Third Party Intervention

In the Case of Selma Melike v. Turkey (no. 35786/19)

by

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Introduction

1. İFÖD will address in its intervention in the case of Selma Melike v. Turkey (no. 35786/19) **the issue of civil servants expressing themselves on the social media platforms**. In this case, the **applicant's employment contract was terminated by public authorities as a disciplinary sanction** for the fact that **she liked some political statements released by other users on Facebook**, a popular social media platform. The submission will first argue that **liking something on social media platforms such as Facebook amounts to symbolic speech which is protected by Article 10** of the European Convention and that the applicant expressed herself by liking some content on the Facebook platform. As the European Court stated several times "when the right to freedom of expression is exercised in the context of political speech through **symbolic acts** or expressive gestures, utmost care must be observed in applying any restrictions" (*Szel and Others v. Hungary*, no. 44357/13,16.09.2014, § 57; *Savva Terentyev v. Russia*, no. 10692/09, § 74, 28.08.2018).
2. The submission will then focus on **issues surrounding civil servants as well as public sector employees' expressing themselves 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 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.
3. As will be shown in this submission, any kind of political criticism by anyone on the social media platforms whether they **create any impact**, **attract public attention** (*Savva Terentyev v. Russia*, no. 10692/09, § 79-82, 28.08.2018) or whether they are shared by thousands of others or not (*Tamiz v. The United Kingdom*, no. 3877/14, 19.09.2017, §80-81; *Rebechenko v. Russia*, no. 10257/17, 16.04.2019, § 25) is responded punitively by public authorities in Turkey to silence fair critiques against the government which as a result stifles democracy and pluralism. 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.
4. The Court's jurisprudence with regard to freedom of expression in the workplace will also be summarized. 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.
5. 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 like the applicant, **does not carry the same weight as a statement published on a mainstream website**. The submission will also discuss whether the domestic law and practice comply with these standards or not. Within this context İFÖD will assess whether the national courts, in their decisions carried out a sufficient examination and an adequate balance between the applicant's right to freedom of expression and other interests at stake in the light of criteria set out and implemented by it in cases relating to freedom of expression. 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 of expression has been breached.

6. 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.

"Liking" Something on Facebook is Protected by Article 10 as Symbolic Speech

7. The applicant complained about the termination of her employment contract by the Ministry of Education because **she liked some political statements released or circulated by other people on Facebook**. She claims that her freedom of expression is violated with her dismissal. The Court asked the parties whether the applicant's freedom of expression had been interfered, **especially her right to communicate information or ideas within the meaning of Article 10 § 1 of the Convention**. And if so, **was this interference foreseen by law and necessary, within the meaning of Article 10 § 2.**
8. First of all, Facebook's "**Like Button**" is available since 2009 and the "Like Button" allows users to show their appreciation for content without having to make a written comment. When the user likes something on the Facebook platform, the user clicks on and the platform shows the universally understood "**thumbs up**" symbol. A Facebook "Like" is, thus, "**a means of expressing support** – whether for an individual, an organization, an event, a sports team, a restaurant, or a cause" (see ACLU, Brief of Amicus Curiae - U.S. Court of Appeals, Fourth Circuit, 08.06.2012, 0.12, at https://www.acluva.org/sites/default/files/wp-content/uploads/2012/08/20120807LikeSpeechamicus.pdf).
9. The **applicant clicked on the "Like" icon for four separate postings of a political nature** generated by other people on the Facebook platform:
   a. "At the time of the CHP (Republican People's Party, main opposition political party) children would drink beer, at the time of AKP (Justice and Development Party, ruling political party) teachers, imams rape their students" (**07.03.2016**)
   b. "Journalists are detained, the Kurdish people are massacred, those who want to march for justice are arrested, but that is not enough for fascism, the assassins attack in the streets as if they were unleashed, those who killed the president of a bar, the president of the bar of Diyarbakır, TE, even if you kill today, even if you place in detention, we will not give up, no, we will not be silent, we will not back up, the streets, the places are ours" (**29.11.2015**)
   c. "Despite the intense snow, the people are walking towards Sur, if you cannot do anything, share, support, it is necessary to share this honourable posture", (**01.01.2016**)
   d. "Dirty guy, is it a mule who gave birth to you, bigoted out of control, if the women weren't there, the men would go more easily to paradise, if only you didn't have a mother and you didn't come into the world" (**10.03.2016)**
10. The applicant was subsequently dismissed on 20.09.2016 by the Employee Disciplinary Board at the Province Directorate of National Education. The initial dismissal decision as well as the subsequent national courts considered without providing any reasoning that the above mentioned content the applicant liked **were not covered by freedom of expression,** that the publication concerning the teachers was offensive to the latter and that these publications were likely to disrupt order and peace in the workplace. The decisions also did not explain how the applicant's Facebook likes going 6 to 9 months back could "disrupt order and peace in the workplace" at the time she was investigated and then dismissed.

