

**REPUBLIC OF TURKEY**  
**İSTANBUL**  
**2nd CRIMINAL COURT OF FIRST**  
**INSTANCE**

**CASE NO** : 2018/277 Docket No  
**DECREE NO** : 2019/281  
**[PUBLIC PROSECUTION OFFICE** : 2016/16660  
**DOCKET NO]**

**JUSTIFIED DECISION**

**ON BEHALF OF THE TURKISH NATION**

**JUDGE:** Nursel BEDİR 107333  
**COURT CLERK:** Zeliha ÖZKILAVUZ 135198  
**PLAINTIFF:** K.H. (PUBLIC LAW)  
**PLAINTIFF:** RECEP TAYYİP ERDOĞAN, son of Ahmet and Tenzile, born on 02/26/1954 in İSTANBUL, registered in RİZE, GÜNEYSU, Dumankaya quarter/village registry. Resides at the address: General Secretariat of the Presidency, Altındağ / ANKARA. Business address: Legal Counseling for Presidency, City Center / ANKARA. Turkish ID No: 17291716060.  
**COUNSEL:** Attorney AHMET ÖZEL, Tozkoparan Mah. Haldun Taner Sok. No: 27 K.4 D. 14 Alparslan İş Merkezi, Merter Güngören/ İSTANBUL  
**DEFENDANT:** VEYSEL OK, son of Abbas and Gami, born on 01/24/1984 in DİYARBAKIR, registered in DİYARBAKIR, BAĞLAR, Kaynartepe quarter/village registry. Resides at the address: Sururi Mehmet Efendi Mah. Çatık Kaş Sk. No:72 İç Kapı No:3 Beyoğlu/ İSTANBUL. Business address: Bozkurt Mah. Dere Sok. No:7/2 Osmanbey- Şişli Şişli/ İSTANBUL. Turkish ID No: 11963080244 : Att. DOĞUŞCAN AYDIN AYGÜN  
**COUNSEL:** Attorney ZELAL PELİN DOĞAN, Şahkulu Mah. İlk Belediye Cad. No:2/6 Arkadaş İş Hamı Beyoğlu/ İSTANBUL Av.HÜRREM SÖNMEZ  
**DEFENDANT:** CİHAN ACAR, son of Haşan and Melek, born on 10/03/1988 in EDİRNE, registered at YOZGAT, KADIŞEHİRİ, Vasfibey quarter/village registry. Resides at the address: Yeniimaret Mah. 3. Sk. No:6 İç Kapı No:1 Edirne Merkez/ EDİRNE. Business address: . Turkish ID No:64060309008  
**COUNSEL:** : Attorney MUSTAFA SÖĞÜTLÜ, Zuhuratbaba Mahallesi Gülderen Sokak Dostlar Apartmanı No:3 Daire:8 34147 Bakırköy Bakırköy/ İSTANBUL

**OFFENSE:** Public Humiliation of the Turkish Nation, the Republic of Turkey, Turkish Grand National Assembly, the Government of the Republic of Turkey and Judicial Bodies of the State

**DATE OF OFFENSE:** 12/29/2015 -, 04/11/2016

**PLACE OF OFFENSE:** İSTANBUL

**DATE OF DECREE:** 09/12/2019

At the end of the hearing held in our court regarding the defendants identified above:

**CHARGES:**

A lawsuit was filed on the grounds that the defendants were to be punished in accordance with Articles 301/1 and 53 of the TCK (Turkish Penal Code) for the article titled "*Period of monochromatic judges in the judiciary*" published on the copy of Özgür Düşünce (Free Thought) newspaper dated 12/25/2015.

