Third Party Intervention

In the Case of Helin DOĞAN v. TURKEY (no. 17461/20)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

An independent non-governmental organization specialized in defending and promoting freedom of expression

I. Introduction

1. İFÖD will address in its intervention in the case of Helin Doğan v. Turkey (**No. 17461/20)** the issue of civil servants' freedom of expression on the social media platforms. It is understood from the case file that the application concerns an administrative sanction of a three-year **grade advancement freeze** imposed on the applicant, a teacher in a public nursery school at the material time, because of some of her social media posts. The applicant was a member of the Education and Science Workers' Union ("**Eğitim-Sen**") at the material time. Disciplinary investigation against the applicant was commenced upon a discussion at the school meeting on an aiding campaign initiated by an NGO (IHH - Humanitarian Relief Foundation). The applicant and some other teachers who were members of Eğitim-Sen reacted against aiding campaign at the school. Following the discussion at the school, social media postings of the applicant was assessed by the school administration and an official disciplinary investigation was instigated. The disciplinary council of the directorate of national education of Istanbul prefecture, in imposing the sanction of a three-year **grade advancement freeze** on the applicant, considered that the social media publications insulted the State, the leaders of the State and the forces of the State and legitimized the acts of a terrorist organization and that the applicant had thus disturbed the peace, tranquillity and order in her workplace.

2. The disputed postings, some of which produced by other Facebook users, read as follows:

> "The kind of educators who don't go on strike so that classes aren't interrupted, while children at their students' age is being killed. History will write to you! (...) We discussed this with the friends at the protest today. It's disgusting."
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> "In the article, it is written that he lost his life. What may a seven year old has been through? You did not [even] let him live, only to lose his life! Like Uğur. Like Ceylan. Like other children you slaughtered!"
> " (...) Think a bit. How is the state you see in Tunalı Hilmi, Taksim, Karşıyaka and [the one you see] in Silopi? What I mean, despite the state's methods and your indifference, these people are still talking about living together with you. Before leaving this world, think at least once why dozens of citizens have been going to the mountains for thirty years."
> "Why does the big man, who asks [neighbourhood] mayors to denounce leftists and socialists, does not tell them: Inform the competent authorities about men who are tempted to violence or who violate their wives or children?"
> "We won't let you go to war. Spit in the face of the executioner, the opportunist, the evil one, the traitor! (...)"
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> "So he said "Building O the Prophet of God ("İnşaat ya Resulallah")", so resist especially now, Kobane."

3. It is also understood from the case file that the Istanbul Administrative Court dismissed the appeal for annulment of the administrative sanction brought by the applicant, noting that the latter had been convicted of criminal charges for propaganda in favour of a

terrorist organization to one year and three months' imprisonment with postponement of the declaration of verdict because of these publications and therefore considered that the administrative sanction was not tainted with illegality. The Istanbul Regional Administrative Court ruled that the administrative court's decision was in accordance with law and procedure. The Constitutional Court, for its part, declared the applicant's individual application inadmissible, considering the applicant's complaint relating to an alleged infringement of her right to freedom of expression was unsubstantiated and manifestly ill-founded.

4. Relying on Article 10 of the Convention, the applicant alleged that the **disciplinary sanction** imposed on her as a result of her publications on social network platforms violated her right to freedom of expression.

5. The Court, in its communication to the parties, relying on the *Baka v. Hungary* Grand Chamber judgment,[1] asked whether the disciplinary sanctioning of a public-school teacher could be deemed necessary in a democratic society for her social media posts. The Court also asked to the parties, in this context, whether the national courts carried out a sufficient examination and an adequate balance between the applicant's right to freedom of expression and other interests at stake with regard to the criteria set out and implemented by the Court in cases relating to freedom of expression.

