European Court of Human Rights: *Vedat Şorli v. Turkey*

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Once again the European Court of Human Rights (ECtHR) has 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 against Turkey. This time, the ECtHR found that the pre-trial detention and criminal conviction for insulting the Turkish president Recep Tayyip Erdoğan in two posts on Facebook amounted to a violation of the right to freedom of (political) speech.

The case concerns the criminal proceedings instituted against Mr Şorli for insulting the President of the Turkish Republic, on account of two satirical posts which he shared on his Facebook account in 2014 and 2016. The first Facebook post consisted of a caricature featuring the former US President Barack Obama kissing the President of the Turkish Republic, who was depicted in a female dress. A speech bubble above the image of the Turkish President contained the following words written in Kurdish: “Will you register ownership of Syria in my name, my dear husband?”. The second post contained photos of the President and the former Prime Minister of Turkey, beneath which the following comments were written: “May your blood-fuelled power be buried in the depths of the earth/May the seats you hold on to by taking lives be buried in the depths of the earth/May the lives of luxury you lead thanks to stolen dreams be buried in the depths of the earth/May your presidency, your power and your ambitions be buried in the depths of the earth”. Mr Şorli was placed in pre-trial detention for two months and two days and subsequently, in 2017, sentenced to a prison term of 11 months and 20 days. Delivery of the judgment was suspended for five years: if the applicant did not commit an intentional offence during that period, the conviction would be quashed and the case would be struck out of the list.

Relying on Article 10 ECHR, Mr Şorli complained before the ECtHR about his placement in pre-trial detention and the criminal proceedings brought against him. He alleged that the content he had shared on Facebook constituted critical comments on current political developments and that the interference with his right to freedom of expression was disproportionate and had a chilling effect. The ECtHR found that the interference complained of had been prescribed by law and had pursued the legitimate aim of protecting the reputation or the rights of others. The domestic courts had based their decisions on Article 299 of the Criminal Code, which afforded a higher degree of protection to the President of the Republic than to other persons – protected by the ordinary rules on

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defamation – with regard to the disclosure of information or opinions concerning them. Article 299 of the Criminal Code, in particular, laid down heavier penalties for persons who made defamatory statements about the President of the Republic. The ECtHR observed that affording increased protection by means of a special law on insult would not, as a rule, be in keeping with the spirit of the Convention or with a State's interest in protecting the reputation of its head of state. While it was entirely legitimate for persons representing the institutions of the State, as guarantors of the institutional public order, to be protected by the competent authorities, the dominant position of those institutions required the authorities to display restraint in resorting to criminal proceedings. There had been nothing in the circumstances of the present case to justify Mr Şorli's placement in police custody, the order for his pre-trial detention or the imposition of a criminal sanction, despite the fact that delivery of the judgment imposing a prison term had been suspended. Such a sanction, by its very nature, inevitably had a chilling effect on the willingness of the person concerned to express his or her views on matters of public interest, especially in view of the effects of a criminal conviction. Likewise, the Turkish Government had not adduced any evidence to demonstrate that the criminal proceedings against Mr Şorli had been made necessary by the state of emergency that had been declared following the attempted military coup of 15 July 2016.

Accordingly, in the circumstances of the case and in view of the sanction, of a criminal character, imposed on Mr Şorli under a special provision affording increased protection to the President of the Republic against insult, which could not be considered in keeping with the spirit of the Convention, the measure complained of had not been proportionate to the legitimate aims pursued and had not been necessary in a democratic society. Therefore, the ECtHR found, unanimously, a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu le 19 octobre 2021 dans l'affaire Vedat Şorli c. Turquie, requête n° 42048/19

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Judgment of the European Court of Human Rights, Second Section, delivered on 19 October 2021 in the case of Vedat Şorli v. Turkey, Application no. 42048/19

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