**DEFENSE:**

**Defendant Veysel Ok made his spoken defense:** "I repeat my previous defenses. The interview conducted in the related article is a criticism of the independence and impartiality of the judiciary. This was not only mentioned by me, but also by many professors who are experts in the field of law. There is no insult or defamation in the context of Article 301 of the TCK. I only used my right to criticism as a lawyer. I have the same opinion today. I believe that the structure and establishment of the Criminal Courts of Peace (Sulh Ceza Hakimlikleri) do not comply with the European Convention on Human Rights and also international laws. In regard to this I submitted the Venice Commission report to the court file. I ask for the evaluation of all these issues and defenses and I demand my acquittal."

**Attorney Zelal Pelin Doğan, counsel of Defendant Veysel Ok, gave her spoken statement:** "In this trial, a conviction that will be made against my client is unlawful in terms of procedure and principles. First of all, the case was reported to the public prosecutor on 12/29/2015, but the case was filed on 08/11/2016. The due process of law was violated by opening a case after the expiration period of 4 months as specified in the law of journalism.

My client's statements are within the scope of freedom of expression. My client has the right to criticize the judiciary as a lawyer. The article in the newspaper consists of my client's views within the limits of criticism. Just like journalists, the freedom of expression of lawyers should also be kept broad. This is explained in detail in the decision of the European court of human rights in the case of Morice v. France. It is established in this decision that since judges carry out public activities, the limits of their criticism should be wider than other people. Therefore, none of my client's words can be evaluated within the scope of Article 301 of TCK. Moreover, Article 301 is an article which does not comply with the international laws in terms of its structure and punishment and action, and is therefore frequently decided as a violation by the European Court of Human Rights. My client is innocent, I demand his acquittal."

**Attorney Doğuşcan Aydın Aygün, counsel of Defendant Veysel Ok, gave his spoken statement:** "The proceedings against my client were in regard of an interview he gave in 2015. My client, here, criticized a number of elements of the judicial system. After the coup attempt in 2016, the decisions about many judiciary members show that my client's criticism is justified. Articles 25 and 26 of the Constitution regulate the concept of freedom of expression. My client's statements are within the scope of freedom of expression. The local court must comply with both the article 10 of the European convention on human rights and the decisions of the constitutional court. This has been guaranteed under Article 148 of the Constitution. I demand the acquittal of my client."

**Attorney Hürrem Sönmez, counsel of Defendant Veysel Ok, gave her spoken statement:** "Within the scope of the decisions of European Human Rights Court and the constitutional court, my client's statements have been made within the framework of his professional activity as a lawyer, which must be protected within the scope of freedom of expression. They do not constitute a crime. We demand

his acquittal.”

**Attorney Mustafa Söğütlü, counsel of Defendant Cihan Acar, gave his spoken statement:** “The defendant Veysel Ok is an attorney to many journalists. Since he is a well-known and celebrated person, it is journalistic activity to include his interview (in the newspaper). The statements in the newspaper should be regarded within the context of freedom of expression. I believe it is not a crime to work on something that its newsworthy for my client. Moreover, both the Minister of Justice and the President have recently announced to the public that several actions will be carried out regarding the function and reliability of the judiciary. It was announced to the public that since there are illegalities in the structure and decisions of the Criminal Courts of Peace, changes will be made. My client's actions are within the scope of expression of thought and journalism activity. According to Article 301/3 of the CMK (Code of Criminal Procedure), my client's action does not constitute a crime. For all these reasons, I first ask for the acquittal of my client. If the court does not agree to this, I ask for the application of provisions of the law that are in favor of my client.”

It was understood that the complaint petition, the copy of Özgür Düşünce newspaper dated 12/25/2015 and the written documents submitted by the parties are included in the file.

#### **ASSESSMENT OF EVIDENCE AND JUSTIFICATION;**

When the allegation and the written and spoken defenses by the defendant’s attorneys and the contents of the whole case were assessed together; it was understood that a news was made in the copy of Özgür Düşünce newspaper published on 12/25/2015 with statements like “*Period of monochromatic judges in the judiciary*”;

According to the Turkish Penal Code (TCK) Article 301 titled “Defamation of the Turkish Nation, the Republic of Turkey, its State’s Institutions and Organs” organized under the title of “Offenses against symbols of state sovereignty and the reputation of its organs”;

“(1) The person conducting Public Humiliation of the Turkish Nation, the Republic of Turkey, the Turkish Grand National Assembly, the Government of the Republic of Turkey and Judicial Bodies of the State shall be punished with imprisonment for a duration of six months to two years.

