European Court of Human Rights: Üçdağ v. Turkey

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Once again in a case against Turkey, the European Court of Human Rights (ECtHR) has found a violation of the right to freedom of expression as guaranteed under Article 10 of the European Convention on Human Rights (ECHR). As the Turkish courts had not sufficiently substantiated why two posts on the Facebook account of an imam could be interpreted as propaganda for a terrorist organisation, the ECtHR found that his conviction amounted to an unjustified interference with his right under Article 10 ECHR.

The case concerned Mr Üçdağ's criminal conviction for disseminating propaganda in favour of a terrorist organisation, on account of two posts published on his Facebook account. Both posts referred to the PKK (the Workers' Party of Kurdistan, an illegal armed organisation). At the relevant time, Mr Üçdağ was a public official working as an imam at a mosque in the Sur district of Diyarbakır. The impugned posts had included two photographs: one of individuals in uniform similar to that of PKK members, and one of a crowd demonstrating in a public street in front of a fire. The posts had originally been shared by two other Facebook users. In March 2017, the Diyarbakır 5th Assize Court found Mr Üçdağ guilty of the offence of disseminating propaganda in favour of a terrorist organisation and sentenced him to one year, six months and 22 days' imprisonment, delivery of the judgment being suspended. Mr Üçdağ's appeal was dismissed.

Relying on Article 10 ECHR, Mr Üçdağ complained before the ECtHR that his right to freedom of expression had been infringed on account of the criminal proceedings instituted against him. The ECtHR considered the suspended sentence to be an interference with Mr Üçdağ's right to freedom of expression. That interference was prescribed by law and pursued a legitimate aim, in compliance with two conditions enshrined in Article 10 § 2 ECHR. The ECtHR came to the conclusion, however, that the interference at issue could not be considered necessary in a democratic society, that condition being the third and most decisive one in the light of Article 10 § 2 ECHR. The ECtHR observed that in describing the impugned posts on Mr Üçdağ's Facebook account, the Turkish courts had merely said that the content in question had been such as to incite violence; that he had glorified, condoned and encouraged the terrorist organisation's methods entailing coercion, violence and threats by sharing that content on his Facebook account; and that he had thereby committed the offence of disseminating propaganda in favour of a terrorist organisation. The ECtHR

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considered that those decisions lacked an adequate explanation of the reasons why the impugned content had to be interpreted as praising, condoning and encouraging the methods entailing coercion, violence and threats used by the PKK. It noted that the decisions by the domestic courts had failed to take into account all of the principles established in the Courts' case-law under Article 10 ECHR concerning verbal and written statements presented as fueling or justifying violence, hatred or intolerance. The ECtHR found that the domestic courts had not explained how the sharing of the posts in question could have been considered - in view of their content, context and capacity to lead to harmful consequences, having regard to their potential impact on the social networks under the circumstances of the case - as comprising incitement to the use of violence, armed resistance or uprising, or as amounting to hate speech. The domestic authorities had therefore failed to conduct an in-depth analysis taking account of all the criteria set out in the ECtHR's case-law concerning freedom of expression. On that basis, the ECtHR came to the conclusion that by convicting Mr Üçdağ on a charge of disseminating propaganda in favour of a terrorist organisation by posting the impugned contents on his Facebook account, the domestic authorities had failed to conduct an appropriate balancing exercise, in keeping with the criteria set out in the ECtHR's case-law, between Mr Üçdağ's right to freedom of expression and the legitimate aims pursued (protecting national security and territorial integrity, and preventing disorder and crime). As the Turkish Government had not demonstrated that the grounds relied on by the domestic authorities to justify the impugned measure had been relevant and sufficient, and that that measure had been necessary in a democratic society, the ECtHR found, unanimously, a violation of Article 10 ECHR. The ECtHR also found a violation of Article 6 ECHR (right to fair trial).

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu le 31 août 2021 dans l'affaire Üçdağ c. Turquie, requête n° 23314/19

https://hudoc.echr.coe.int/eng?i=001-211581

Judgment by the European Court of Human Rights, Second Section, in the case of Üçdağ v. Turkey, Application no. 23314/19, 31 August 2021

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