In the case of *Tușalp v. Turkey*, the European Court was asked to consider whether two defamation actions taken by the Prime Minister of Turkey against a journalist for protection of his personality rights were compatible with Article 10 of the European Convention.

The applicant was Erbil Tuşalp, a journalist and author, who had published two articles in the Birgûn newspaper concerning alleged illegal conduct and corruption in Turkish public life. The articles severely criticised the Prime Minister, Mr. Recep Tayyip Erdoğan, including such statements as “From teachers to judges ... the man uses these posts like the property of his own party”, and “I consider it useful for both his and the public’s mental health to investigate whether he had a high-fevered illness when he was young ... I suspect he is suffering from a psychopathic aggressive illness. I wish him quick recovery”.

The Prime Minister brought civil proceedings against the applicant and the publishing company on the ground that certain remarks in the articles constituted an attack on his personality rights. The Turkish courts considered that the remarks went beyond the limits of acceptable criticism and “belittled the Prime Minister in the public and the political arena”. According to the domestic courts, the applicant had published “allegations of a kind one cannot make of a Prime Minister”, holding that the impugned remarks had alleged that the Prime Minister had psychological problems and was mentally ill. The applicant and publishing company were ordered to pay 10,000 Turkish liras (€4,300) in compensation.

The European Court of Human Rights however disagreed with the findings of the Turkish courts. The Court considered that the articles concerned the applicant’s comments and views on current events, and were very important matters in a democratic society which the public had an interest in being informed about and fell within the scope of political debate.

The Court also considered the balance between the applicant’s interest in conveying his views, and the Prime Minister’s interests in having his reputation protected and being protected against personal insult. In this regard, the Court held that even assuming that the expressions used in the articles could be classed as provocative, inelegant, and offensive, they were mostly value judgments, and had a sufficient factual basis.

In an important passage, the Court held as a matter of principle that offensive language may fall outside the protection of freedom of expression if it amounts to “wanton denigration”, where the sole intent of the offensive statement is to insult (citing *Skałka v. Poland*, para. 34). However, the Court added that the use of vulgar phrases in itself is not decisive in the assessment of offensive expression as it may well serve merely stylistic purposes, as “style constitutes part of communication as a form of expression and is as such protected together with the content of the expression”.

The European Court held that the Turkish courts had not set the impugned remarks within the context and the form in which they were conveyed, with the European Court holding that the
strong remarks in the articles could not be construed as a gratuitous personal attack on the Prime Minister. The Court concluded that the Turkish courts had failed to establish any “pressing social need” for putting the Prime Minister’s personality rights above the right to freedom of expression and the general interest in promoting press freedom. There had thus been a violation of Article 10.

Comment

The Tuşalp judgment continues a strong tradition in European Court jurisprudence where freedom of expression prevails in cases of insult or defamation of heads of state, presidents or high ranking politicians (for example, Lingens v. Austria, Oberschlick (no. 2) v. Austria, Feldek v. Slovakia, Colombani a.o. v. France, Wille v. Liechtenstein, Radio Twist AS v. Slovakia, Ukrainian Media Group v. Ukraine, Sokolowski v. Poland, Gutiérrez Suárez v. Spain, Karák v. Hungary and Otegi Mondragon v. Spain).

Moreover, the Court has also shown its willingness to hold that freedom of expression may be legitimately restricted where statements concerning public figures may stir up violence (see Lindon, Otechakovsky-Laurens and July v. France, defamation of Jean Marie le Pen), where there has been an illegitimate intrusion into private life (see Standard Verlags GmbH v. Austria (no. 2), privacy of President and his wife), or where there is a clear lack of a factual basis (see Alithia Publishing Co. Ltd. and Constantinides v. Cyprus, serious allegations against former Minister of Defence, without a sufficient factual basis).

The most interesting aspect of the Tuşalp judgment relates to the statements of principle concerning “satirical style”, and offensive expression. The Court in Tuşalp held that offensive expression may fall outside the protection of freedom of expression only if it amounts to “wanton denigration”, such as where the sole intent is to insult (citing Skałka v. Poland). This idea of “wanton denigration” is a new caveat to determining whether certain expression is not protected by Article 10 and notably, this qualification was not mentioned Skałka nor in a previous Grand Chamber judgment in Palomo Sánchez a.o. v. Spain when discussing offensive expression.

Moreover, the Court in Tuşalp further held that the use of vulgar phrases in itself is not decisive in the assessment of whether expression is offensive, as it may well serve “stylistic purposes”, as style constitutes part of communication and is protected under Article 10. This continues the trend evidenced in judgments such as Vereinigung Bildender Künstler v. Austria, where highly offensive expression is protected due to its satirical and political nature (see also Alinak v. Turkey, Klein v. Slovakia, Nikowitz and Verlagsgruppe News GmbH v. Austria, Bodrožić and Vuijin v. Serbia and Alves Da Silva v. Portugal).

Although the Court does not provide any authority for its propositions regarding the principles for determining whether an expression is offensive, and for expressive “style” being protected by Article 10, the principles are in fact taken from a recent Second Section judgment in Uj v. Hungary, which concerned a libel action following the characterisation of a wine produced by a national State-owned corporation as “shit”. It would seem that the Court in Tuşalp is building
upon the *Uj* judgment, and broadening the breathing space for borderline critical / insulting expression discussing or commenting on matters of public interest or as part of political debate.

Finally, this judgment must be placed in the broader context of the worrying series of violations of Article 10 by Turkey, now symbolised by the Turkish Prime Minister successfully taking defamation proceedings against a journalist to curtail press criticism, with the Turkish courts again blatantly failing to apply the Court’s case law on criticising political figures (see Committee of Ministers’ Resolution (2008) *here*, and the Commissioner for Human Rights’ Report (2011) *here*). It is to be hoped that judgments such as *Tușalp* will provide sufficient guidance to the Turkish courts on adequate application of Article 10 principles, with a consequent strengthening of press freedom in Turkey. In the most recent ranking by *Reporters Without Borders* Turkey is at number 148, in the neighbourhood of Russia, Philippines, Democratic Republic of Congo, Afghanistan, Pakistan, Iraq, Libya, Uzbekistan and Saudi Arabia. A very awkward situation for a *country* that has been a member for 60 years of the Council of Europe and of the European Convention on Human Rights.

(The title of this blog refers to the famous BBC comedy series *Yes (Prime) Minister* (YPM): [http://www.yes-minister.com/introduc.htm](http://www.yes-minister.com/introduc.htm))