11. Finally, both the Court of Appeal as well as the Constitutional Court dismissed the applicant's appeal and individual application without giving any reasoning. In fact, the one page Constitutional Court (2nd Commission of the 2nd Section) decision stated that the applicant did not explain how her rights were violated as the reasoning for the inadmissibility decision.
12. However, in the case of the applicant, Selma Melike, the local courts **disregarded the fact that her Facebook likes amounts to her exercise of her freedom of expression** in the context of political speech through **symbolic acts** or expressive gestures, for which utmost care must be observed by the governments in applying any restrictions (*Szel and Others v. Hungary*, no. 44357/13,16.09.2014, § 57). **The Court has previously accepted that symbolic acts of this kind can be understood as an expression of dissatisfaction and protest rather than a call to violence** (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 27, 2 February 2010, in which a flag and a picture of a State leader were burnt; *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, § 39, 13 March 2018, concerning the burning of a photograph of the Spanish royal couple and more recently in *Savva Terentyev v. Russia*, no. 10692/09, 28.08.2018, in which angry comments under a blog post should not have been regarded as an actual call to physical violence against the police). Similarly, under the US First Amendment jurisprudence, burning of the American flag (*Texas v. Johnson*, 491 U.S. 397, 405-406 1989); refusing to salute the flag, (*W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 1943); sit-in by African-Americans in a "whites only" area to protest segregation (*Brown v. Louisiana,* 383 U.S. 131, 141-42 (1966) is regarded as symbolic speech and is protected.
13. At the outset, therefore, **there can be no dispute that** the applicant's Facebook likes **amounts to symbolic expression**.

Termination of an Employment Contract Because of the Statements of a Civil Servant Constitutes Interference with her Freedom of Expression

14. The European Court of Human Rights examined in several cases whether termination of an employment contract because of the statements of an employee 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*" (*Vogt v. Germany*, [GC], no. 17851/91, 26.09.1995, § 43).
15. 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 (*Lombardi Vallauri v. Italy,* no. 39128/05, 20.10.2009, § 38). 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.

16. Therefore, the Court's case law in this regard is well established and it accepts that **Article 10 applies to the workplace in general** (e.g. *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). More importantly, the Court reiterates that **civil servants, such as the applicant, enjoy the right to freedom of expression** *(Guja v. Moldova* [GC], no. 14277/04, ECHR 2008, § 70). 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 (see *Baka*, § 140), 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 expertise may be conducive to an informed debate on issues of public interest and importance (*Karapetyan and Others v. Armenia*, no. 59001/08, § 58, 17.11.2016).
17. 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 (De Diego Nafria v. Spain, no. 46833/99, § 37, 14 March 2002). 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.
18. 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 (*Vogt,* § 53; *Albayrak v. Turkey*, no. 38406/97, § 41, 31.01.2008; and *Baka v. Hungary*, no. 20261/12, 23.06.2016, § 162). 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 (*Ahmed and Others v. the United Kingdom,* 2 September 1998, § 63, Reports of Judgments and Decisions 1998 VI). 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** (see, mutatis mutandis, *Küçükbalaban and Kutlu v. Turkey*, nos. 29764/09 and 36297/09, § 34, 24.03.2015; and *Dedecan and Ok v. Turkey*, nos. 22685/09 and 39472/09, § 38, 22.09.2015).
19. Within this context, the **act of liking four separate Facebook postings** circulated by others by the applicant was a **symbolic act 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 (compare *Harabin v. Slovakia*, no. 58688/11, §§ 151-153, 20.11.2012) nor her

duties were affected as a worker. Unlike in the case of *Karapetyan and Others v. Armenia* (no. 59001/08, 17.11.2016) 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 (Langner v. Germany, no. 14464/11, 17.09.2015). 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. The applicant also did not face any criminal charges such as terror propaganda subject to article 7/2 of the Anti Terror Law.

20. Therefore, considering the Court's above-mentioned case-law, İFÖD is of the opinion that, termination of her employment contract by public authorities as a disciplinary penalty for the symbolic act of liking four separate Facebook postings including critical and political messages amounts to severe and disproportionate measure taking into account the particular circumstances of the case within the scope of Article 10. Having regard to the case-law of the ECtHR regarding with freedom of expression at the workplace, **Melike application has an exceptional nature** since the applicant's liking of some political postings does not have any relation with her work and **public authorities failed to establish a meaningful link between her symbolic act of liking those political messages and her subsequent dismissal**. Political neutrality or impartiality of an ordinary worker does not impact her performance at the workplace. So, this case is more related to a worker's 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.