(2) The person who publicly humiliates the Military or Security Organization of the State shall be punished in accordance with the provision of the first paragraph.

(3) Statements of opinion made for the purpose of criticism do not constitute a crime.

(4) Investigation of this offense is subject to the permission of the Minister of Justice ”.

When the justification of Article 301 of the TCK is examined, it is stated that the term “humiliation” is described not as a moral element, but as a material element and that this humiliation should take place publicly and that the behaviors, aimed at reducing the dignity of the values that constitute the subject of the crime will be regarded as humiliation.

The equivalent of the concept of “humiliation” as laid out in Article 301 of TCK was included in Article 159 of the Turkish Penal Code No. 765 as “insulting and deriding”. The term “insulting and deriding” used in Article 159, which is not currently in force, means humiliation, disdain, trying to depict as worthless and degrading. Thus, Article 159, with the aim of protecting the political and legal entity of the Turkish Nation and State and its benefits in the same context, condemned the defamation and deriding of the entities and values listed in the article. Article 301 of TCK has preferred to use the term “humiliation” instead of these terms.

Publicity, listed in Article 301 as the material element of the offense, can be realized by the use of any convenient means that makes it possible for a large number of people to learn, read, see and hear the words and statements containing humiliation.

In accordance with article 301 addressing the offense of endangerment; the protection of the dignity of the Turkish Nation, the Republic of Turkey, Turkey's Grand National Assembly, the Government of the Republic of Turkey, the State's military and police forces and judicial bodies against public insults and humiliation was set forth. Legal interest protected by the provision of the article is not the persons of these constitutional institutions per se, but their reputation in the eyes of the individual and

society.

The act of humiliation covers all forms of behavior aimed at degrading the respect for the values that constitute the subject of the offense. In this sense, the offense can be committed by direct insulting (defamation) of the Turkish Nation or the other constitutional institutions listed in the article, and it may also manifest through an offense aimed at presenting them in the eyes of the individual as worthless or infamous.

Although the defendants refused to accept the offense, and they argued that their action did not constitute a crime; when the content of the article is evaluated, it is understood that the statements like the judges delivering their judgments by receiving instructions, and that they belonged to a certain mentality and that they make their decisions by the instructions they take rather than according to the rules of universal legal norms, clearly humiliates the judges who carry out their judicial activities, and that the allegation for the judiciary that the court decisions were made by instruction was highly degrading. Since according to the 9th article of the Constitution titled jurisdiction, "The judiciary power is used by independent courts on behalf of the Turkish Nation." and according to Article 138 of the Constitution, "Judges are independent in their duties. They shall make judgments in accordance to the Constitution, the laws and legal systems, under the guidance of their conscientious opinions. No organ, authority, body or person may issue orders and instructions, send circulars, make recommendations or suggestions to courts and judges in the exercise of the judicial power. No question can be asked, talked about or made a statement about the use of judiciary power in the legislature about a case in progress. Legislative and executive bodies and the administration must comply with court decisions. These bodies and the administration, can not change the court decisions and delay execution of the decisions by any means." Accordingly, since the Criminal Courts of Peace, which are the subjects of the article, have been executed in accordance to the law and the constitution and universal legal norms, claiming that the members of the judiciary acting in these courts act in accordance with the instructions they receive, is an insult and a defamation of the judicial organization. Already, the most serious accusation for the judicial organization is the claim that they act upon instructions they receive. Such narrative discredits the judiciary and ensure that any decision taken by the Judiciary is questioned and is harmful to justice in the eyes of the society. If the judges who exercise their jurisdiction individually have faults, this situation is assessed by applying the relevant legal procedure. In addition, it was understood that the content of the article, which was considered to be discrediting the entire judicial organization, constitutes the offense defined in Article 301 of the TCK. It was decided that the defendants shall be punished in accordance with Article 301 of TCK, and on the grounds that the defendants have been sentenced to imprisonment for less than two years, that they have no criminal record, that the defendants have consented to the application of Article 231 of the CMK and that there is a positive opinion of the court that they will not commit any further offense and that there is no detectable material damage, it was decided to adjourn the announcement of the judgment against the defendants pursuant to Article 231 of CMK and Law No 5728.

