**1. Summary and outcome**

The European Court of Human Rights has ruled that the conviction of an imam, who was charged with disseminating propaganda on behalf of a terrorist organization for the content posted on his Facebook account, violated his right to freedom of expression under Article 10 of the Convention.

The applicant was accused of condoning, praising, and encouraging the use of violent and coercive methods in posts published on his Facebook account in 2015 and 2016, during military operations conducted under curfews by security forces in southeast Turkey.

The Court found that the domestic authorities did not properly balance the applicant's freedom of expression with the legitimate aims of the interference, violating their right to freedom of expression under Article 10 of the Convention. The government failed to demonstrate that the reasons put forward by the domestic courts to justify the interference were both relevant and sufficient, and that the applicant's conviction was necessary in a democratic society.

**2. Facts**

R. Üçdağ, an imam working at a mosque in the Sur district of Diyarbakır, was indicted in June 2016 by the public prosecutor of Diyarbakır for disseminating propaganda on behalf of a terrorist organization. The indictment alleged that several posts he published on his Facebook account in 2015 and 2016 made propaganda for the PKK (Kurdistan Workers' Party) by condoning, praising, and encouraging the use of violent and coercive methods during military operations conducted under curfews by security forces in southeast Turkey. Among the posts were two photographs, one showing individuals in a uniform similar to that of PKK members and the other showing a crowd demonstrating in a public street in front of a fire, accompanied by the comment “If our brothers and sisters in Sur are not at peace, we cannot be at rest. Let everyone share once to react. If you can't do anything, at least let everyone know please.”

In March 2017, Mr. Üçdağ was found guilty by the Diyarbakır 5th Assize Court of disseminating terrorist propaganda under Article 7/2 of the Anti-Terror Law and was sentenced to one year, six months, and 22 days in prison, However, the delivery of the judgment was suspended under Article 231 of the Code of Criminal Procedure. The court believed that the content published by Mr. Üçdağ incite violence in nature that he praised, legitimized, and encouraged violent and coercive methods of the terrorist organization, considering the public nature of the shared content.

Mr. Üçdağ's appeal against the suspension of the delivery of the judgment was dismissed by the 6th Assize Court on 7 April 2017, but his lawyer was not notified of this decision until 14 February 2018, after which his individual application before the Constitutional Court was declared inadmissible due to its late submission beyond the 30-day legal time limit.

**3. Decision Overview**

The main issue that the Court had to determine was whether the content shared by the applicant on his Facebook account about military operations conducted at that time by the security forces in the district where he lived had the potential to incite violence, given the specific context in which it was published, its potential to cause harm, and the particular circumstances of the case.

The applicant claimed that the content he shared on his Facebook account regarding the military operations conducted by security forces in his district, which he believed were disproportionate and involved human rights violations, did not have any violent implications.

The government argued that the applicant's right to freedom of expression was not violated, as the penal proceeding against him did not result in a criminal conviction on his record, but only in a measure of suspension of judgment delivery that did not have any negative legal consequences for him. The government also contended that the criminal proceedings did not have a chilling effect on the applicant. Additionally, the government claimed that the applicant's conviction was necessary because the content published on his Facebook account was intended to support the PKK, legitimize their actions, and create a negative perception of the legal operations carried out by the security forces against the PKK at the time of the events.

The Court initially evaluated whether the suspension of the delivery of the criminal sentence against the applicant constituted an interference under Article 10 of the Convention. After considering the possible deterrent impact of the criminal conviction and the decision to suspend the judgment, which imposed a five-year probationary period on the applicant, the Court determined that there was indeed an interference with the exercise of the applicant's right to freedom of expression.

The Court examined the reasoning behind the domestic courts' decision to convict the applicant and interfere with their freedom of expression. This scrutiny was necessary to determine whether the interference was justified and necessary in a democratic society. The Court's assessment focused on whether the domestic courts' reasoning was in line with the principles established by the Court's case-law under Article 10 of the Convention.

The Court noted that the content posted by the applicant on his Facebook account was related to the ongoing armed conflict in the region where he lived, and that the posts were made during a time of heightened tension and violence. The Court acknowledged that the posts were intended to express the applicant's political views and to inform others about the situation in the region.

