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

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ECHR 187 (2021)
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# Dismissal of a public-sector employee for having "Liked" Facebook posts: violation of her right to freedom of expression

In today's **Chamber** judgment[1] in the case of Melike v. Turkey (application no. 35786/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned the dismissal of Ms Melike, a contractual employee at the Ministry of National Education, for having clicked "Like" on various Facebook articles (posted on the social networking site by a third party). The authorities considered that the posts in question were likely to disturb the peace and tranquillity of the workplace, on the grounds that they alleged that teachers had committed rapes, contained accusations against political leaders and related to political parties.

The Court noted that the content in question consisted of virulent political criticism of allegedly repressive practices by the authorities, calls and encouragement to demonstrate in protest against those practices, expressions of indignation about the murder of the president of a bar association, denunciations of the alleged abuse of pupils in establishments controlled by the authorities and a sharp reaction to a statement, perceived as sexist, made by a well-known religious figure.

The Court held that these were essentially and indisputably matters of general interest. It reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two areas: political speech and matters of public interest. It also noted that the disciplinary committee and the national courts had not taken account of all the relevant facts and factors in reaching their conclusion that the applicant's actions were such as to disturb the peace and tranquillity of her workplace. In particular, the national authorities had not sought to assess the potential of the relevant "Likes" to cause an adverse reaction in Ms Melike's workplace, having regard to the content of the material to which they related, the professional and social context in which they were made and their potential scope and impact. Accordingly, the reasons given in the present case to justify the applicant's dismissal could not be regarded as relevant and sufficient. The Court also held that the penalty imposed on Ms Melike (immediate termination of her employment contract without entitlement to compensation) had been extremely severe, particularly in view of the applicant's seniority in her post and her age. Lastly, it concluded that, given their failure to provide relevant and sufficient reasons to justify the impugned measure, the national courts had not applied standards which were in conformity with the principles enshrined in Article 10 of the Convention. In any event, there had been no reasonable relationship of proportionality between the interference with Ms Melike's right to freedom of expression and the legitimate aim pursued by the national authorities.

## Principal facts

The applicant, Selma Melike, is a Turkish national who was born in 1970 and lives in Adana (Turkey).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

At the relevant time she was employed as a contractual cleaner at the Seyhan National Education Directorate (Adana). She had been working in public institutions since 1996 as a permanent employee, a status subject to ordinary employment law.

In March 2016 disciplinary proceedings were brought against her for having clicked the "Like" button on various Facebook posts, published on this networking site by third parties. In September 2016 the disciplinary commission imposed the sanction of dismissal, holding that the acts of which she was accused constituted offences under the terms of the collective labour agreement in force at her workplace. The applicant brought proceedings to have the decision terminating her employment contract set aside, and asked to be reinstated in her post.

In April 2017 the Labour Court dismissed Ms Melike's appeal, holding that the Facebook posts to which she had added a "Like" could not be covered by freedom of expression and that their content was likely to disturb the peace and tranquillity of the workplace. The court noted, in particular, that the content containing accusations against teachers was offensive to them and could be viewed by pupils and parents, causing them concern, and that the other articles were political in nature. It found that the termination of the applicant's employment contract, in application of the collective labour agreement to which she was subject, had been in conformity with the procedure and compatible with the law. Ms Melike lodged an appeal, then an appeal on points of law, but these were rejected. An individual application before the Constitutional Court was declared inadmissible as manifestly ill-founded in April 2019.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression, the applicant complained about her dismissal.

The application was lodged with the European Court of Human Rights on 20 June 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Aleš **Pejchal** (the Czech Republic),
Valeriu **Griţco** (the Republic of Moldova),
Pauliine **Koskelo** (Finland),
Marko **Bošnjak** (Slovenia),
Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar.*

## Decision of the Court

### Article 10 (freedom of expression)

The Court noted that Ms Melike had been dismissed for having clicked the "Like" button on a number of articles posted by third parties on Facebook, the online social networking site. It considered that the use of "likes" on social networks, which could be regarded as enabling people to show their interest in and approval of content, was, as such, a common and popular form of exercising freedom of expression online.

Analysing the national courts' decision, the Court noted that, in concluding that the acts complained of was liable to disturb the peace and quiet of Ms Melike's workplace, the domestic courts did not appear to have carried out a sufficiently thorough examination of the content of the contested publications or the context in which they had been posted.