6. İFÖD's submission will, firstly, focus on freedom of expression of **civil servants** as well as **public sector employees in relation to political issues on the social media platforms** and **the extent of their responsibility for the statements they themselves published, shared, commented on or liked**. The relevant European standards and the Court's jurisprudence concerning freedom of expression of public servants in relation to political issues and their responsibility for the statements they themselves publish or like on social media platforms will be assessed. Within this context İFÖD will provide an overview of legal issues surrounding social media postings as well as provide an assessment of the impact of such publications and their further circulation through "likes" by other users who did not generate the original content which may be the subject matter of a legal dispute.
7. İFÖD will therefore assess the important issue of whether the majority of comments published on social media platforms are likely to be too trivial in character, and/or whether the extent of their publication is likely to be too limited in semi closed social media platforms such as Facebook. İFÖD will therefore argue that a statement released by an individual to a small and restricted group of Facebook users or a statement liked by another user of the same social media platform, **does not carry the same weight as a statement published on a mainstream website**. The submission will argue that whether the domestic law and practice comply with these standards should be evaluated by the Court.
8. Finally, the state of freedom of expression in Turkey will be briefly outlined. This assessment is relevant to the Court's questions involving whether the applicant's freedom

[1] no. 20261/12, § 162, 23.06. 2016.

of expression has been breached. Within this context, İFÖD will note that this case cannot be considered as an isolated single incident, rather it is an example of the deterioration of freedom of expression in Turkey. It is submitted that the current case should be reviewed against this background.

II. Freedom of Expression of Civil Servant on the Social Media

9. The European Court of Human Rights examined in several cases whether sanctioning of a civil servant because of his/her statements constitutes an interference with his/her freedom of expression. The Court stated, in the *Vogt* case, that "… the refusal to appoint a person as a civil servant cannot as such provide the basis for a complaint under the Convention. This does not mean, however, that a person who has been appointed as a civil servant cannot complain on being dismissed if that dismissal violates one of his or her rights under the Convention. **Civil servants do not fall outside the scope of the Convention**" and accordingly "the status of permanent civil servant … **did not deprive her of the protection of Article 10**".[2]
10. The Court also ruled in *Lombardi* Vallauri that dismissal of the applicant's candidacy taken by the Faculty Council on the basis of his ideas conflicting with the doctrine of the catholic church **did constitute an interference with the applicant's right guaranteed by Article 10 of the Convention** in view of the fact that the applicant worked more than twenty years on the basis of temporary contracts.[3] The case concerned the refusal of a teaching post in a denominational university because of alleged heterodox views of the applicant and he complained that his dismissal without any reason and without any genuine adversarial debate had breached his right to freedom of expression. The Court examined the case under Article 10 and held that there had been a violation of freedom of expression.
11. Therefore, the Court's case law in this regard is well established and it accepts that **Article 10 applies to the workplace in general**.[4] More importantly, the Court reiterates that **civil servants, such as the applicant, enjoy the right to freedom of expression**.[5] Moreover, the Court reiterates that as civil servants enjoy the freedom to express their opinions and ideas under Article 10 of the Convention, like all other individuals,[6] Contracting States must allow a certain space in domestic public debate, even in difficult times, for the participation of civil servants, in particular where their experience and

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2 *Vogt v. Germany*, [GC], no. 17851/91, 26.09.1995, § 43.

3 *Lombardi Vallauri v. Italy*, no. 39128/05, 20.10.2009, § 38.

4 *Herbai v. Hungary*, no. 11608/15, 25.11.2019; *Ahmed and Others v. the United Kingdom*, no. 22954/93, 02.09.1998; *Wille v. Liechtenstein*, (GC), no.28396/95, 28.10.1999; Fuentes Bobo v. Spain, no, 39293/98, 29.02.2000; *Kudeshkina v. Russia*, no. 29492/05, § 79, 26.02.2009; *Guja v. Moldova* [GC], no. 14277/04, § 55, 12.02.2008; *Guja v. Moldova (No.2)*, no. 1085/10, 27.02.2018; *Baka v. Hungary*, (GC), no. 20261/12, 23.06.2016.

5 *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008, § 70.

