

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ÖZLÜ v. TÜRKİYE

(Application no. 45204/20)

JUDGMENT

STRASBOURG

8 October 2024

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Özlü v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 45204/20) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 September 2020 by Mr Abuzer Serdar Özlü ("the applicant"), a Turkish national born in 1966, who lives in Isparta and was represented by Mr A. Avcı, a lawyer practising in Isparta;

the decision to give notice of the complaint concerning Article 10 of the Convention to the Turkish Government ("the Government"), represented by their then Agent, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the decision to dismiss the Government's objection to the examination of the application by a Committee,

Having deliberated in private on 17 September 2024,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The present application concerns the criminal conviction of the applicant to a prison sentence combined with a measure to suspend the pronouncement of the judgment on account of certain publications he had made on his Twitter account. The applicant complained of a violation of his freedom of expression under Article 10 of the Convention.

2. By an indictment dated 10 November 2017, the Mersin Public Prosecutor charged the applicant with the offence of the public denigration of the Turkish nation, the Republic of Türkiye, the Grand National Assembly of Türkiye and the judicial bodies of the State pursuant to Article 301 of the Turkish Criminal Code, due to nine different publications he had made on his Twitter account between the dates of 13 March 2016 and 9 April 2016, which read as follows:

> "In the past, with [proper] surveillance and intelligence, a vehicle with a suicide bomber would be prevented before entering the province in this way. [But those superiors] are now on trial)"

"In every new unlawfulness, you say, what is there to do beyond this on the part of them. It just is...."

"The miner E.K. was sentenced to imprisonment for a period of ten months. Defending justice in a country where the kicked is punished, not the kicker!"

"You purged the police, the judiciary and put the Constitution aside because of the bribes given by the damned S."

"You suspended the Constitution and cancelled out the police and the judiciary because of the bribes this man distributed to your Ministers!"

"For those who want to see by whose order the police was purged..."

"Information is incomplete, according to the documents, only one minister received $ 52 million!"

"Just like when you attack Kılıçdaroğlu, when you also attack those who mock the verses [of the Quran], (...) those who use the verses [of the Quran] for political benefit, the tyrants, those who do not acknowledge the law, the liar inspectors, the bribers, those who engage in corruption, the thieves, those who lie in front of 26-year-old Persian boys (*acem oğlanları*), the rapists and those who protect the rapists in the same way, then I will be with you."

"Domestic and national police organization is reportedly being established. In other words, the police officers that they put in prisons were from Burkina-Faso! Those they dismissed came from the country in the South! I suppose that those they retired might be a mixture of Australian-New Zealander. Because I likened some of them to aborigines! It is probably the Irish among us who could not be retired and who have been subjected to a different form of mobbing every day! In this case, let's find the definition of 'domestic and national; Those who they have chosen and who lie in front of Persian boys, who mock the verses [of the Quran] as baqara-makara, who have five money counters, steel safes in their homes, and keep the money in shoe boxes genuinely become 'domestic and national'! Those who commit the child rapes and who try to cover them up are also purely national! Begging your pardon, but the businessmen who f...k the people by winning tenders are also purely domestic."

3. On 5 February 2020 the Mersin 14th Criminal Court of First Instance convicted the applicant to a five-month prison sentence on account of the litigious messages he had posted on his Twitter account. In its reasoning, the Criminal Court of First Instance retained the afore-mentioned publications included in the indictment and considered that these posts constituted the offence of the public denigration of the Turkish nation, the Republic of Türkiye, the Grand National Assembly of Türkiye and the judicial bodies of the State under Article 301 of the Criminal Code. The Criminal Court of First Instance decided however to suspend the pronouncement of the judgment, pursuant to Article 231 § 5 of the Code of Criminal Procedure and to subject the applicant to a five-year supervision period (see for the text of the provision *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, § 23, 3 October 2023).

4. On 6 February 2020 the applicant filed an appeal against the decision of the Mersin 14th Criminal Court of First Instance. On 27 February 2020 the

Mersin 1st Assize Court dismissed the applicant's appeal, stating that the reasoning of the judgment suspending the pronouncement was relevant.