The Court noted that the content in question consisted of virulent political criticism of allegedly repressive practices on the part of the authorities, calls and encouragement to demonstrate in protest against those practices, expressions of indignation about the murder of the president of a bar association, denunciations of the alleged abuse of pupils in establishments controlled by the authorities and a sharp reaction to a statement by a well-known religious figure which was perceived as sexist.

It noted that these were essentially and indisputably matters of general interest and that the content in issue was part of the context of those debates. In this connection, it reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two areas: political speech and matters of public interest.

It also noted that Ms Melike had not been a civil servant with a special bond of trust and loyalty to her hierarchy, but a contractual employee subject to employment law. It reiterated in this connection that the duty of loyalty, reserve and discretion owed by employees in private-law employment relationships to their employer could not be as strong as the duty of loyalty and reserve required of members of the civil service.

It further noted that the national courts had completely failed to examine the potential impact of Ms Melike's conduct. On this point, it noted that the impugned content had been published on Facebook, an online social network. The Court reiterated its previous finding that user-generated expressive activity on the Internet provided an unprecedented platform for the exercise of freedom of expression.

However, alongside these benefits, certain dangers could also arise. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, could be disseminated as never before, worldwide, in a matter of seconds, and sometimes remained persistently available online. That being stated, it was clear that the reach and potential impact of a statement released online with a small readership was certainly not the same as that of a statement published on mainstream or highly visited web pages. It was therefore essential for the assessment of a potential influence of an online publication to determine its scope and public reach.

In this regard, the Court noted that Ms Melike was not the individual who had created and published the impugned content on the social network in question and that her action was limited to clicking on the "Like" button below that content. It noted that the act of adding a "Like" to content could not be considered to carry the same weight as sharing content on social networks, in that a "Like" merely expressed sympathy for the content published, and not an active desire to disseminate it. The Court also noted that the authorities had not alleged that the content in question had reached a very large audience on Facebook. It noted in this connection that some of the relevant posts received only about a dozen "likes" and very few comments. Moreover, given the nature of her position, Ms Melike could have had only limited renown and representative status in her workplace and her activities on Facebook could not have had a significant impact on pupils, parents, teachers and other employees. Moreover, the national authorities had not sought to establish in their decisions whether the latter had had access to Ms Melike's Facebook account or to the contested "likes", on the basis of the parameters, connections and degree of popularity of the applicant's profile on that social network.

In any event, the national authorities had not specified in their decisions whether, during the period between the publication of the disputed content and the initiation of the disciplinary proceedings, which had been approximately six to nine months depending on the posts in question, the "likes" expressed by the applicant in relation to the disputed content had been noticed or complained of by pupils, parents, teachers or other employees in her workplace and whether those "likes" had given rise to incidents of such a nature as to jeopardise order and peace in the workplace.

In consequence, the Court considered that the disciplinary committee and the national courts had not taken account of all the relevant facts and factors in the circumstances of the present case in concluding that the applicant's contested actions were such as to disturb the peace and tranquillity of her workplace. In particular, the national authorities had not sought to assess the potential of the "Like" comments in question to cause an adverse reaction in the applicant's workplace, having regard to the content of the material to which they related, the professional and social context in which they were made and their potential scope and impact. Accordingly, the reasons given in the present case to justify the applicant's dismissal could not be regarded as relevant and sufficient.

As to the severity of the penalty imposed on the applicant, the Court noted that the disciplinary commission, whose decision had been endorsed by the national courts, applied in her case the maximum penalty provided for by the collective labour agreement, namely immediate termination of the employment contract without entitlement to compensation. This was undoubtedly an extremely severe penalty, particularly in view of the applicant's seniority in her post and her age.

Lastly, the Court concluded that, given their failure to provide relevant and sufficient reasons to justify the impugned measure, the domestic courts could not be said to have applied standards which were in conformity with the procedural principles embodied in Article 10 of the Convention or to have based their decisions on an acceptable assessment of the relevant facts. It considered that, in any event, there had been no reasonable relationship of proportionality between the interference with the applicant's right to freedom of expression and the legitimate aim pursued.

**It followed that there had been a violation of Article 10 of the Convention.**

## Just satisfaction (Article 41)

The Court held that Turkey was to pay Ms Melike 2,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**Press contacts**
During the current health-crisis, journalists can continue to contact the press unit via echrpress@echr.coe.int

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