Potential Impact of the Applicant's Facebook Likes

21. The European Court is already aware of the importance and impact of the Internet on freedom of expression (among others see *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015, § 110). So, its jurisprudence will not be repeated in this submission. However, the European Court should be mindful that the applicant liked four separate postings of a political nature posted by others on a semi closed social media platform, namely Facebook. The users of the Facebook platform themselves decide whether to have their accounts and profiles are publicly open to anyone or whether their accounts are restricted to family and friends. Therefore, the Facebook activities of the applicant did not take place on a completely publicly accessible Internet platform, website or blog (compare *Savva Terentyev v. Russia*, no. 10692/09, 28.08.2018, § 79).
22. 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**" (*Savva Terentyev*, § 79). 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* (no. 3877/14, 19.09.2017), 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.

23. 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, A/67/357, of 7 September 2012 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"* (§ 46).
24. In the current application, it must be reiterated that it does not appear that the applicant was a public, well-known or influential figure at the time he published two separate postings on Facebook or when he was prosecuted (*Stomakhin v. Russia*, no. 52273/07, 09.05.2018, §131). The applicant only liked four separate Facebook postings, all of which must be regarded of a political nature and the issues raised in the liked postings were **undeniably part of a political debate on a matter of general and public concern.** Secondly, the applicant did not face criminal sanctions or a prosecution for her symbolic act of liking these four separate postings. Thirdly, there is no indication that the statements that the applicant liked attracted any public attention. It is also important to note that, **the applicant does not appear to have been a well-known blogger or YouTuber** (*Rebechenko v. Russia*, no. 10257/17, 16.04.2019, § 25) **or a popular user of social media** (*Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, ECHR 2016), **let alone a public or influential figure** (contrast, *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11.10.2001, and *Féret v. Belgium*, no. 15615/07, §§ 75 and 76), **which fact could have attracted public attention to his comment and thus have enhanced the potential impact of the impugned statements** (*Savva Terentyev*, § 81). In fact, the applicant's impact must be regarded very low or insignificant (*Stomakhin v. Russia*, no. 52273/07, 09.05.2018, §131).
25. İFÖD is in the opinion that in such circumstances the European Court should assess the potential of the applicant's action, in this case through the symbolic act of liking Facebook postings, to reach the public and pay attention to the manner in which the statements were made, and the applicant's capacity – direct or indirect – to lead to harmful consequences.

Content of the Facebook Likes Amounts to Political Speech

26. From an assessment of the full dossier and the related decisions, the local courts did not assess in full the content of the liked content by the applicant on the Facebook platform other than stating that the impugned statements **were not covered by freedom of expression, that the publication concerning the teachers was offensive to the latter and that these publications were likely to disrupt order and peace in the workplace**.
27. However, the local courts only focused on the **form and tenor of the impugned speech** rather than analysing the statements **"in the context of the relevant discussion and to find out which idea they sought to impart**" (*Savva Terentyev*, § 82). As the Court in Savva Terentyev v. Russia rightly stated 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" (*Savva Terentyev*, § 82).

28. Furthermore, the local courts should have assessed whether the impugned statements, fairly construed and seen in their immediate or wider context, could be seen **as a direct or indirect call for violence or as a justification of violence, hatred or intolerance** (see, among other authorities, *Incal v. Turkey*, 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). At least in one case, subsequent to the applicant's case was lodged, a criminal assize court in Mardin ruled in December 2019 to acquit a certain Mürvet Aslan, who liked Facebook content related to the Kurdistan Workers' Party (PKK), on the grounds that liking posts should be included within the scope of freedom of expression.[1] Aslan was on trial for allegedly "spreading propaganda on behalf of terrorist organizations" after he liked a number of Facebook posts that included pictures of alleged members of the PKK. The Mardin Court stated that "as **the defendant has not shared or published these posts to disseminate them to other users**, the act of propaganda has not occurred" by noting that "freedom of expression is one of the liberties that are most frequently infringed upon in the scope of the fight against terrorism."
29. İFÖD observes that all the four postings liked by the applicant **include criticism of ruling party and public authorities and they were all related to actual public debates when they were generated**. It should be indicated that the first statement was related to an actual political debate about several incidents of abuse of pupils in dormitories or schools and some ministers' statements about those incidents. Other two messages were related to security operations and judicial harassment of some critical voices. And one message was related to a sexiest statement of a public figure. Some of the messages can be described as harsh criticism considering that the texts in question are framed in very strong words. In particular, one of the messages includes a general estimation that "*teachers and imams rape their students*". Public authorities considered that this statement disrupts peace at workplace.
30. The Court stated that 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 (*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). 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