6 *Baka*, § 140.

expertise may be conducive to an informed debate on issues of public interest and importance.[7]

12. At the same time, the Court is mindful that civil servants have a duty of loyalty, to their employer since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion.[8] It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between an individual's fundamental right to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthers the purposes enumerated in Article 10(2) of the Convention.
13. In carrying out this review, the Court will bear in mind that, whenever a civil servant's right to freedom of expression is in issue, the "duties and responsibilities" referred to in Article 10(2) of the Convention assume a special significance which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim.[9] In this regard, the Court considers that measures directed at the need to preserve the political neutrality of a precise category of civil servants can in principle be considered legitimate and proportional for the purposes of Article 10 of the Convention.[10] However, such a measure **should not be applied in a general manner which could affect the essence of the right protected**, **without having in mind the functions and the role of the civil servant in question**, and, in particular, **the circumstances of each case**.[11]
14. Within this context, the Court should consider that the act of **sharing six separate Facebook postings** some of which were produced by others than the applicant as a nursery teacher was **expression of her political ideas as part of her private life** rather than acted upon within the sphere of her employment in the civil service or as part of her official duties,[12] nor her duties were affected as a civil servant. Unlike in the case of *Karapetyan and Others*[13] she **did not hold a high-ranking civil servant position** within the Ministry of Foreign Affairs and her name did not appear on a statement criticising a widely disputed presidential election. By way of further example, she was not a senior civil servant who made unjustified accusations of perversion of justice within the Housing Office of the Municipality of Dresden.[14] Finally, the applicant's Facebook activity did not interfere seriously with the working atmosphere at the public institution where she worked as a common worker.

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7 *Karapetyan and Others v. Armenia*, no. 59001/08, § 58, 17.11.2016.

8 *De Diego Nafria v. Spain*, no. 46833/99, § 37, 14.03.2002.

9 *Vogt*, § 53; *Albayrak v. Turkey*, no. 38406/97, § 41, 31.01.2008; and *Baka v. Hungary*, no. 20261/12, 23.06.2016, § 162.

10 *Ahmed and Others v. the United Kingdom*, 02.09.1998, § 63, Reports of Judgments and Decisions 1998 VI.

11 *Küçükbalaban and Kutlu v. Turkey*, nos. 29764/09 and 36297/09, § 34, 24.03.2015; *Dedecan and Ok v. Turkey*, nos. 22685/09 and 39472/09, § 38, 22.09.2015.

12 *Harabin v. Slovakia*, no. 58688/11, §§ 151-153, 20.11.2012.

13 *Karepetyan and Others v. Armenia* (no. 59001/08, 17.11.2016.

14 *Langner v. Germany*, no. 14464/11, 17.09.2015.

15. İFÖD is of the opinion that, civil servants, like other members of the public, can express their views on matters of general interest or on political issues, but must ensure the impartiality of discharging their duty as a civil servant is not affected. Therefore, a civil servant's activities on the social media in his/her private life should be evaluated according to general principles relating to freedom of expression as long as his/her postings are not related to his/her work, or his/her position as a government employee. Having regard to the case-law of the ECtHR regarding with freedom of expression at the workplace, this application **has an exceptional nature** since the applicant's sharing of some political postings does not have any relation with her work. It should also be considered that **public authorities failed to establish a meaningful link between her sharing of those political messages and her subsequent disciplinary punishment.** Political neutrality or impartiality of a nursery teacher in her private life does not impact her performance at the workplace. So, this case is more related to a civil servants' right to have a political opinion critical of the ruling party or government **in her private life outside the workplace environment**. Therefore, this case should be evaluated according to general principles relating to freedom of expression.

ii. The Speaker/Producer vs. the Distributor of Content

16. There is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate on matters of public interest. The limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries.[15]
17. Within this context, there needs to be a distinction between various types of social media users. Although the title and position of the person making the speech is important within the Court's jurisprudence, there may be other types of users of social media platforms previously not considered by this Court. Therefore, there needs to be a distinction between the following type of users while determining criminal responsibility if any:

    a. **The Speaker** is the person who creates, produces and owns the original content,
    b. **The Direct Distributor** is the person who shares the original content,
    c. **The Indirect Distributor** is the person who likes the original content.