5. On 17 March 2020 the applicant lodged an individual application before the Turkish Constitutional Court, asserting that the litigious posts which, in his view, were of a critical nature should be evaluated within the scope of the freedom of expression and that the elements of the offence for which he was charged had not occurred. His individual application form contained a summary of each stage of the criminal proceedings in question and was accompanied by all the relevant decisions which had been taken in that context.

6. In its decision delivered on 21 July 2020, the Turkish Constitutional Court declared the applicant's individual application inadmissible for being manifestly ill-founded, noting that the allegations were not substantiated.

7. Relying on Article 10 of the Convention, the applicant complained about the criminal proceedings brought against him because of his publications on social media.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Admissibility

8. The Government raised several preliminary objections. They first challenged the applicant's victim status, asserting that the suspended sentences had not imposed any obligations or restrictions. They argued that once the supervision period had expired, the conviction was quashed with associated consequences; and if the judgment was delivered before the supervision period ended, the applicant could appeal against it.

9. The Government argued secondly that the domestic remedies had not been exhausted. In this regard, the Government argued that the individual appeal which the applicant had brought before the Constitutional Court was declared inadmissible as manifestly ill-founded on the grounds that the applicant had not complied with the obligation to produce evidence and provide explanations in support of his complaints. The Government argued that the applicant could not therefore be said to have exhausted domestic remedies, as he had failed to submit his individual appeal to the Constitutional Court in compliance with the applicable rules and procedures.

10. Finally, invoking Article 17 of the Convention, the Government alleged that the messages imputed to the applicant amounted to clear defamation and were specifically directed at organs of the State. They therefore considered that under that provision, the applicant could not claim the protection of Article 10 of the Convention.

11. The applicant contested the Government's preliminary objections.

12. Regarding the first objection raised concerning the applicant's victim status, the Court notes that it has already examined and dismissed similar objections (see *Durukan and Birol*, cited above, §§ 43 and 44, and *Üçdağ v. Turkey*, no. 23314/19, § 58, 31 August 2021). Therefore, it dismisses this objection on the same grounds.

13. When it comes to determine the objection concerning the exhaustion of domestic remedies, the Court recalls that it has already dealt with a similar objection as well (see, *inter alia, Durukan and Birol*, cited above, §§ 39 and 42 and the references therein). In the present case, the Court observes that in the application form submitted to the Constitutional Court, the applicant invoked freedom of expression and argued that the content of the messages he had published on his Twitter account should be evaluated within the scope of freedom of expression and that the elements of the offence for which he was charged had not occurred. He also provided a summary of all the acts and decisions adopted in the course of the criminal proceedings by referring to the relevant documents that he had annexed to his application form (see paragraph 5 above). The Court considers that the applicant communicated all the relevant factual elements to the Constitutional Court and formulated sufficiently reasoned complaints to allow the high court to examine his allegation of a violation of his right to freedom of expression (compare ibid., § 42). Therefore, the objection of non-exhaustion of domestic remedies raised by the Government must be rejected.

14. Finally, as regards the plea that Article 17 of the Convention deprived the applicant of protection under Article 10, the Court recalls that it has already addressed a similar objection (*Durukan and Birol*, cited above, §§ 46-48 and references therein). In the present case, the Court considers that the content of the litigious posts (see paragraph 2 above), which essentially constituted political criticism, is not sufficient to reveal that the applicant was seeking to destroy the rights and freedoms guaranteed by the Convention. Accordingly, the Court concludes that the application does not constitute an abuse of rights within the meaning of Article 17 of the Convention and that the applicant cannot therefore be deprived of the protection of Article 10 of the Convention. Therefore, this plea regarding the Court's *ratione materiae* jurisdiction must also be rejected.

15. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

16. The applicant alleged that the content of the messages he posted on his Twitter account were of a critical nature and within the scope of the freedom of expression. He added that his conviction for his critical views

constituted an inappropriate interference with his right to freedom of expression.

