

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

SECOND SECTION

CASE OF YORULMAZ v. TÜRKİYE

(Application no. 41400/19)

JUDGMENT

STRASBOURG

8 October 2024

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



In the case of Yorulmaz 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. 41400/19) 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 26 July 2019 by a Turkish national, Mr Bayram Yorulmaz ("the applicant"), who was born in 1975, lives in Adıyaman and was represented by Mr B. Temel, a lawyer practising in Adıyaman;

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 the remainder of the application inadmissible;

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

the comments submitted by the Association for Freedom of Expression (*İfade Özgürlüğü Derneği*) who were granted leave to intervene by the President of the Section;

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 of suspension of the pronouncement of the judgment. The applicant complained of a violation of his freedom of expression under Article 10 of the Convention.

2. At the material time, the applicant was a public official at the Adana Court house.

3. By an indictment dated 2 June 2017, the Adıyaman public prosecutor charged the applicant with the offence of insulting a public official, under Article 125 of the Turkish Criminal Code. In the indictment it was alleged that the applicant shared two photos on his Facebook account showing that two paintings were given to the then Prime Minister, with the following remarks: *"They sneeringly give each other as gifts the paintings of the people they condemned to death... What is this? Effrontery? Insolence?*

Perversion?" ("ölüme mahkum ettikleri insanların tablolarının, sırıta sırıta hediye olarak alıp veriyorlar... Ne bu şimdi? Yüzsüzlük? Arsızlık? Sapıklık?").

4. On 6 February 2018 the Adıyaman 1st Criminal Court of First Instance sentenced the applicant to eleven months and twenty days' imprisonment on the basis of Article 125 §§ 1, 3 (a) and 4 of the Criminal Code and then decided to suspend the pronouncement of the judgment under Article 231 § 5 of the Code of Criminal Procedure (see for the text of the latter provision *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, § 23, 3 October 2023), and to apply a five-year supervision period. In its reasoning the Criminal Court of First Instance held that the applicant's remarks in the message as "*They sneeringly give each other as gifts the paintings of the people they condemned to death"* could be considered as an expression of opinion and political criticism; but the subsequent statements in the same message such as "*Effrontery, Insolence, Perversion*" were of a nature to humiliate the victim in the eyes of the public and to damage his honour, dignity and respectability. Accordingly, the Criminal Court of First Instance held that these words constituted the offence of insulting a public official.

5. On 6 February 2018 the applicant lodged an appeal against the decision of the Criminal Court of First Instance. On 3 April 2018 the Adıyaman 1st Assize Court dismissed the applicant's appeal, stating that relevant reasons had been given for the suspension of the pronouncement of the judgment.

6. On 24 May 2018 the applicant lodged an individual application with the Turkish Constitutional Court, complaining that his conviction on the basis of his Facebook post, which in his view had contained his critical opinions concerning a politician, had violated his right to freedom of expression. His individual application form contained a summary of each stage of the criminal proceedings in question and was accompanied by all the relevant decisions that had been taken in that context.

7. In a decision delivered on 26 February 2019, the Turkish Constitutional Court declared the applicant's individual application inadmissible as being manifestly ill-founded, noting that the allegations had not been substantiated.

8. Relying on Articles 9 and 10 of the Convention, the applicant alleged that his criminal conviction had infringed his right to freedom of expression.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

9. The Court, being the master of the characterisation to be given in law to the facts of the case (see Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), finds that the complaint at issue falls to be examined solely under Article 10 of the Convention.

A. Admissibility

10. The Government raised several preliminary objections. They first challenged the applicant's victim status, asserting that the suspended sentence had not imposed any obligations or restrictions. They argued that the decision of the suspension of the pronouncement of the judgment had been taken with the applicant's consent and that once the suspended sentence expired, the conviction would be erased along with any associated consequences. If the judgment was delivered before the suspension ended, the applicant would be able to appeal against it.

11. The Government also stated that the applicant had not exhausted all domestic remedies. In that connection, the Government argued that the individual application which the applicant had brought before the Constitutional Court had been declared inadmissible as being manifestly ill-founded on the grounds that the applicant had not complied with the obligation to provide evidence and 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 application to the Constitutional Court in compliance with the applicable rules and procedures.

12. Lastly, the Government argued that the applicant had had the opportunity to raise his complaints at national level, and that the domestic courts had duly examined them in compliance with the procedural rules and the principle of subsidiarity. They urged the Court to declare his application inadmissible, asserting that it was manifestly ill-founded.

13. Regarding the objection raised concerning the applicant's victim status, the Court notes that it has already examined and dismissed similar objections (see *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, §§ 43, 44 and 57, 3 October 2023, and *Üçdağ v. Türkiye*, no. 23314/19, §§ 58, 76 and 77, 31 August 2021). It therefore dismisses this objection on the same grounds.

14. As regards the objection concerning the non-exhaustion of domestic remedies, the Court notes that it has already dealt with similar objections (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 referred to his right to freedom of expression and argued that convicting him for a post that had contained his critical opinions about a politician had violated that right. He also provided a summary of all the steps taken and decisions adopted in the course of the criminal proceedings and made reference to the relevant documents that he had annexed to his application (see paragraph 6 above). The Court considers that the applicant communicated all the relevant factual elements to the Constitutional Court and formulated sufficiently reasoned complaints to allow that court to examine his allegations of a violation of the

right to freedom of expression (compare ibid., § 42). Therefore, the objection of non-exhaustion of domestic remedies raised by the Government must be dismissed.

15. In determining whether the application is manifestly ill-founded, the Court considers that the arguments put forward by the Government in this connection raise issues which require an examination of the merits of the complaint under Article 10 of the Convention, rather than an examination of its admissibility (see *Durukan and Birol*, cited above, § 45 and the references therein).

