European Court of Human Rights: Tuşalp v. Turkey

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On 21 February 2012, the European Court of Human Rights has once again found an unjustified interference with the right to freedom of expression and press freedom by the Turkish authorities. The peculiarity this time is that the Prime Minister, Mr Recep Tayyip Erdoğan, himself lies at the centre of the violation of the European Convention by the Strasbourg Court. In the case Tuşalp v. Turkey the European Court was asked to consider whether two defamation actions taken by the Prime Minister of Turkey against a journalist for protection of his personality rights were compatible with Article 10 of the European Convention. The applicant was Erbil Tuşalp, a journalist and author of several books. He criticised in two articles, published in the newspaper Birgün, the alleged illegal conduct and corruption of high-ranking politicians, also including the Prime Minister in his commentary. The Prime Minister brought civil actions for compensation against the journalist and the publishing company before the Turkish courts on the ground that certain remarks in the articles constituted an attack on his personality rights. The Turkish courts considered that the remarks made in the articles indeed went beyond the limits of acceptable criticism and belittled the Prime Minister in the public and the political arena. According to the domestic courts, Tuşalp had published allegations of a kind that one cannot make about a Prime Minister, including the second article that had alleged that the Prime Minister had psychological problems and that he had a hostile attitude suggesting he was mentally ill. The journalist and publishing company were ordered to pay TRY 10,000 (EUR 4,300) in compensation.

The European Court of Human Rights however disagreed with the findings of the Turkish courts. The Court considered that the articles concerned comments and views on current events. Both articles focused on very important matters in a democratic society which the public had an interest in being informed about and fell within the scope of political debate. The Court also considered the balance between Tuşalp's interest in conveying his views, and the Prime Minister's interests in having his reputation protected and being protected against personal insult. The European Court considers that, even assuming that the language and expressions used in the two articles in question were provocative and inelegant and certain expressions could legitimately be classed as offensive, they were, however, mostly value judgments. These value judgments were based on particular facts, events or incidents which were already known to the general public, as some of the quotations compiled by Tuşalp for the purposes of the

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domestic proceedings demonstrate. They therefore had sufficient factual basis. As to the form of the expressions, the Court observes that the author chose to convey his strong criticisms, coloured by his own political opinions and perceptions, by using a satirical style. According to the Court offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult. But the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. Style constitutes part of communication as a form of expression and is as such protected together with the content of the expression. However, in the instant case, the domestic courts, in their examination of the case, omitted to set the impugned remarks within the context and the form in which they were expressed.

The European Court is of the opinion that various strong remarks contained in the articles in question and particularly those highlighted by the domestic courts could not be construed as a gratuitous personal attack against the Prime Minister. In addition, the Court observes that there is nothing in the case file to indicate that the applicant's articles have affected the Prime Minister's political career or his professional and private life. The Court comes to the conclusion that the domestic courts failed to establish convincingly any pressing social need for putting the Prime Minister's personality rights above the journalist's rights and the general interest in promoting the freedom of the press where issues of public interest are concerned. The Court therefore considers that in making their decisions the Turkish courts overstepped their margin of appreciation and that they have interfered with the journalist's freedom of expression in a disproportionate way. The amount of compensation which Tuşalp was ordered to pay, together with the publishing company, was significant and such sums could deter others from criticising public officials and limit the free flow of information and ideas. The Court concluded that the Turkish courts had failed to establish any "pressing social need" for putting the Prime Minister's personality rights above the right to freedom of expression and the general interest in promoting press freedom. There had thus been a violation of Article 10.

Judgment by the European Court of Human Rights (second section), case of Tuşalp v. Turkey, Nos. 32131/08 and 41617/08 of 21 February 2012

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