[1] See "Liking pictures of PKK members on social media is free speech, Turkish court says," 27.12.2019, https://www.turkishminute.com/2019/12/27/liking-pictures-of-pkk-members-on-social-media-is-free-speech-turkish-court-says/

the Convention and that which forfeits its right to tolerance in a democratic society (*Vajnai v. Hungary*, no. 33629/06, §§ 53 and 57, ECHR 2008). Within this context the Court evaluated 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.*" as a provocative metaphor, which frantically affirmed the applicant's wish to see the police "cleansed" of corrupt and abusive officers ("infidel cops"), and was the applicant's emotional appeal to take measures with a view to improving the situation, though it did not approve the language used by the applicant or the tone of his text *(Terentyev,* § 72)

31. İFÖD considers that **the applicant's act of liking those postings shows her emotional disapproval and rejection of policies and applications of the ruling party and public authorities** and thus the context and style of the impugned messages and whether they can be seen as disturbing peace at the workplace should be taken into the account when evaluating the case.
32. It should also be taken into the consideration that **the message liked by the applicant did not attack personally any identifiable teacher but rather concerned the problem of child abuse in some dormitories and schools and alleged tolerance of some public authorities to such abuses** in Turkey. 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 (*Terentyev,* § 75).
33. 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 liking 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 clicking on "like" button should be a factor in the assessment of the case.
34. İFÖD is therefore in the opinion that the applicant's trivial symbolic act of liking certain Facebook postings which did not call for violence, amount to hate speech, or **was likely to provoke imminent unlawful actions in respect of the public authority personnel where the applicant was employed and to expose them to a real risk of physical violence**, should have been tolerated by the local authority as well as the local courts. It is, in this case, safe to state that without a doubt that **the domestic courts failed to take account of all facts and relevant factors** while **approving the applicant's dismissal or rejecting her individual application to the Constitutional Court.**

Whether the Interference was Foreseen by Law

35. 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 (*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 September 2015). Those consequences need not be foreseeable with absolute certainty, as experience shows that to be unattainable (*Perinçek v. Switzerland* [GC], no. 27510/08, § 131, ECHR 2015 (extracts)).

36. In the Melike case, the key issue is whether by deciding to like 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 termination of her employment contract under the collective agreement and subject to labour law.
37. İFÖD is of the opinion that it is not foreseeable for an objective observer that clicking on “like” button on the Facebook platform may result in termination of an employment contract depending on the provision of Collective Agreement. The **national authorities interpreted the concept of disrupting peace at the workplace very extensively and in an unprecedented way**. In this connection, it cannot be said that the applicant should have known any practice of the national courts which would, at the time when she was dismissed, have interpreted the notions referred to in Article 44 of the Collective Agreement and Labour Law to define their meaning and scope with a view to giving an indication as to clicking on the like button on Facebook could have resulted in disciplinary liability under that provision.
38. 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 liked those messages would cause any problem at the workplace. Therefore, whether interpretation and application of national authorities of the provisions of the Collective Agreement and the Labour 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. In 2016, Reporters Without Borders (RSF) ranked Turkey 151st of 180 countries in their World Press Freedom Index. In 2017, Turkey ranked 155th and 157th in 2018. Similarly, Freedom House classified Turkey as a ‘partly free’ country ranking it 156th in its 2016 media freedom index with a 20point decrease in score compared to 2010. In April 2017, it was announced that Turkey had fallen to 163rd in the global index. In January 2018,

Turkey was ranked 154th and classified as 'not free' for the first time. Finally, in the most recent Freedom in The World 2019 Report, Turkey's total score was 31 out of 100 points and continued to be in the "not free" category. The problem relating to freedom of expression is evident not only in reports published by NGOs but also in reports issued by interstate oversight mechanisms.[2] Similarly, the Venice Commission noted that without individualized decisions, and without the possibility of timely judicial review, "membership" of terrorist organizations charges and arrests without relevant and sufficient reasons, instead of restoring democracy may further undermine it.[3]

Conclusion

42. 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 and symbolic act of liking four social media postings critical of the government may result in people losing their jobs and only incomes and there is no single institution in Turkey to restore their 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.

11.02.2020

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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.

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[2] See in particular the Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891 and The Council of Europe's platform to promote the protection of journalism noted that Turkey has the highest number of alerts and that a large part of these involve imprisonment of journalists. Of the 626 alerts provided in the database, 123 involve Turkey and 69 are classified as Level 1 alerts. Platform to promote the protection of journalism and safety of journalists: http://www.coe.int/en/web/media-freedom/all-charts

[3] Venice Commission, CDL-AD(2017)007.