

European Court of Human Rights: Durukan and Birol v. Türkiye

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The European Court of Human Rights (ECtHR) in a judgment of 3 October 2023 found a violation by the Turkish authorities of the right to freedom of expression via social media as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns the conviction and prison sentences of two persons, Mr Baran Durukan and Mrs İlknur Birol, on account of content they posted on Facebook and Twitter. Although the effects of their convictions were suspended, subject to probation periods of three and five years respectively, the ECtHR considered the convictions and their suspension, in view of their potentially chilling effect, as unjustified interferences with the rights of Durukan and Birol under Article 10 ECHR. According to the ECtHR, the interferences did not afford the requisite protection against arbitrary abuse by the public authorities of the rights guaranteed under the ECHR.

As to the facts, Durukan had posted photographs and comments on his Facebook account, including the slogans “Long live the Kurdistan resistance” and “Long live Abdullah Öcalan” which led to a conviction on charges of disseminating propaganda for a terrorist organisation, while Birol was sentenced for insulting the Turkish President in a tweet – in connection with ongoing anti-corruption investigations – labelling President Erdogan as a “thief”. Durukan and Birol argued before the ECtHR that the criminal proceedings brought against them and the suspended prison sentences had breached their right to freedom of expression.

In its judgment the ECtHR focussed on the deficient legal basis for the suspension of the prison sentences and on the potential chilling effect of such probation measures. In the absence of adequate procedural safeguards to regulate the discretion granted to the domestic courts in applying the suspension of prison sentences, the applicable legal basis did not afford the requisite protection against arbitrary abuse by the public authorities of the rights guaranteed under the ECHR. Hence the applicants were not guaranteed the degree of protection of their right to freedom of expression required by the rule of law in a democratic society. Therefore the ECtHR, unanimously, found a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu le 3 octobre 2023 dans l'affaire Durukan et Birol c. Türkiye,

requêtes nos 14879/20 et 13440/21

<https://hudoc.echr.coe.int/eng?i=001-227720>

Judgment by the European Court of Human Rights, Second Section, in the case of Durukan and Birol v. Türkiye, Application nos 14879/20 and 13440/21, 3 October 2023