The Court noted that the 5th Assize Court did not provide any detailed analysis on whether the posts on the applicant's Facebook account amounted to incitement to violence or glorification of terrorism. Instead, the court simply stated that the content was likely to incite violence and that the applicant had disseminated propaganda on behalf of a terrorist organization. The 6th Assize Court, which reviewed the applicant's appeal, only assessed the conditions for suspending the delivery of the judgment and did not analyze the content of the posts in question.

The Court determined that the domestic courts did not provide adequate reasoning for why the content on the applicant's Facebook account should be considered as praising, condoning, or encouraging violence, coercion, and threats by the PKK. The national courts failed to consider the established principles under Article 10 of the Convention regarding expressions that promote violence, hatred, or intolerance. They did not assess whether the impugned content could be seen as inciting violence, armed resistance, or hate speech based on its content, context, and potential harm caused by its impact on social networks. As a result, the domestic authorities did not conduct a comprehensive analysis based on the criteria set forth by the Court in previous cases related to freedom of expression.

Furthermore, the Court concluded that the domestic authorities did not properly balance the applicant's freedom of expression with the legitimate aims sought by the interference, as required by the Court's case-law. In particular, the government failed to demonstrate that the reasons put forward by the domestic courts to justify the interference were both relevant and sufficient, and that the applicant's conviction was necessary in a democratic society. Consequently, the Court found that the applicant's right to freedom of expression under Article 10 of the Convention had been violated.

The Court found a violation of the right to a fair trial under Article 6 as well. The Court held that the rejection of the applicant's individual application before the Constitutional Court was a result of excessive formalism. This had placed a disproportionate burden on the applicant, thus violating their right to a fair trial.

**4. Expands expression**

The decision of the Court expands freedom of expression by upholding that any interference with freedom of expression must be justified by a genuine demonstration by domestic authorities that the statement at hand intends to glorify or incite to violence, hatred, or hostility.

The Court's decision affirms and reinforces the right to freedom of expression by emphasizing that any interference with this right must be supported by a genuine and convincing demonstration from domestic authorities that the statement in question is intended to incite violence, hatred, or hostility.

**5. Global Perspective**

This case highlights the importance of protecting freedom of expression while also considering the legitimate aim of preventing the spread of terrorist propaganda. The European Court of Human Rights' decision emphasizes the need for a thorough analysis of the content, context, and potential harm of expression before imposing any restrictions. It also underscores the importance of a fair trial and a proper balancing of interests in cases involving freedom of expression. This case serves as a reminder that any interference with freedom of expression should be proportionate and necessary in a democratic society, in line with the European Convention on Human Rights.

**Related International and/or regional laws**

Turkish Anti-Terror Law, Article 7/2

Turkish Code of Criminal Procedure, Article 231

European Court of Human Rights, Erdoğdu v. Turkey, App. no [25723/94](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2225723/94%22]}) (2000) Dilipak v. Turkey, App. no [29680/05](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2229680/05%22]}), (2015),

Ergündoğan v. Turkey, App. no [48979/10](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2248979/10%22]}) (2018)

  Selahattin Demirtaş v. Turkey (no 3), App. no [8732/11](https://hudoc.echr.coe.int/eng#{%22appno%22:[%228732/11%22]}) (2019)

Otegi Mondragon v. Spain, App. no [2034/07](https://hudoc.echr.coe.int/eng#{%22appno%22:[%222034/07%22]}) (2011)

Özer v. Turkey (no 3), App. no [69270/12](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2269270/12%22]}), (2020)

Bédat v. Switzerland ([GC], no [56925/08](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2256925/08%22]}) (2016),

Perinçek v. Switzerland ([GC], App. no [27510/08](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2227510/08%22]}) (2015)

Selahattin Demirtaş v. Turkey (no 2) [GC], App. no [14305/17](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2214305/17%22]}) (2020)

Sürek v. Turkey (no 4) [GC], App. no [24762/94](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2224762/94%22]}) (1999)

Gözel and Özer v. Turkey, App. nos [43453/04](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2243453/04%22]}) et [31098/05](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2231098/05%22]}) (2010)

Mehdi Tanrıkulu v. Turkey, App. no [9735/12](https://hudoc.echr.coe.int/eng#{%22appno%22:[%229735/12%22]}) (2020)