18. Even when liability may arise for the speaker category within the context of social media postings and content, that may not necessarily extend to the distributor category as the potential impact of such distribution needs to be evaluated further by reference to the Court's jurisprudence, as will be explained further below.

[15] *Erdoğdu and İnce v. Turkey*, no. 25067/94, § 50, 8.7.1999; *Başkaya and Okçuoğlu v. Turkey*, no. 23536/94, § 62, 08.7.1999; *Sürek v. Turkey* (no. 4), no. 24762/94, § 57, 08.7.1999; *Sürek v. Turkey* (no.2), no. 24122/94, § 34, 8.7.1999; *Yalçın Küçük v. Turkey*, no. 28493/95, § 38, 5.12.2002; *Erdoğdu v. Turkey*, no. 25723/94, §§ 61-62, 15.6.2000.

iii. Potential Impact of Facebook Content

19. There are substantial differences between the various social media platforms and how the users choose to use these platforms. While, for example, Twitter is regarded as largely an open microblogging platform, Facebook is often regarded as a semi closed platform given that users largely post on their Facebook "wall" that is visible to their "friends" (unless they make the content accessible to anyone). The users of Facebook themselves decide whether to have their accounts and profiles publicly open to anyone or whether their accounts are restricted to family and friends. Therefore, İFÖD believes it is important to consider **the nature of the platform on which the impugned posts were made**; that is whether they were made on a completely publicly accessible Internet platform, website or blog or on semi-private platform.[16]
20. The Court established that the **potential impact** of the medium of expression concerned **is an important factor** in the consideration of the proportionality of an interference.[17] According to the Court's jurisprudence, "it is clear that the **reach** and **thus potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or highly visited web pages"**.[18] It is therefore essential for the assessment of a potential influence of an online publication to determine the scope of its reach to the public. Similarly, in the admissibility decision of *Tamiz v. The United Kingdom*,[19] the Court established that "millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, **the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage**" (§80-81) to another person's reputation or to state institutions to require criminal prosecutions or sanctions such as dismissal.
21. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, in his Report submitted in accordance with Human Rights Council resolution 16/4 also stated that "*a statement released by an individual to a small and restricted group of Facebook users does not carry the same weight as a statement published on a mainstream website*".[20]
22. Therefore, İFÖD suggests that distinctions should be made between whether the posts were made by a public, **well-known or influential figure**,[21] or **a well-known blogger or YouTuber**[22] **or a popular user of social media**,[23] **which could have attracted public**

16 Compare *Savva Terentyev v. Russia*, no. 10692/09, 28.08.2018, § 79.
17 *Murphy v. Ireland*, no. 44179/98, § 69, ECHR 2003 IX (extracts).
18 *Savva Terentyev*, § 79.
19 *Tamiz v. The United Kingdom*, no. 3877/14, 19.09.2017.
20 A/67/357, of 07.09.2012, § 46.
21 Contrast, *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11.10.2001; *Féret v. Belgium*, no. 15615/07, §§ 75 and 76.
22 *Rebechenko v. Russia*, no. 10257/17, 16.04.2019, § 25.
23 *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, ECHR 2016.

attention to his comment and thus have enhanced the potential impact of the impugned statements[24] at the time she shared six posts on Facebook or when she was under disciplinary investigation.[25] Moreover, the Court should also take into account the content of shared postings whether they had a political nature and whether they were **part of a political debate on a matter of general and public concern.** Thirdly, the Court should also consider whether the alleged **publications of the applicant attracted any public attention**. Finally, the Court should examine whether domestic judicial authorities evaluated the potential impact of the applicant's postings on Facebook and **his trivial role in distribution of the original content.**

23. The Public Service Alliance of Canada believes that "Union members and all employees have a right to freedom of expression protected by the Charter of Rights and Freedoms, even if they work for the federal government." Considering the **applicant's position as a civil servant**, the following factors developed by the Public Service Alliance of Canada should also be taken into account:[26]

    i. **Visibility of the applicant**: Whether the applicant holds a highly visible and public position? Is he/she a senior public service employee or a public service worker with little to no public visibility?

