**1. Summary and outcome**

The European Court of Human Rights held that the conviction of an imam for disseminating propaganda on behalf of a terrorist organization in the criminal proceedings initiated against him on account of the content he posted on his Facebook account constituted a violation of his right to freedom of expression guaranteed under Article 10 of the Convention.

**2. Facts**

The applicant, R. Üçdağ was working as an imam at a local mosque in the Sur district of Diyarbakır. In June 2016, the public prosecutor of Diyarbakır indicted him for disseminating propaganda on behalf of a terrorist organization, alleging that several posts he published on his Facebook account in 2015 and 2016 made propaganda of PKK (Kurdistan Workers’ Party) by condoning, praising and encouraging recourse to violent and coercive methods. The impugned contents were published during the military operations conducted under curfews by the security forces in the southeast Turkey. These included two photographs, one showing individuals in uniform similar to that of PKK members and the other 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, the Diyarbakır 5th Assize Court found Mr Üçdağ guilty of disseminating terrorist propaganda under Article 7/2 of the Anti-Terror Law and sentenced him to one year, six months and 22 days’ imprisonment. The delivery of the judgment was suspended under Article 231 of the Code of Criminal Procedure. The court reasoned that the content published by the applicant was of a nature to call for violence and that he praised, legitimized and encouraged violent and coercive methods of the terrorist organization. The court also took account of the public nature of the shared content. The applicant’s appeal against the suspension of delivery of the judgment was dismissed on 7 April 2017 by the 6th Assize Court. This decision was not notified to the applicant’s lawyer, who thereafter was handed a copy of the decision on 14 February 2018 by the registry of the 5th Assize Court. The applicant’s individual application before the Constitutional Court dated of 7 April 2017 was declared inadmissible on account that it had not been lodged within the 30 days legal time limit.

**3. Decision Overview**

The applicant alleged before the European Court of Human Rights that the contents shared on his Facebook account about military operations – which he deemed disproportionate and entailing human rights violations - conducted at that time by the security forces in the district where he lived, had not any violent implication. The government submitted that the applicant’s right to freedom of expression was not interfered with since the penal proceeding against him did not result in a criminal conviction to be registered in his criminal record, but in a measure of suspension of delivery of the judgment, which did not entail any negative legal consequences against him. According to the government, the criminal proceeding did not engender a chilling effect on the applicant. The government also argued that the conviction of the applicant was necessary in that, the content published on the applicant's Facebook account was intended to support the members of the PKK, to legitimize their actions and to 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 first examined whether the suspension of delivery of the criminal sentence against the applicant amounted to an interference under Article 10 of the Convention. Taking into account the potential deterrent effect of the criminal conviction and of the decision to suspend the delivery of that judgment which subjected the applicant to a five-year probationary period, the Court concluded that there was an interference with the exercise of the applicant’s right to freedom of expression.

The Court further noted that the impugned content on the applicant’s Facebook account included two photographs which had been originally posted by other users. In the first photo were two people, deemed by the national authorities to be members of the YPG given their uniforms and the weapons they were carrying, in front of buildings damaged possibly as a result of the armed conflict. The second photo showed a group of protesters around a fire in a street and was accompanied by a comment which, according to the authorities, asked other people to share the photo in question in support of the protesters in the city where the applicant was living at that time. In the light of the European Court’s established case-law, the essential question before the Court was whether these posts could be considered as inciting to the use of violence, taking into consideration the context in which they were published, their capactiy to harm and the particular circumstances of the present case. In order to assess whether the necessity of the interference with the applicant’s freedom of expression was convincingly established, the Court proceeded with scrutinizing the reasoning of the domestic courts in support of their conviction of the applicant.

The Court first observed that 5th Assize Court who, after describing the content published on the applicant’s Facebook account, contented itself with merely indicating that the content in question was likely to incite to violence, that the applicant had glorified, legitimized and encouraged the methods of the terrorist organization containing coercion, violence and threats by sharing these contents on his Facebook account and that the applicant thus committed the crime of disseminating propaganda on behalf of a terrorist organization. The 6th Assize Court, for its part, examining the applicant’s appeal, only checked the conditions for applying the measure to suspend the delivery of the judgment.

The Court found that the decisions of the domestic courts did not provide a sufficient explanation as to why the incriminated content should be interpreted as praising, condoning and encouraging the methods entailing violence, coercion and threats used by the PKK in the context where they were published. In fact, in their decisions the national courts failed to take into account the principles established by the Court’s case-law under Article 10 of the Convention with regards to written and verbal expressions considered to fuel or justify violence, hatred or intolerance. They did not examine whether the impugned content could be considered as containing an incitement to the use of violence, armed resistance or uprising, or as constituting hate speech, in view of their content, the context in which they were published and their capacity to cause harm given their potential impact on social networks in the circumstances of case. The domestic authorities thus did not carry out an adequate analysis with regards to all the criteria set out and implemented by the Court in the cases relating to freedom of expression.

Furthermore, the Court held that the domestic authorities, while sentencing the applicant for disseminating terrorist propaganda, did not proceed to an appropriate balancing, in conformity with the Court’s case-law, between the applicant’s freedom of expression and the legimitate aims pursued by the interference. Thus, in the present case, the government did not demonstrate that the reasons relied on by the domestic authorities to justify the impugned measure were relevant and sufficient and that the sentencing of the applicant was necessary in a democratic society. Accordingly, the applicant’s right to freedom of expression under Article 10 of the Convention was violated.

The Court also found a violation of the right to a fair trial under Article 6, holding that the rejection of the applicant’s individual application before the Constitutional Court was a result of an excessive formalism, which had placed a disproportionate burden on the applicant.

**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.

**5. Global Perspective**

**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" \l "{%22appno%22:[%2225723/94%22]}" \t "_blank) (2000) Dilipak v. Turkey, App. no [29680/05](https://hudoc.echr.coe.int/eng" \l "{%22appno%22:[%2229680/05%22]}" \t "_blank), (2015),

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

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

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

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

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

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

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

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

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

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