European Court of Human Rights: Case of Yalçin Küçük (nr. 3) v. Turkey

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On 22 April 2008, the European Court of Human Rights found a breach of freedom of expression in the case of Yalçin Küçük (nr. 3) v. Turkey. Küçük, a university professor and a writer, who was prosecuted on account of various speeches he gave and articles he wrote concerning the Kurdish question. In 1999, the Ankara State Security Court found him guilty of inciting hatred and hostility, of emitting separatist propaganda and of belonging to an armed group (art. 312 § 2 and art. 168 § 2 of the Criminal Code and art. 8 of the Antiterrorism Act nr. 3713). He was also convicted of assisting an armed group (art. 169 Criminal Code) on the basis of an interview for Med-TV in which Küçük had welcomed the PKK-leader Abdullah Öcalan as “Mister President” and had invited him to make a statement about the Kurdish question.

Küçük had to undergo a prison sentence of six years and six months and was ordered to pay a fine of EUR 1,300. Relying on Article 6 § 1 and Article 10 of the European Convention on Human Rights, he complained that the proceedings had been unfair and that his right to freedom of expression had been breached.

The European Court in its judgment of 22 April 2008 considered that the grounds adopted by the Turkish courts could not be regarded in themselves as sufficient to justify interference with Külçük’s right to freedom of expression. While certain comments in the offending articles and speeches sought to justify separatism, which thus made them hostile in tone, taken as a whole they did not, however, advocate the use of violence, armed resistance or an uprising and did not constitute hate speech, which, in the Court’s view, was the essential factor to be taken into consideration. One speech by Külçük, however, contained a sentence considered as incitement to violence and therefore could not invoke the protection guaranteed by Article 10 of the Convention.

The European Court, referring to the nature and the severity of the sanctions, found that Külçük’s conviction as a whole had been disproportionate to the aims pursued and, accordingly, was not “necessary in a democratic society”. The Court in particular referred to the severity of the sentence of imprisonment for six years and six months. The Court held, unanimously, that there had been a violation of Article 10 and that it did not need to examine the complaints submitted under Article 6 of the Convention. It awarded Küçük EUR 3,000 in respect of non-pecuniary damage.

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Arrêt de la Cour européenne des Droits de l'Homme (quatrième section), affaire Yalçin Küçük (n° 3) c. Turquie, requête n° 71353/01 du 22 avril 2008

Judgment by the European Court of Human Rights (fourth section), case of Yalçin Küçük (n° 3) v. Turkey, Application no. 71353/01 of 22 April 2008

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