

## European Court of Human Rights: *A.M. v. Turkey*

**IRIS 2022-1:1/17**

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In a judgment of 19 October 2021, the European Court of Human Rights (ECtHR) found a violation of the right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR) in a case where disciplinary sanctions had been imposed on the applicant for a video posted on Facebook. According to the Turkish authorities the video offended the Prophet of Islam, an offence that had to be qualified as an act aimed at humiliating Turkishness.

At the time of the application, the applicant, A.M., was the president of the International Yoga Federation and a yoga trainer officially certified by *THİSF* (Turkish Federation of Sports for All — the Federation). In 2014 a video recording of A.M. was uploaded to the video-hosting website YouTube. The video showed A.M. giving a speech, to an audience, which included an extensive statement with some critical remarks about religion and the Prophet Muhammad. The Ankara public prosecutor's office lodged a bill of indictment against A.M. and he was sentenced to one year's imprisonment by the Ankara Criminal Court of General Jurisdiction for publicly degrading religious values of a section of the public, an offence under Article 216 of the Criminal Code. A.M. appealed against this conviction. In 2017, while the appeal proceedings were ongoing, disciplinary proceedings were initiated against him under section 16 § 17 (breach of national honour) and section 17 (discrimination) of the 2016 Disciplinary Regulation of the Federation in view of the criminal penalty imposed on him by the Ankara Criminal Court of General Jurisdiction. The Disciplinary Committee decided to deprive A.M. of his rights for three years pursuant to the above-mentioned sections of the Disciplinary Regulation. This decision was confirmed by the Arbitration Board, holding that offending the Prophet of Islam should be qualified as an act aimed at humiliating Turkishness falling within the scope of section 16 § 17 (violation of national honour) of the Disciplinary Regulation. It therefore found the disciplinary measure to be proportionate with regard to A.M.'s behaviour. A request for rectification of this decision was rejected by the Arbitration Board.

Before the Strasbourg Court, A.M. complained that the disciplinary sanction imposed on him on account of his statements had constituted a breach of Article 10 ECHR. He argued in essence that the 2016 Disciplinary Regulation were not in force at the time the video was posted in 2014. A.M. further submitted that the disciplinary proceedings had been initiated against him in breach of the statutory one-year time limit prescribed by the Disciplinary Regulation.

Having referred to its case-law about the condition that any interference with the right to freedom of expression needs to be “prescribed by law”, the ECtHR observed that the Disciplinary Regulation had not been in force on the date the video had been uploaded. Further, there was no evidence that any previous disciplinary regulation issued by the Federation had had provisions similar to that of section 16 § 17 and section 17 of the 2016 Disciplinary Regulation. The Court also noted that the Arbitration Board had considered that acts against a prophet could not be subject to prescription by analogy with the section of the Criminal Code relating to genocide and crimes against humanity. In that respect, the ECtHR observed that section 30 of the Disciplinary Regulation stipulated a general one-year investigation time-limit which started to run from the day of the event. The ECtHR further observed that no exception to the provisions of section 30 was provided for in the Disciplinary Regulation. Therefore the Arbitration Board’s interpretation extended the scope of section 30 beyond that which had reasonably been foreseeable in the circumstances of the case. A.M. could not, therefore, reasonably have foreseen that his statements would be considered to be within the scope of the section of the Criminal Code relating to genocide and crimes against humanity.

The ECtHR found that not only was the Disciplinary Regulation, upon which the disciplinary sanction inflicted on A.M. had been based, not in force at the time of the events, but the interpretation of the Arbitration Board extending the scope of section 30 of the Disciplinary Regulation by analogy with the Criminal Code had not been foreseeable within the meaning of Article 10 ECHR. The ECtHR considered, accordingly, that the interference at issue was not “prescribed by law” within the meaning of Article 10 § 2 ECHR. Having regard to that conclusion, it found that it was not necessary to verify whether the other conditions required by that paragraph - namely the existence of a legitimate aim and the necessity of the interference in a democratic society - were complied with in the case. Therefore the ECtHR came to the conclusion that there has been a violation of Article 10 ECHR.

***European Court of Human Rights, Second Section, in the case of A.M. v. Turkey, Application no 67199/17, 19 October 2021.***

<http://hudoc.echr.coe.int/eng?i=001-212369>

