



## Conviction of an imam on the grounds of his Facebook posts was in breach of the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of **Üçdağ v. Turkey** (application no. 23314/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right of access to a tribunal) and a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.**

The case concerned Mr Üçdağ's criminal conviction for disseminating propaganda in favour of a terrorist organisation on account of two posts published on his Facebook account, as well as the rejection of his individual application to the Constitutional Court as being out of time. At the relevant time, Mr Üçdağ was a public official working as an imam at a local mosque. The impugned posts had included two photographs (of individuals in uniform similar to that of PKK members and of a crowd demonstrating in a public street in front of a fire), originally shared by two other Facebook users.

The Court considered that the domestic courts' decisions failed to provide an adequate explanation of the reasons why the impugned contents had to be interpreted as condoning, praising and encouraging the methods [using] coercion, violence or threats implemented by the PKK in the context of their publication. It held that by convicting Mr Üçdağ on charges of propaganda in favour of a terrorist organisation for having posted controversial contents on his Facebook account, the domestic authorities had failed to conduct an appropriate balancing exercise, in line with the criteria set out in its case-law, between the applicant's right to freedom of expression and the legitimate aims pursued.

The Court also ruled that the Constitutional Court's very strict interpretation of the time-limit on lodging an individual application had disproportionately interfered with the applicant's right to an assessment of the merits of his individual application.

### Principal facts

The applicant, Resul Üçdağ, is a Turkish national who was born in 1966 and lives in Diyarbakır (Turkey). At the relevant time, Mr Üçdağ was a public official working as an imam at a local mosque in the Sur district of Diyarbakır.

In June 2016 the Diyarbakır public prosecutor charged Mr Üçdağ with the offence of disseminating propaganda in favour of a terrorist organisation, submitting that certain texts which he had posted in 2015 and 2016 had amounted to propaganda for the PKK (Workers' Party of Kurdistan, an illegal armed organisation) such as to condone, praise and encourage the use of that organisation's methods entailing coercion, violence and threats. The impugned posts had included two photographs (of individuals in uniform similar to that of PKK members and of a crowd demonstrating in a public street in front of a fire), originally shared by two other Facebook users.

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).

In March 2017, the Diyarbakır 5<sup>th</sup> Assize Court found Mr Üçdağ guilty of the offence as charged and sentenced him to one year, six months and 22 days' imprisonment, delivery of the judgment being suspended. The applicant's appeal was dismissed on 7 April 2017 by the 6<sup>th</sup> Assize Court. In the absence of notification of that decision, the applicant's lawyer attended the registry of the 5<sup>th</sup> Assize Court and was handed a copy of the decision on 14 February 2018.

On 26 February 2018 the applicant lodged an individual application with the Constitutional Court, explaining that he had obtained notification of the 7 April 2017 decision on 14 February 2018, and presented the voucher drawn up by the Assize Court registry certifying that the decision had been handed to his lawyer on the latter date. The Constitutional Court declared the application inadmissible as being out of time, considering that it had not been lodged within the 30-day time-limit laid down in Law no. 6216.

## Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial) of the Convention, Mr Üçdağ complained of the rejection of his individual application to the Constitutional Court for failure to comply with the 30-day time-limit laid down in Law no. 6216 for such applications.

Relying on Article 10 (freedom of expression), Mr Üçdağ complained that his right to freedom of expression had been infringed on account of the criminal proceedings instituted against him.

The application was lodged with the European Court of Human Rights on 16 April 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),  
Egidijus **Kūris** (Lithuania),  
Pauliine **Koskelo** (Finland),  
Marko **Bošnjak** (Slovenia),  
Saadet **Yüksel** (Turkey),

