



## Affording increased protection to the head of State by means of a special law on insult is incompatible with the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Vedat Şorli v. Turkey](#) (application no. 42048/19) 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 sentencing of the applicant to a term of imprisonment – with delivery of the judgement suspended for five years – for insulting the President of the Republic, on account of two posts which he shared on his Facebook account. The content comprised, among other things, a caricature and a photograph of the President of the Republic accompanied by satirical and critical comments concerning him. The judgment convicting the applicant was based on Article 299 of the Criminal Code, which afforded a higher level of protection to the President of the Republic than to other persons.

The Court found in particular as follows.

- There had been no justification in the present case for Mr Şorli's placement in police custody and in pre-trial detention or for 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 conviction.
- The criminal proceedings complained of, instituted under Article 299 of the Criminal Code, had been incompatible with freedom of expression. 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, and a State's interest in protecting the reputation of its head of State could not serve as justification for affording the head of State privileged status or special protection *vis-à-vis* the right to convey information and opinions concerning him.
- These findings implied that the violation of Mr Şorli's rights under Article 10 of the Convention stemmed from a problem with the drafting and application of Article 299 of the Criminal Code. In the Court's view, bringing the relevant domestic law into line with Article 10 of the Convention would constitute an appropriate form of redress making it possible to put an end to the violation found.

### Principal facts

The applicant, Vedat Şorli, is a Turkish national who was born in 1989 and lives in Istanbul.

In 2017 Mr Şorli was sentenced to a prison term of 11 months and 20 days (with delivery of the judgment suspended for five years) for insulting the President of the Republic, on account of two posts he had shared on his Facebook account. He was placed in pre-trial detention for two months and two days.

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](http://www.coe.int/t/dghl/monitoring/execution).

The first post, which was shared in 2014, consisted of a caricature featuring the former US President Barack Obama kissing the President of the Turkish Republic, who was depicted in female dress. A speech bubble above the image of the President of the Republic contained the following words written in Kurdish: “Will you register ownership of Syria in my name, my dear husband?”.

The second post, shared in 2016, contained photos of the President of the Republic 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”.

An appeal by the applicant against the judgment convicting him was rejected by the Assize Court in 2017. He lodged an individual application with the Constitutional Court which was rejected in 2019 as being manifestly unfounded.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Şorli complained about the criminal proceedings against him. He alleged that the content he had shared on Facebook constituted critical comments on current political developments. He argued that the offence of insulting the President of the Republic, affording special protection to the head of State and punishable by a more severe penalty than the ordinary offence of insult, was incompatible with the spirit of the Convention and the Court’s case-law. He maintained that his placement in pre-trial detention and his criminal conviction had been disproportionate and that the decision to suspend delivery of the judgment had a chilling effect on his freedom of expression.

The association *İfade Özgürlüğü Derneği* (Freedom of Expression Association) was given leave to intervene as a third party in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).

The application was lodged with the European Court of Human Rights on 10 July 2019.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Carlo **Ranzoni** (Liechtenstein),  
Valeriu **Griţco** (the Republic of Moldova),  
Egidijus **Kūris** (Lithuania),  
Branko **Lubarda** (Serbia),  
Pauliine **Koskelo** (Finland),  
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### [Article 10 \(freedom of expression\)](#)

The Court considered that, in view of the chilling effect which they produced, the order for Mr Şorli’s pre-trial detention in the context of the criminal proceedings against him, his criminal conviction and the decision to suspend delivery of the judgment given in those proceedings, which had subjected him to a five-year suspension period, amounted to interference with the exercise by the applicant of his right to freedom of expression.

The Court went on to note that the interference complained of had been prescribed by law, namely by Article 299 of the Criminal Code. It could also accept that the interference had pursued the legitimate aim of protecting the reputation or rights of others.

As to the necessity of the interference, the Court noted that in convicting the applicant 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 defamation under Article 125 of the Criminal Code – with regard to the disclosure of information or opinions concerning them, and laid down heavier penalties for persons who made defamatory statements.

In that connection the Court observed that it had repeatedly held 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. In one case<sup>2</sup> which, like the present one, concerned a criminal conviction for insulting the President of the Republic, it had also held that a State's interest in protecting the reputation of its head of State could not serve as justification for affording the head of State privileged status or special protection *vis-à-vis* the right to convey information and opinions concerning him, and that the opposite approach could not be reconciled with modern practice and political conceptions.

With particular reference to the proportionality of the criminal sanction laid down for insulting the President of the Republic, the Court noted that 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. It reiterated in that connection that the assessment of the proportionality of an interference with the rights protected by Article 10 often depended on whether the authorities could have had recourse to any means other than a criminal sanction, such as civil-law measures. Even when the sanction was the lightest possible, such as a guilty verdict with a discharge in respect of the criminal sentence and an award of only a "token euro" in damages, it nevertheless constituted a criminal sanction. In any event, that in itself was not sufficient to justify the interference with the exercise of the right to freedom of expression.

The Court therefore considered that in the instant case there had been no justification for Mr Şorli's placement in police custody and in pre-trial detention or for 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 conviction.

In view of the sanction, of a criminal character, imposed on the applicant 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 Court held that the Government had not demonstrated that the measure complained of was proportionate to the legitimate aims pursued or was necessary in a democratic society.

**There had therefore been a violation of Article 10 of the Convention.**

#### [Article 46 \(binding force and execution of judgments\)](#)

The Court held that the criminal proceedings complained of, instituted under Article 299 of the Criminal Code, had been incompatible with freedom of expression. In particular, it stressed 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, and that a State's interest in protecting the reputation of its head of State could not serve as justification for affording the head of State privileged status or special

<sup>2</sup> *Artun and Güvener v. Turkey* (no. 75510/01, § 31, 26 June 2007).

protection *vis-à-vis* the right to convey information and opinions concerning him. Those findings implied that the violation of Mr Şorli's rights under Article 10 of the Convention stemmed from a problem with the drafting and application of the provision in question.

Consequently, the Court held that bringing the relevant domestic law into line with Article 10 of the Convention would constitute an appropriate form of redress making it possible to put an end to the violation found.

#### **Just satisfaction (Article 41)**

The Court held that Turkey was to pay Mr Şorli 7,500 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.