    ii. **The applicant's duties and responsibilities**: Whether the content of statements is directly related his/her work or the work of his/her department? Or, his/her criticism is limited to government policies that are not linked to his/her work.

    iii. **The applicant's level of influence**: Does the applicant has a significant degree of authority and influence?

    iv. **The tone and intensity of the posts**: Does the posts use a measured and reasonable tone or they use derogatory language and a vitriolic tone over a sustained period of time?

    v. **Union membership**: whether the applicant holds office in a union and his/her position at the union?

24. The Public Service Alliance of Canada argues that as long as a public server worker does not identify herself as a government employee and does not criticise government policies that are directly related to her job or department, she is then entitled to have an opinion and express herself. İFÖD is of the opinion that **these are important factors that needs to be taken into account** and that the Court should assess in the present case.

iv. Content of the Facebook Publications: Political Speech Enjoys Wider Protection

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24 *Savva Terentyev*, § 81.

25 *Stomakhin v. Russia*, no. 52273/07, 09.05.2018, §131.

26 See further Public Service Alliance of Canada, "Expressing political opinions on social media: Your rights," at http://psacunion.ca/expressing-political-opinions-social-media-your-0?_ga=2.24150332.740880621.1570731776-1094096334.1570731776

25. The Court's well-established case law holds that political speech enjoys high protection and there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. The margin of appreciation of States is thus reduced where a debate on a matter of public interest is concerned.[27] Therefore, the local courts should consider whether the nature of the online content at issue in a given case constitutes political speech or relates to matters of public interest. They should analyse the statements **"in the context of the relevant discussion and to find out which idea they sought to impart**".[28] The Court rightly stated in *Terentyev v. Russia* that the local courts "made no attempt to assess the potential of the statements **at hand to provoke any harmful consequences**, with due regard to the political and social background, against which they were made, and to the scope of their reach".[29]
26. Furthermore, the local courts should assess whether the impugned statements, are fairly construed and seen in their immediate or wider context, can be seen **as a direct or indirect call for violence or as a justification of violence, hatred or intolerance**.[30]
27. The Court stated that offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration; **but the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes**. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the substance of the ideas and information expressed.[31] The Court stresses that not every remark which may be perceived as offensive or insulting by particular individuals or their groups justifies a sanction. It is only by a careful examination of the context in which the offending, insulting or aggressive words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society.[32] Within this context, though it did not approve of the language used by the applicant or the tone of his text, the Court considered even very harsh statements like "*It would be great if in the centre of every Russian city, on the main square... there was an oven, like at Auschwitz, in which ceremonially every day, and better yet, twice a day (say, at noon and midnight) infidel cops would be burnt. The people would be burning them. This would be the first step to cleansing society of this cop-hoodlum filth.*" to be a provocative metaphor, which frantically affirmed the applicant's wish to see the police "cleansed" of corrupt and

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27 *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, [GC], no. 931/13, § 167, 27.06.2017.

28 *Savva Terentyev*, § 82.

29 *Ibid*.

30 See, among other authorities, *Incal v. Turkey*, no. 22678/93, 09.06.1998, § 50, Reports 1998-IV; *Özgür Gündem v. Turkey*, no. 23144/93, § 64, ECHR 2000-III; *Gündüz v. Turkey*, no. 35071/97, §§ 48 and 51, ECHR 2003-XI; *Hizb ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, § 73, 12.06.2012; *Fáber v. Hungary*, no. 40721/08, §§ 52 and 56-58, 24.07.2012 and *Vona v. Hungary*, no. 35943/10, §§ 64-67, ECHR 2013.

31 *Gül and Others v. Turkey*, no. 4870/02, § 41, 08.06.2010; *Grebneva and Alisimchi v. Russia*, no. 8918/05, § 52, 22.11.2016; *Savva Terentyev v. Russia*, no. 10692/09, § 68, 28.08.2018.

