It was therefore clearly justified for the domestic courts to pursue the matter in a comprehensive and diligent manner. In the course of the proceedings the first-instance court thus obtained experts' reports, but the applicant objected to the appointment of the experts in question and his actions in this regard undoubtedly had some effect on the timely progress of the proceedings.

8. On 25 October 2001, eleven months after the civil action was brought, the first-instance court gave judgment in the case, finding for the plaintiff.

9. The applicant appealed on an unspecified date. Just under seven months after the judgment of the first-instance court, the Fourth Division of the Court of Cassation gave judgment, quashing the lower court judgment. The plaintiff sought rectification of that judgment, which was rejected on 11 November 2002, just under seven months from the appellate judgment on the merits.

10. Three months later, on 4 February 2003, the first-instance court appointed new experts in the light of the judgment of the Fourth Division of the Court of Cassation, and on 21 April 2003, just over two and a half months later, a new experts' report was submitted to the Court. The applicant again objected to the report and the appointment of the experts. Thus, on 1 October 2003, just over five months after the submission of the second experts' report, the first-instance court appointed three new experts. Just over one month later, on 22 December 2003, the new experts' report was submitted. Two months later, on 25 February 2004, the first-instance court gave judgment again.

11. The applicant appealed again. Just over seven months later, on 19 October 2004, the Fourth Division of the Court of Cassation gave judgment a second time and, again, quashed the judgment of the first-instance court, in the applicant's favour. Just over a year later, on 8 November 2005, the first-instance court decided to disregard the judgment of the Fourth Division of the Court of Cassation and ordered the applicant to pay compensation.

12. Naturally, the applicant appealed a third time to the Court of Cassation, his appeal, according to domestic law, coming before the Plenary Session of the Court of Cassation. The Plenary Session gave judgment against the applicant on 10 May 2006, just over a year and a half after the first-instance court had disregarded the judgment of the Fourth Division. However, it is of some significance in this respect that the date of the applicant's appeal to the Plenary Session is unspecified in the documents provided to the Court, nor is there any information on whether and when observations were submitted by the parties before the Plenary Session.

13. The applicant then requested the rectification of the judgment of the Plenary Session, which rejected his plea on 27 September 2006, just over four months after giving judgment in May of the same year. Just over two months later, on 16 November 2007, the Plenary Session decided, however, to reduce the amount of compensation. Lastly, four months later, on 14 March 2007, the Plenary Session rejected a request from both parties to rectify its judgment.

IV.

14. The length of the proceedings in the present case was, viewed objectively, rather long. However, the applicable test under the Court's case law requires an examination on whether delays that may be attributed to the State were the predominant cause or whether other factors were at play. In my view, it is clear that taking into account the complexity of the factual and legal questions at stake, the need to obtain experts' reports and the objections made by the applicant in that regard, the difficulty of the issue of plagiarism in the Turkish legal system and its ramifications within the academic environment, and, lastly, the issues involved for both parties, the Government have adequately demonstrated that the length of the proceedings was, taken in its entirety and in context, justified.

In sum, I am of the opinion that there has been no violation of Article 6 § 1 in the present case.