European Court of Human Rights: *Dickinson v. Turkey*

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

In a case about a satirical collage insulting the Turkish Prime Minister, the European Court of Human Rights (ECtHR) found that the criminal proceedings against the author of the collage had violated his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR).

The applicant in this case was Michael Dickinson, a British national who had been living in Turkey for a long time; he was teaching in two universities in Istanbul and was also active as a collage artist. On two occasions in 2006 Dickinson took part in events during which he exhibited a collage featuring the then Prime Minister Recep Tayyip Erdoğan. The collage criticised Erdogan's political support for the military occupation of Iraq, portraying the Prime Minister's head glued to the body of a dog which was held on a leash with the colours of the American flag. The collage displayed the following phrase pinned on the dog's torso: "We Will not be Bush's Dog". Dickinson was placed in police custody and pre-trial detention for a few days, and criminal proceedings were brought against him for insulting the Prime Minister, in application of Article 125 of the Turkish Criminal Code. In 2010, Dickinson was ordered to pay a judicial fine of around EUR 3 043 for having displayed his collage in public. The court considered that Dickinson's work was such as to humiliate and insult the Prime Minister and that it represented an attack on his honour and reputation. However, the court decided to suspend delivery of its judgment for five years. In 2015, the court set aside the judgment in respect of which sentencing had been deferred and ordered that the criminal proceedings against Dickinson be discontinued. The court noted that Dickinson had not committed any new intentional offences during the five-year period of suspension and that he had complied with the conditions attached to the supervision order.

Dickinson lodged an application with the ECtHR complaining about the criminal proceedings brought against him for his artistic work as part of a political protest. The ECtHR agrees that the criminal proceedings against Dickinson for a period of nearly four years, and subsequently the five-year period of suspension of delivery of the judgment, amounted to an interference with his right to freedom of expression under Article 10 ECHR, emphasising the chilling effect as a result of such a criminal prosecution. As there was no disputing that the interference at issue was prescribed by law and aimed at the protection of the reputation and rights of others, the crucial question before the ECtHR was whether the criminal

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prosecution against Dickinson could be justified as being necessary in a democratic society.

The ECtHR refers to its established case law and criteria when balancing the right to privacy and reputation as protected under Article 8 ECHR with the right to freedom of expression under Article 10 ECHR (see also *Von Hannover (no. 2) v. Germany* and *Axel Springer AG v. Germany* (IRIS 2012- 3/1)). The Court is of the opinion that the collage contained a political statement which criticised the Turkish Prime Minister for his policy on the international scene with regard to the military actions by the United States of America, and in particular those in Iraq. The cartoonish collage clearly expressed a value judgment about an issue of general public interest related to a country's foreign policy. The criticism was directed against the public functioning of the Prime Minister, and had a sufficient factual basis (see also *Tuşalp v. Turkey*, IRIS 2012-4/1). Although the depiction of the Prime Minister as a dog in a collage was likely to be perceived as degrading and humiliating by a part of the population in Turkey and might have created some unease among citizens, in the context at issue, a cartoonist is permitted to resort to a certain amount of exaggeration and even immoderate provocation. The ECtHR recalls that those who create, interpret, distribute or exhibit a work of art contribute to the exchange of ideas and opinions essential to a democratic society. Forms of artistic expression and social commentary such as satire, by the exaggeration and distortion of reality which characterise them, and by the use of an ironic and sarcastic tone, naturally aim to provoke and agitate. Having regard to the subject matter of the collage, the context of its public exposure and its factual basis, as well as its provocative style and content, the ECtHR finds that the collage at issue cannot be regarded as gratuitously insulting. In any case, a politician must show a greater tolerance towards criticism, especially when the latter takes the form of satire.

Finally, the ECtHR recalls that the dominant position that state institutions occupy requires them to exercise restraint in the use of criminal proceedings, such as in cases to protect the reputation of the Prime Minister as a representive of the state. It reiterates that the assessment of the proportionality of an interference with the rights protected by Article 10 would, in many cases, depend on whether the authorities could have used means other than a criminal sanction, such as civil measures. The ECtHR recalls the chilling effect of criminal prosecution and criminal sanctions, also in cases of suspended delivery of judgment or being sentenced to pay only a moderate fine. Although the delivery of the judgment convicting Dickinson was suspended and this judgment was finally set aside, the ECtHR is of the opinion that the duration for a considerable period of time of the criminal proceedings against Dickinson on the basis of a serious criminal offence, with the risk of being sentenced to imprisonment, had a chilling effect on Dickinson's willingness to express himself on matters of public interest. The ECtHR points at the domestic court's lack of analysis of the proportionality of the penal sanction imposed on Dickinson, and the lack of examination of the chilling

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effect that this sanction could have on his freedom of expression. In the light of all of the foregoing considerations, the ECtHR comes to the conclusion that the national authorities have not carried out an adequate balancing of interests in compliance with the criteria established by its case law dealing with the right to freedom of expression and the right to privacy and reputation. The ECtHR finds that there was no reasonable relationship of proportionality between the interference with the exercise of Dickinson's right to freedom of expression and the legitimate aim of protecting the reputation of the Prime Minister. Therefore, the ECtHR unanimously finds that the Turkish authorities have violated Article 10 ECHR.

Judgment by the European Court of Human Rights, Second Section, in the case of Dickinson v. Turkey, Application No. 25200/11, 2 February 2021.

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