17. The Government claimed that there had been no interference with the applicant's freedom of expression, underlining that no conviction had been included in his criminal record due to the application of the measure suspending the pronouncement of the judgment. They further argued that in the event of a future pronouncement of the suspended judgment, the applicant would have the opportunity to appeal against it. Thus, they argued that there were no negative legal consequences or deterrent effects caused by the criminal proceedings and his conviction.

18. If the Court were to find that there had been interference, the Government submitted that the interference in question had been provided for by Article 301 of the Criminal Code in a manner meeting the criteria of clarity, accessibility and foreseeability.

19. They also stated that the interference in question had pursued the legitimate aims of maintaining public security, national security and territorial integrity.

20. Finally, the Government considered that the applicant's impugned remarks solely intended to insult and defame the State organs. They argued that the interference with the applicant's freedom of expression was proportionate and necessary in a democratic society.

2. The Court's assessment

21. The Court considers that the criminal conviction of the applicant with the suspension of the pronouncement of the judgment, including a five-year supervision period, amounted to an interference with the applicant's exercise of his right to freedom of expression in view of the deterrent effect it may have had (see *Durukan and Birol*, cited above, § 56; *Vedat Şorli v. Turkey*, no. 42048/19, § 41, 19 October 2021; and *Üçdağ*, cited above, § 75).

22. In the present case, the Court notes, firstly, that it was not disputed between the parties that the applicant's criminal conviction had had a legal basis, namely Article 301 of the Criminal Code and Article 231 of the Code of Criminal Procedure. While having doubts as to the quality of law of these provisions (see *Dilipak v. Turkey*, no. 29680/05, §§ 57-58, 15 September 2015; *Fatih Taş v. Turkey (no. 5)*, no. 6810/09, §§ 32-33 and 38, 4 September 2018; and *Durukan and Birol,* cited above, §§ 66 and 67), the Court considers that it is not necessary to decide on this question, in the light of the conclusion it reached on the necessity of the interference (see paragraph 26 below).

23. The Court accepts that the interference in question pursued the legitimate aims of protecting public safety (compare also *Fatih Taş*, cited above, § 38).

24. As regards to the necessity of the interference, the Court notes that the posts at issue communicated the ideas and opinions of the applicant on current political and judicial news and debates at the time and thus contributed to a

debate of public interest in a democratic society. Analysing the posts taken into account by the domestic courts in support of the applicant's conviction (see paragraph 2 above), the Court notes that, despite the severity of some of the expressions used, these posts may be regarded as a sharp and exaggerated criticism of the organs of the State and its officials. It considers that these posts were devoid of any gratuitously offensive or insulting character and that they did not incite to violence or hatred (compare *Dilipak*, cited above, § 68, and *Fatih Taş*, cited above, § 39).

25. The Court also considers that, by sentencing the applicant to a term of imprisonment, even though the pronouncement of the judgment was suspended, the judicial authorities' decision had a chilling effect on the applicant's desire to express his views on matters of public interest (see, *mutatis mutandis*, *Dilipak*, cited above, § 70).

26. In the light of the foregoing, the Court considers that the measure in question did not meet a pressing social need, that it was not, in any event, proportionate to the legitimate aims pursued and that, therefore, it was not necessary in a democratic society.

27. Accordingly, there has been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 respect of costs and expenses incurred before the Court. The applicant submits a lawyer contract dated 24 September 2021, signed both by the applicant and the lawyer, which indicates the applicant will pay EUR 1,000 to the lawyer for his representation before the Court.

29. The Government argued that the applicant's just satisfaction claims must be rejected as the applicant failed to submit them within the prescribed time limit. They further requested the claims to be rejected as being unsubstantiated and excessive.

30. The Court observes that by a letter of the Court dated 16 February 2022 the parties were informed that the President of the Section had decided to accept the applicant's just satisfaction claims and to include them in the file in accordance with Rule 38 § 1 of the Rules of the Court.

31. The Court considers that the applicant should be awarded EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable. It also awards EUR 1,000, plus any tax that may be chargeable to the applicant, in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President