European Court of Human Rights: *Özlü v. Türkiye* and three other judgments *v. Türkiye* relating to content on social media

IRIS 2024-10:1/22

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The European Court of Human Rights (ECtHR), in a judgment of 8 October 2024, once again found a violation by the Turkish authorities of the right to freedom of expression on social media, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). In *Özlü v. Türkiye* the ECtHR found that some statements on Twitter (now X) posted by the applicant might be regarded as a sharp and exaggerated criticism of the organs of the state and its officials, but it found that they were not gratuitously offensive or insulting and did not incite violence or hatred. The ECtHR concluded that the criminal conviction of Özlü was in breach of the applicant's right to freedom of expression. In three other judgments on the same day the ECtHR also found violations of the right to freedom of expression because of (suspended) convictions on account of content the applicants had posted on Facebook.

By an indictment in November 2017, the public prosecutor charged Özlü with the offence of the public denigration of the Turkish nation, the Republic of Türkiye, the Grand National Assembly of Türkiye and the judicial bodies of the state pursuant to Article 301 of the Turkish Criminal Code, due to nine different publications Özlü had posted on his Twitter account. In 2020 Özlü was sentenced to five months in prison on account of the litigious messages on Twitter. The pronouncement of the judgment was suspended, however, and Özlü was subjected to a five-year supervision period. Both the Assize Court and the Constitutional Court dismissed Özlü's appeals. Relying on Article 10 ECHR Özlü complained about the criminal proceedings brought against him because of his publications on social media.

The ECtHR again rejected the argument by the Turkish Government invoking Article 17 ECHR (see also *Gümüs v. Türkiye*, IRIS 2024-9:1/24) alleging that the messages at issue amounted to clear defamation and were specifically directed at organs of the state. The government argued that therefore Özlü could not claim the protection of Article 10 ECHR. The ECtHR found, however, that the content of the litigious posts, which essentially constituted political criticism, was not sufficient to demonstrate that Özlü was seeking to destroy the rights and freedoms guaranteed by the ECHR. Accordingly, the Court found no evidence of an abuse of rights within the meaning of Article 17 ECHR and therefore Özlü was

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not deprived of the protection of Article 10 ECHR.

Next the ECtHR considered that the criminal conviction of Özlü with the suspension of the pronouncement of the judgment, including a five-year supervision period, amounted to an interference with Özlü's exercise of his right to freedom of expression in view of the deterrent effect it may have had. The ECtHR focussed on the question of the necessity in a democratic society of the interference complained of. It noted that the posts at issue communicated ideas and opinions on current political and judicial news and debates at the time and thus contributed to a debate of public interest in a democratic society. Despite the severity of some of the expressions used, the posts could be regarded as a sharp and exaggerated criticism of the organs of the state and its officials. But these posts were devoid of any gratuitously offensive or insulting character and did not incite violence or hatred. The ECtHR also considered that, by sentencing Özlü to a term of imprisonment, even though the pronouncement of the judgment was suspended, the judicial authorities' decision had a chilling effect on Özlü's desire to express his views on matters of public interest. The ECtHR concluded that the measure in question did not meet a pressing social need, that it was not, in any event, proportionate to the legitimate aims pursued and that, therefore, it was not necessary in a democratic society. Accordingly, the ECtHR found a violation of Article 10 ECHR in the case of *Özlü v. Türkiye*.

On the same day, 8 October 2024, the ECtHR delivered three other judgments in which it found that Türkiye had breached the freedom of expression rights of the applicants by convicting them of insulting the president (*Açıkgöz v.Türkiye* and *Erdoğan and Others v. Türkiye*) or insulting the prime minister as a public official (*Yorulmaz v. Türkiye*). In all three cases the applicants were given a prison sentence combined with a measure of suspension of the pronouncement of the judgment on account of content they had posted on Facebook. In line with the judgment in the case of *Durukan and Birol v. Türkiye* (IRIS 2023-10:1/22) and more recently *Gümüs v. Türkiye* (IRIS 2024-9:1/24) the ECtHR in *Açıkgöz v. Türkiy* e and *Erdoğan and Others v. Türkiye* found that the interference with the applicants' rights under Article 10 ECHR did not afford the requisite protection against arbitrary abuse by the public authorities. In the case of *Yorulmaz v. Türkiye* the ECtHR considered that the Turkish courts did not provide a satisfactory analysis of the question of whether the then prime minister's right to respect for his private life could justify, in the circumstances of the case, the interference with Yorulmaz's right to freedom of expression by his criminal conviction. The ECtHR referred in particular to the status of the prime minister as a politician, the context of the impugned social media post of the applicant, and the deterrent effect that this criminal conviction, even if the pronouncement of the sentence had been suspended, could have on Yorulmaz's exercise of his freedom of expression.

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Judgment by the European Court of Human Rights, Second Section sitting as a Committee, in the case of Özlü v. Türkiye, Application No. 45204/20, 8 October 2024

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Judgment by the European Court of Human Rights, Second Section sitting as a Committee, in the case of Açıkgöz v. Türkiye, Application No. 45123/20, 8 October 2024

https://hudoc.echr.coe.int/eng?i=001-236143

Judgment by the European Court of Human Rights, Second Section sitting as a Committee, in the case of Erdoğan and Others v. Türkiye, Application No. 61243/19 and 3 others, 8 October 2024

https://hudoc.echr.coe.int/eng?i=001-236138

Judgment by the European Court of Human Rights, Second Section sitting as a Committee, in the case of Yorulmaz v. Türkiye, Application No. 41400/19, 8 October 2024

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