

2021

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Recommended Citation

Hamad, Danya (2021) "The Politics of Freedom of Expression in Turkey," *Human Rights Brief*. Vol. 25: Iss. 1, Article 11.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol25/iss1/11>

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THE POLITICS OF FREEDOM OF EXPRESSION IN TURKEY

by *Danya Hamad**

In the past couple of years, Turkey has increasingly restricted its citizens' right to the freedom of expression. Each year, the Turkish government charges and convicts thousands of people for insulting the President of the Republic under Article 299 of the Turkish Criminal Code.¹ Article 299 reads as follows, "anyone who insults the President of the Republic shall be punished by a term of imprisonment of between one and four years."² Article 299 affords a higher degree of protection to the President than to other persons and lays down greater penalties for persons who make defamatory statements.³ In the case of *Şorli v. Turkey*, the European Court of Human Rights (ECtHR) takes a further look at this issue to determine if the increased protection to the head of a state by means of special law on insult is compatible with the European Convention on Human Rights (ECHR).⁴ The outcome of this case is not only important in understanding and protecting the freedom of expression of persons within Turkey, but it also provides an important interpretation for the freedom

of expression of persons who make political posts in Kurdish, which is a prominent issue given Turkey's ongoing crackdown on Kurdish oppositions.⁵

In *Şorli*, the petitioner is a Turkish national that the Turkish government, in 2017, prosecuted and convicted for insulting the President of the Republic under Article 299 on account of two Facebook posts he had shared on his account.⁶ The Facebook posts in question included two caricatures/images depicting the President along with some political statements, one of which was written in Kurdish.⁷ After two months of pre-trial detention, the applicant received a suspended sentence of eleven months and twenty days.⁸ The applicant brought the case before the ECtHR under ECHR Article 10, which guarantees the right to freedom of expression, including the "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."⁹

The ECtHR recently held that the Turkish government interfered with the applicants' exercise of his right to freedom of expression through pre-trial detention of the applicant, criminal conviction, and the five-year period of his suspended sentence.¹⁰ Turkey's actions effectively prevented the applicant from exercising his right to freedom of expression.¹¹ Furthermore, by issuing a suspended sentence, the state continues to prevent convicted individuals from expressing their views on public matters due to the fear of violating the terms of their sentence.¹²

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¹ *Turkey: End Prosecutions for 'Insulting President'*, HUM. RTS. WATCH (Oct. 17, 2018), <https://www.hrw.org/news/2018/10/17/turkey-end-prosecutions-insulting-president>.

² *Şorli v. Turkey*, App. No. 42048/19, (Eur. Ct. H.R. 2021), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-212394%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-212394%22]}).

³ HUM. RTS. WATCH, *supra* note 1.

⁴ *Şorli*, App. No. 42048/19

⁵ *Turkey: Crackdown on Social Media Posts*, HUM. RTS. WATCH (Mar. 27, 2018), <https://www.hrw.org/news/2018/03/27/turkey-crackdown-social-media-posts>.

⁶ *Şorli*, App. No. 42048/19 at ¶ 9.

⁷ *Id.* ¶ 5.

⁸ *Id.* ¶ 9.

⁹ Convention for the Protection of Human Rights and Fundamental Freedoms art. 10(1), Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 222.

¹⁰ *Şorli*, App. No. 42048/19 at ¶ 47.

¹¹ *Id.* ¶ 48.

¹² *Id.* ¶ 45.

The Court held in its opinion that Article 299's increased protection of the Turkish President from public insults is incompatible with the spirit of the ECHR.¹³ Lastly, the Court recognized that an appropriate form of redress would be for Turkey to bring its relevant domestic law, such as Article 299, in line with Article 10 and the spirit of the ECHR.¹⁴

The Court's holding importantly identifies that not only is Turkish domestic law incompatible with Article 10 of the ECHR, but the procedural methods in place, such as suspended sentences, are further incompatible with Article 10.¹⁵ Additionally, the Court's affirmation of the defendant's right to freedom of expression given the political nature of his posts could also indicate that Turkey's recent crackdown on Kurdish opposition, including social media propaganda, is also incompatible with Article 10.

¹³ *Id.* ¶ 47.

¹⁴ *Id.* ¶ 54.

¹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms art. 10(1), Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 222.