32 *Vajnai v. Hungary*, no. 33629/06, §§ 53 and 57, ECHR 2008.

abusive officers ("infidel cops") and which was the applicant's emotional appeal to take measures with a view to improving the situation.[33] This assessment of the Court should also be taken into consideration when deciding whether specific types of content result in direct or indirect call for violence or as a justification of violence, hatred or intolerance.

28. Another factor which should be taken into the account is whether impugned statements is likely to provoke imminent unlawful actions in the workplace or to expose other workers to a real risk of physical violence. Whether the Disciplinary Board or the domestic courts including the Constitutional Court evaluated that the applicant's sharing of impugned postings on Facebook took place against a sensitive social or political background, or that the general security situation in the Country or in her workplace and the potential impact of the applicant's sharing should be a factor in the assessment of the case.
29. The Court should also take into the consideration that **the message shared by the applicant did not attack personally any identifiable teacher but rather concerned the impact of security operations on children.** The Court accepts that civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens, even more so when such criticism concerns a whole public institution. A certain degree of immoderation may fall within those limits, particularly where it involves a reaction to what is perceived as unjustified or unlawful conduct of civil servants.[34]
30. İFÖD, therefore, believes that in addition to context analysis, content analysis is an important necessary element for assessing this and similar applications in the future with regards to social media content.

v. Whether the Interference was Foreseen by Law

31. According to the Court's settled case-law, the expression "prescribed by law" requires that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, which should be accessible to the persons concerned and foreseeable as to its effects, that is formulated with sufficient precision to enable the persons concerned – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct.[35] Those consequences need not be foreseeable with absolute certainty, as experience shows that to be unattainable.[36]
32. In the current application, the key issue is whether by deciding to share impugned posting on Facebook, the applicant knew or ought to have known – if need be, with appropriate legal advice – that this could result her responsibility and disciplinary punishment.
33. The applicant has been subjected to administrative penalty of three-year **grade advancement freeze** based article 125 paragraph (D) sub-paragraph (o) of the Law No 657 (Civil Servants Law) which stipulates that;

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33 *Terentyev*, § 72.

34 *Terentyev*, § 75.

35 *Öztürk v. Turkey* [GC], no. 22479/93, § 54, ECHR 1999-VI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; and *Dilipak v. Turkey*, no. 29680/05, § 55, 15.09.2015.

36 *Perinçek v. Switzerland* [GC], no. 27510/08, § 131, ECHR 2015 (extracts).

"… The acts and situations that require grade advancement freeze are as follows:
... o) To act actively for the benefit or disadvantage of any political party."

34. The Court should evaluate whether the applicant should have reasonably foreseen that her Facebook postings could be considered as acting for benefit of a political party.
35. It should be noted that there are no official guidelines for personal use of social media by civil servants in general or by teachers of public schools particularly in Turkey.
36. Several international organisations and national governments published guidelines for personal use of social media by civil servants. For example, United Nations Secretariat published guidelines for the personal use of social media for UN employees. UN guidelines indicates that staff are encouraged to promote a better understanding of the objectives and work of the Organization through social media and to advocate for the ideals, principles and values enshrined in the United Nations Charter, the Universal Declaration of Human Rights, and other decisions taken by the Organization. Any comments or statements posted by staff on personal social media should be consistent with the ideals of peace, respect for fundamental human rights, the dignity and worth of the human person and the equal rights of men and women, respect for all cultures, and must not discriminate against any individual or group of individuals.[37] The Guidelines also includes some practical advice for staff to keep their impartiality and to avoid responsibility such as violation of privacy rights etc.
37. Public Service Alliance of Canada declared that Union members and all employees have a right to freedom of expression protected by *the Charter of Rights and Freedoms*, even if they work for the federal government. Expressing political opinions or sharing political content on social media is a form of political expression and is protected by the *Charter*. Online political expression does not benefit from any greater or any less protection than other forms of political expression. As a public service worker, you have the right to share content from our campaign on your personal Facebook, Twitter or other social media accounts as long as you do so outside of your hours of work, and you don't use the employer's equipment.[38] The Union also recommended that civil servants to avoid exposing their identity as a government employee and to avoid criticising government policies that are directly related to their job in order not to breach their duty of loyalty.
38. İFÖD is of the opinion that the Court should evaluate whether it is foreseeable for an objective observer that sharing personal views of a nursery teacher on her private social media account may result in disciplinary punishment. Considering that the impugned messages did not directly target any person or any teacher, and even there existed an unlikely possibility of a fellow co-worker or teacher seeing the messages and offended from them, it is highly unlikely that the fact that the applicant shared those messages would cause any problem at the workplace. Therefore, whether interpretation and

