



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

Information Note on the Court's case-law 255

October 2021

Vedat Şorli v. Turkey - 42048/19

Judgment 19.10.2021 [Section II]

Article 10

Article 10-1

Freedom of expression

Various criminal-law measures for insulting the President of the Republic on account of defamatory content shared on Facebook: *violation*

Facts – The applicant was placed in police custody and then in pre-trial detention and was sentenced to eleven months and twenty days' imprisonment for insulting the President of the Republic, on account of two posts shared on his Facebook page which included a caricature and a photograph of the head of State accompanied by satirical and critical comments concerning him. Delivery of the judgment was suspended for five years: if the applicant did not commit an intentional offence during that period, the conviction would be quashed and the case would be struck out of the list.

Law – Article 10:

In view of the chilling effect which they produced, the order for the applicant's pre-trial detention – even if it was considered not to have been enforced – in the context of the criminal proceedings against him, allied to 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 interference complained of had been prescribed by law and had pursued the legitimate aim of protecting the reputation or the rights of others.

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 – 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, 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 or with a State's interest in protecting the reputation of its head of State.

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.

There had been nothing in the circumstances of the present case to justify the applicant's placement in police custody, the order for his pre-trial detention or 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.

Likewise, the Government had not adduced any evidence to demonstrate that the criminal proceedings against the applicant had been made necessary by the state of emergency that had been declared following the attempted military coup of 15 July 2016.

Accordingly, in the circumstances of the present case and 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 measure complained of had not been proportionate to the legitimate aims pursued and had not been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 46: The violation of the applicant's rights under Article 10 of the Convention stemmed from a problem with the drafting and application of the special provision on insult which afforded the head of State privileged status or special protection *vis-à-vis* the right to convey information and opinions concerning him. In that connection, bringing the relevant domestic law into line with Article 10 would constitute an appropriate form of redress making it possible to put an end to the violation found.

Article 41: EUR 7,500 in respect of non-pecuniary damage.

(See also *Artun and Gvener v. Turkey*, 75510/01, 26 June 2007)

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