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

## Decision of the Court

### [Article 6 \(right of access to a tribunal\)](#)

The Court noted that the Constitutional Court had declared the applicant's individual application inadmissible as being out of time without explaining why it had considered it out of time or clarifying the manner in which it had calculated the 30-day time-limit in the present case, for example by stating the date when the time-limit was deemed to have started running in respect of the applicant. The Court considered that in rejecting the applicant's individual application as being out of time, the Constitutional Court had displayed excessive formalism, which had led to the imposition on the applicant of a particularly onerous duty of diligence, ignoring the specific circumstances of the case, and inflicting on the applicant the consequences of the judicial authorities' failure to notify the final decision, even though such notification had been ordered by the court having given the decision. Requiring the applicant to lodge his individual application within thirty days, preceded by a three-month period starting on the date when the 5<sup>th</sup> Assize Court had prepared a finalisation entry, unknown to the latter, amounted to making the running of the time-limit depend on a factor over which the applicant had had absolutely no control. It therefore considered that the right to lodge an application should apply from the time when the applicant might actually have had known of the

final decision. Consequently, it held that the Constitutional Court's very strict interpretation of the time-limit on lodging an individual application had disproportionately interfered with the applicant's right to an assessment of the merits of his individual application. There had therefore been a violation of Article 6 § 1 of the Convention.

#### Article 10 (freedom of expression)

The Court noted that the impugned Facebook contents on which the domestic authorities had based the applicant's conviction had shared two photographs which had originally been posted by other users. The first photograph had shown two individuals, whom the domestic authorities had taken for members of the YPG (People's Protection Units, an organisation which was set up in Syria and is considered by Turkey as a terrorist entity on account of its alleged links with the PKK), based on their uniforms and the weapons they were carrying, in front of buildings which might have been damaged by armed conflict. The second photograph showed a group of demonstrators who had lit a fire in a street, and was accompanied by a comment, which, according to the authorities, invited the users of the social network in question to share the photo in order to support demonstrators in the city in which the applicant had lived at the material time.

The Court observed that in its decision, the 5<sup>th</sup> Assize Court, having described the impugned posts on the applicant's Facebook account, had merely pointed out that the contents in question had been such as to incite to violence, that the applicant had glorified, condoned and encouraged the terrorist organisation's methods entailing coercion, violence and threats by sharing those contents on his Facebook account, and that he had thereby committed the offence of disseminating propaganda in favour of a terrorist organisation. For its part, the 6<sup>th</sup> Assize Court, examining the applicant's appeal, had merely verified the conditions for the application of the suspension of delivery of judgment measure.

The Court considered that the decisions lacked an adequate explanation of the reasons why the impugned contents had to be interpreted as praising, condoning and encouraging the methods entailing coercion, violence and threats used by the PKK, in the context of the sharing of the posts. It noted that the decisions consequent upon the assessment carried out by the domestic courts in the present case had failed to take into account all the principles established in the Courts' case-law under Article 10 of the Convention concerning verbal and written statements presented as fuelling or justifying violence, hatred or intolerance, since they had not explained whether the sharing of the posts in question could have been considered, in view of their content, context and capacity to lead to harmful consequences having regard to their potential impact on the social networks under the circumstances of the case, as comprising incitement to the use of violence, armed resistance or uprising, or as amounting to hate speech. The domestic authorities had therefore failed to conduct an in-depth analysis taking account of all the criteria which the Court sets out and implements in cases concerning freedom of expression.

The Court concluded that by convicting the applicant on a charge of disseminating propaganda in favour of a terrorist organisation by posting the impugned contents on his Facebook account, the domestic authorities had failed to conduct an appropriate balancing exercise, in keeping with the criteria set out in its case-law, between the applicant's right to freedom of expression and the legitimate aims pursued (protecting national security and territorial integrity and preventing disorder and crime). Thus, the Government had not demonstrated that the grounds relied on by the domestic authorities to justify the impugned measure had been relevant and sufficient and had been necessary in a democratic society. There had therefore been a violation of Article 10 of the Convention.

#### Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Üçdağ 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,736 in respect of costs and expenses.

## Separate opinions

Judges Kjølbros and Koskelo expressed a concurring opinion. Judge Ranzoni expressed a partly concurring opinion. These opinions are annexed to the judgment.

*The judgment is available only in French.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Inci Ertekin (tel : + 33 3 90 21 55 30)**

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

**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.