16. The Court notes that this complaint 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

17. The applicant alleged that his conviction owing to a post shared on his Facebook account had amounted to a violation of his right to freedom of expression. He maintained that the suspension of the pronouncement of the judgment ordered at the end of the proceedings had created a deterrent effect on the exercise of his right to freedom of expression.

18. The Government asserted that the criminal proceedings, which had quickly resulted in the decision to order the suspension of the pronouncement of the judgment, could not be considered to have created a deterrent effect on the applicant's exercise of his right to freedom of expression. They submitted that there had been no interference with the applicant's freedom of expression, emphasising that no conviction had been added to his criminal record because of the conditional stay of the judgment. They accordingly argued that no negative legal consequences or deterrent effects had been caused by the criminal proceedings and his conviction.

19. 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 125 §§ 1, 3 (a) and 4 of the Criminal Code in a manner meeting the criteria of clarity, accessibility and foreseeability.

20. They also stated that the interference in question had pursued the legitimate aims of protecting the reputation and rights of others.

21. Finally, the Government considered that, having regard to the content of the impugned post, which in their view could not be regarded as a criticism with a factual basis and contained defamatory and swear expressions against the then Prime Minister, the domestic courts struck a fair balance between the applicant's right to freedom of expression and the opposing party's right to respect for his private life. They concluded that the impugned interference was necessary in a democratic society and proportionate to the legitimate aim pursued.

2. The Court's assessment

22. 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. Türkiye*, no. 42048/19, § 41, 19 October 2021; and *Üçdağ*, cited above, § 75).

23. 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 125 §§ 1, 3 (a) and 4 of the Criminal Code and Article 231 of the Code of Criminal Procedure. While having doubts as to the quality of law of the provision of Article 231 of the CCP (see *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 paragraphs 25-28 below).

24. The Court accepts that the interference in question pursued a legitimate aim under Article 10 § 2 of the Convention, namely the protection of the reputation or rights of others.

25. As regards the necessity of the interference, the Court recalls the principles deriving from its case-law on the protection of privacy and freedom of expression, which are summarised, *inter alia*, in the judgments in *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, §§ 83-93, ECHR 2015 (extracts)) and *Tarman v. Turkey* (no. 63903/10, §§ 36-38, 21 November 2017). It points out that, in order to assess whether the national authorities have weighed up the applicant's right to freedom of expression against the opposing party's right to the protection of his reputation in accordance with the criteria laid down in its case-law (see *Tarman*, cited above, § 38), it must pay attention essentially to the reasoning adopted by the national court (*ibid.*, § 40).

26. In the present case, the Court notes that the applicant, in his remarks shared on his Facebook account against the then Prime Minister, essentially denounced the latter's attitude by the following sentence:"*They sneeringly give each other as gifts the paintings of the people they condemned to death... What is this? Effrontery? Insolence? Perversion?*". It further observes that in its judgment of 6 February 2018, the Criminal Court of First Instance considered that the remarks "*Effrontery? Insolence? Perversion?*" made by the applicant were of a nature to humiliate the Prime Minister in the eyes of the public and had undermined his honour, dignity and respectability, and that they constituted the offence of insulting a public official by reason of his or her position (see paragraph 4 above).

27. The Court considers that the reasoning thus adopted by the Criminal Court of First Instance in its judgment does not allow it to hold that this court struck an appropriate balance between the applicant's right to freedom of expression and the opposing party's right to respect for his private life, taking

into account all the relevant criteria laid down in its case-law (*Tarman*, cited above, § 38). It considers that the judgment in question does not provide a satisfactory analysis of the question of whether the then Prime Minister's right to respect for his private life could justify, in the circumstances of the case, the interference with the applicant's right to freedom of expression by his criminal conviction, having regard in particular to the status of the Prime Minister as a politician, the context of the impugned social media post of the applicant, and the deterrent effect that this criminal conviction, even if the pronouncement of the sentence had been suspended, could have on the applicant's exercise of his freedom of expression (*Ömür Çağdaş Ersoy v. Turkey*, no. 19165/19, §§ 49-62, 15 June 2021).

28. In the light of the foregoing, the Court considers that, in the circumstances of the present case, the national authorities have failed to weigh up the interests at stake in accordance with the criteria laid down in its case-law. The interference has thus not been shown to have been "necessary in a democratic society", for the purposes of Article 10 § 2 (compare ibid., § 63).

29. Accordingly, there has been a violation of Article 10 of the Convention in the present case.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicant claimed 20,000 Turkish liras (TRY) (approximately 2,216 euros (EUR) at the relevant date) in respect of non-pecuniary damage. He also claimed TRY 16,000 in respect of costs and expenses, including lawyer's fees. In support of that claim, he submitted two separate lawyer's fees agreements dated 2 March 2020, which had been signed by the applicant and his lawyer, indicating that the applicant would pay TRY 10,000 (approximately EUR 1,458 at the relevant date) and TRY 5,000 (approximately EUR 729 at the relevant date). He further submitted a receipt demonstrating that he had paid TRY 299.90 (approximately EUR 52 at the relevant date) as an application fee to the Constitutional Court, and another receipt for TRY 590 (approximately EUR 65 at the relevant date) as a translation payment.

31. The Government contested the applicant's claims as unsubstantiated and excessive.

32. The Court awards the applicant the full amount of EUR 2,216 claimed in respect of non-pecuniary damage, plus any tax that may be chargeable. As to costs and expenses, having regard to the documents in its possession, the Court considers it reasonable to award the sum of EUR 1,500 in this respect, plus any tax that may be chargeable to the applicant.

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 2,216 (two thousand two hundred and sixteen euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred 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