

## Turkish Constitutional Court's Latest Decisions on Freedom of Expression in Social Media

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Turkish Constitutional Court recently granted two remarkable decisions on November 19, 2019 and on November 28, 2019 regarding individual applications claiming violation of the applicants' freedom of expression. The decisions have been published in the Official Gazette respectively on December 24, 2019 and on January 3, 2020. In both decisions, the Constitutional Court accepted the applicants' violation claims by concluding that the contents posted by the applicants on social media are in the acceptable limits of freedom of expression and the applicants' freedoms of expression are violated.

The first of the decisions, which are elaborated below, concerns messages shared on a group page of a social media website whereas the second decision relates to posts of a journalist, including a hashtag, regarding a politician.

### ***I. Constitutional Court's Decision of November 19, 2019***

#### ***-Background of the Case***

Applicant of the case ("Applicant") is a lawyer same as the complainant ("Complainant") and they are members of a group created on a social media website.

According to the decision, the Complainant shared a text on the homepage of a group on a social media website, whose members are mostly lawyers and expressed his reaction to the contents which were humiliating religious values and praising terrorist acts. Right after the Complainant's post, the Applicant responded with a written message which was quoted from a comedy movie and stated by using a slang language that the Complainant has hurled his ideas in the group.

Eskisehir Public Prosecutor's Office filed a criminal complaint before Eskisehir 1st Criminal Court of First Instance on the grounds that the Complaint was publicly insulted by the Applicant. Eskisehir 1st Criminal Court of First Instance convicted the Applicant and imposed a judicial fine. Following the appeal process where the Applicant's objections were denied, the Applicant filed an individual application before the Constitutional Court (2016/5583) on March 21, 2016 by claiming that his freedom of expression has been violated.

#### ***-Constitutional Court's Evaluation***

Constitutional Court stated that the Complainant wrote a text criticizing other opinions in the relevant group and while the Complainant does not have a second thought on sharing his ideas in the relevant group, he should be more tolerant about the other members who share their opinion without exceeding the limit of criticism. On the other hand, even though it is clear that the Applicant expressed his opinion in an aggressive manner, freedom of expression does not only aim to preserve the essence of opinion and knowledge, but also protects the way the opinion and information is presented. Therefore, the Applicant's post should be considered as a harsh response to the statements made by the

Complainant. Constitutional Court further stated that the Applicant's response is in the acceptable limits of freedom of expression and that otherwise, it would cause excessive limitation of the freedom of expression in similar cases. Therefore the balance between the Applicant's freedom of expression and protection of Complainant's reputation has not been provided in the relevant case. Thus, the Applicant's freedom of expression protected under the Constitution is violated.

In conclusion, the Constitutional Court unanimously decided that (i) the application based on the violation of freedom of expression is rightful and admissible, (ii) that the freedom of expression protected under Article 26 of the Turkish Constitution has been violated, (iii) a copy of the order to be sent to Eskisehir 1st Criminal Court of First Instance to recover the consequences of the violation and (iv) that an adequate amount to be paid to the Applicant for legal costs.

## ***II. Constitutional Court's Decision of November 28, 2019***

### ***-Background of the Case***

Applicant of the case ("Applicant") is an Armenian journalist, radio and television programmer, columnist, who is a Turkish citizen and the complainant is a former mayor ("Complainant").

According to the decision, the Complainant posted a critique regarding a third party's visit to a monument for the alleged genocide of Armenian people and asked him whether he is Armenian on a social media website. Right after the Complainant's post, the Applicant responded to this post with a hashtag which basically states that (i) the Complainant is Armenian (ironically for indicating that calling someone Armenian cannot be used as an insult) and (ii) the Complainant is a disgusting man, and refers to the fellowship of people (Turkish and Armenian people).

The Complainant filed a complaint before Ankara Public Prosecutor's Office on the basis that the Applicant insulted the Complainant and tried to establish a public pressure against the Complainant. Ankara 24th Criminal Court of First Instance decided that Applicant defamed the Complainant and imposed a judicial fine. Since the Applicant's objections and defenses were denied, the Applicant filed an individual application before the Constitutional Court (2016/256) on January 6, 2016 by claiming that his freedom of expression has been violated.

### ***-Constitutional Court's Evaluation***

The Constitutional Court stated that the Applicant wrote these messages upon the Complainant's irritating messages regarding Armenian people. Constitutional Court also took into account the Complainant's political figure status and stated that the limits of freedom of expression are broader for the statements against political figures. Accordingly the Constitutional Court concluded that the Applicant's statements are proportionate and within the acceptable limits of freedom of expression. Otherwise, it would cause for excessive limitation of the freedom of expression in similar cases. Therefore the balance between the Applicant's freedom of expression and protection of Complainant's reputation has not been established in the relevant case. Thus, the Applicant's freedom of expression protected under the Constitution is violated.

In conclusion, the Constitutional Court unanimously decided that (i) the application based on the violation of freedom of expression is rightful and admissible, (ii) that the freedom of expression protected under Article 26 of the Turkish Constitution has been violated, (iii) a copy of the order to be sent to Ankara 24th Criminal Court of First Instance to recover the consequences of the violation and (iv) that the determined amounts to be paid to the Applicant respectively for moral damages and legal costs.

### ***III. Conclusion***

In light of the foregoing decisions, we can observe that the Constitutional Court has taken into account all facts including but not limited to the status of the complainant and the social media website where the relevant expression is made, conjuncture in which the statements and critics were made and how these critics and reactions were expressed for evaluating violations of freedom of expression on social media. Constitutional Court acknowledged the balance between the applicants' freedom of expression and protection of complainants' honor and reputation but eventually upheld free speech on the internet.

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