[37] UN Secretariat, Guidelines for the Personal Use of Social Media, 2019, https://www.un.org/en/ethics/assets/pdfs/UN_Personal_Use_Social%20Media_Guidelines_Feb_2019.pdf

[38] Public Service Alliance of Canada, (2019) "Expressing political opinions on social media: Your rights", available at http://psacunion.ca/expressing-political-opinions-social-media-your-0?_ga=2.24150332.740880621.1570731776-1094096334.1570731776

application of national authorities of the provisions of Civil Servants Law meet the foreseeability requirement established by the case-law of the Court should be assessed against this background.

Crack Down on Critical Voices

39. Considering all the above factors İFÖD would like to emphasize that, the applicant's case is not an isolated incident, rather it is a reflection of the general deterioration in the state of freedom of expression in Turkey and crack down on critical voices. It shows that any critical attitude from any person can be reprimanded harshly by the public authorities.

40. As observed by interstate institutions as well as international NGOs, the state of human rights, the rule of law and independence of the judiciary **deteriorated drastically within the last five years in Turkey**. Freedom of expression, freedom of the media and Internet freedom have been the most affected areas during this deterioration.

41. İFÖD recently outlined the extent of deterioration of freedom of expression in Turkey in its Third Party Intervention to the *Mümtazer Türköne v. Turkey (*no. 70430/17) case. Making reference to that submission, İFÖD will refrain repeating the same observations here. Only one quote from The European Commission's "**Turkey Report 2020**" will suffice to show the current situation of fundamental rights and freedom of expression in Turkey. The Commission stated that;

> "The Council of Europe continued its monitoring of Turkey's respect for fundamental freedoms. Serious backsliding in most areas continued. Legislation introduced immediately after the lifting of the state of emergency (SoE) removed crucial safeguards protecting detainees from abuse, thereby increasing the risk of impunity. **Restrictions imposed on and surveillance of the activities of journalists**, writers, lawyers, academics, human rights defenders and critical voices on a broad scale **have a negative effect on the exercise of these freedoms, and lead to self-censorship**. The enforcement of rights is hindered by the fragmentation and limited independence of public institutions responsible for protecting human rights and freedoms, and is aggravated by the lack of an independent judiciary"[39]

42. **İFÖD** would like to emphasize that under these conditions **an isolated approach to the case at hand** may cause losing sight about the surrounding conditions of the applicant's disciplinary punishment. Therefore, İFÖD is of the opinion that the **broader political context in which the applicant was investigated** and **punished should be taken into account** when evaluating whether interference with her freedom of expression pursued a legitimate aim, and whether it was necessary and proportional.

Conclusion

[39] The European Commission, Turkey Report 2020, p.28, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

43. İFÖD kindly invites the Court to take into account the general deterioration of freedom of expression in Turkey and to examine the case at hand on this background. This case shows that a trivial act of sharing six social media postings critical of the government may result in severe punishment of a nursery teacher who is a member of a critical Union and there is no single institution in Turkey to restore her rights as the whole judicial system, including the Constitutional Court, failed to restore the applicant's rights. Therefore, examination of the case speedily has crucial importance to determine systemic failure.

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İfade Özgürlüğü Derneği – İFÖD (Turkey)

Web: https://ifade.org.tr Twitter: @ifadeorgtr

İfade Özgürlüğü Derneği (İFÖD) has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The new Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.