#### **JUDGMENT / As per the aforementioned justification;**

1- Due to the offense of humiliating the Turkish Nation, the Republic of Turkey and the State Institutions and Bodies, charged and proved on the defendants; and in consideration of the way the offense was committed, the importance and value of the subject of offense, the severity of the consequences, the defendant's intention, the intensity of the intention altogether; it was decided that they shall be SEPARATELY PUNISHED BY IMPRISONMENT FOR 6 MONTHS by the lower limit at the court's discretion, in accordance with Article 301/1 of the TCK, which corresponds to the actions of the defendants;

2- that a reduction of 1/6 of the penalty given to the defendants shall be made, at the court's discretion, due to the defendants' behavior after the act and during the trial process, pursuant to Article 62/1 of TCK No. 5237, and that they shall be SEPARATELY PUNISHED BY IMPRISONMENT FOR 5 MONTHS;

3- and on the grounds that the defendants have been sentenced to imprisonment for less than two

years, that they have no criminal record, that the defendants have consented to the application of Article 231 of the CMK and that there is a positive opinion of the court that they will not commit any further offense and that there is no detectable material damage, it was decided to **ADJOURN THE ANNOUNCEMENT OF THE JUDGMENT** against the defendants pursuant to Article 231 of CMK and Law No 5728;

-and in accordance with the Article 231/8 of the CMK,

**the defendants shall be subjected to A CAUTIONARY PROBATION (SUPERVISED RELEASE) FOR 5 YEARS;**

- The defendants shall spend the probation period without being subject to any obligation,

- In accordance with Article 231/11 of the CMK, the defendants shall be notified/warned that if the defendants are convicted of a deliberate offense that requires imprisonment within the period of probation, the remaining part of the deferred judgment shall be applied; (Defendant Veysel was notified, defendant Cihan could not be notified)

- The decision shall be recorded on the decision page and book, in the court records in accordance with Article 231/13 of the CMK,

- If the defendants do not commit a deliberate crime within the 5-year probation period, this case against the defendants shall be eliminated and dropped in accordance with Article 231/10 of the CMK.

- If the decision to defer the announcement of the judgment is finalized, this decision shall be sent to the Chief Public Prosecutor's Office to be recorded in a system specific to them;

The 9 summons expenses 126 TL, mailing fees 7.40 TL, total 133.40 TL court expenses incurred by the defendants shall be collected from both defendants and registered as revenue for the treasury;

As a result of the open trial, a decision was made in presence of the defendant Veysel Ok and his counsels and the counsels of Cihan Acar and in the absence of the defendant Cihan Acar it was clarified that an objection can be made against the decision made against the defendant and its contents, by giving a petition to our court or by a statement submitted to our court's clerk and approved by the judge, within seven days after the announcement of the decision made in person and after notifying the decision made in absence. Those who are outside the jurisdiction of our court may appeal the decision in the İstanbul High Criminal Court by filing a petition to the nearest Criminal Courts of First Instance or by submitting a statement to court's clerk; and that in case legal actions are not taken by the defendant within the given time period against the decisions made about the defendant, the provisions shall be finalized;

In accordance with Article 231/1 of CMK numbered 5271, the operative part of the judgment was written to the minutes in accordance with Article 232/6; the judgment was read publicly and the justification and main elements were described properly. 09/12/2019

Clerk 135198

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Judge 107333

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