

05 August 2022

INFORMATION NOTE REGARDING THE DECISION RENDERED AS PER THE INDIVIDUAL APPLICATION BY İLKNUR UYAN

In the İlknur Uyan individual application decision dated 14.04.2022 and numbered 2019/14617 published in the Official Gazette numbered 31914 and dated 05.08.2022, the Constitutional Court made important determinations within the framework of freedom of expression and the right to education, regarding the imposition of a disciplinary sanction on a student, due to participating in a group of students' press release regarding the relevant higher education institution.

I. SUMMARY OF FACTS

The applicant, who is a student of Mersin University Art History Department, participated in the press release made by a group of students on 30.11.2017 in order to react to the investigation launched by the University administration on the students protesting the Ankara Station attack. Thereupon, a disciplinary investigation was initiated by the University administration and with the decision of the Dean's Office dated 23.02.2018, a sanction of suspension from the higher education institution for 1 month was imposed on the applicant, in accordance with the Higher Education Institutions Student Disciplinary Regulation published in the Official Gazette dated 18.08.2012 and numbered 28388 ("Regulation").

Thereupon, the applicant applied to the administrative court for the annulment of the administrative act. The administrative court decided to dismiss the request for annulment of the said administrative act on the grounds that "the text read in the press release in question, included statements targeting the University Rectorate and damaging honor and dignity, although the text in question was not read by the plaintiff, it was understood that the press release was made on behalf of the group and from the plaintiff's behavior during and at the end of the press release, she supports the press release."

The applicant's appeal against the decision was rejected with the final decision of the Konya Regional Administrative Court.

II. RELEVANT LEGISLATION

Art. 42 of the Constitution:

*"No one shall be deprived of the right of education.
The scope of the right to education shall be defined and regulated by law."*

Art. 54 of the Higher Education Law numbered 2547:

"Investigation, powers and penalties: a. To students who, act against the title of higher education student, honor and dignity within or outside higher education institutions, restrict the freedom of learning and teaching directly or indirectly, disrupt the peace, tranquility and working order of institutions, participate in actions such as boycott, occupation and blocking, encourage and provoke them, violate the honor and dignity or persons of higher education members or act disrespectfully, and participate in or provoke and encourage anarchic or ideological events; even if the act constitutes another crime, additional penalties are imposed such as warning, condemnation, suspension from the institution for a week to a month or for one or two semesters, or expulsion from the higher education institution."

Art. 6 of the Regulation:

“(1) Actions requiring suspension from higher education institution from one week to one month are as follows; d) Engaging in verbal or written actions that damage the honor and dignity of the personnel of the higher education institution, inside or outside the institution.

Art. 13 of the Constitution:

“Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality.”

Accordingly, as per Article 13 of the Constitution, following the examination made within the scope of i) legality, ii) legitimate aim, iii) compliance with the requirements of the democratic society order (suitability, necessity, proportionality), following conclusions were reached:

- *The intervention has a legal basis (Law No. 2547, Art. 54 – Regulation, Art. 6),*
- *The intervention has a legitimate aim since it is aimed at maintaining the discipline and order of the educational institution,*
- *In order for the educational institution to work with maximum efficiency, it is essential that the coherence of the institution is not disturbed or that there is no danger of deterioration, but it is expected that the limitations on fundamental rights and freedoms must be necessary and proportionate for the democratic social order; within this context, it is necessary to examine whether the restriction on the right to education has an impact on the individual's right to education as well as other rights and freedoms guaranteed by the Constitution, such as freedom of expression, freedom of religion and conscience, and the right to respect for private life.*

III. CONCLUSION

The Constitutional Court, with the decision of individual application of İlknur Uyan, concluded that it **constitutes a violation of the right to education** in connection with the freedom of expression that one of the students was suspended due to taking part in a press release criticizing the University; the first instance court did not discuss which words would damage the honor and dignity of the Rector and for what reasons the applicant could not benefit from the protection of freedom of expression; again, the courts' failure to address the issue of where the line between the right to legitimate criticism of the Rector and insulting the President, who is alleged to have resorted to drastic measures such as the dismissal of many academics and students from the University, lies. The decision pointed to the following:

1. Ensuring social and political pluralism depends on the peaceful and free expression of all kinds of thoughts. (*Yaman Akdeniz et al., §25*) Interfering with the opinions expressed in the press release, which is the subject of the application, makes it impossible to punish those who support such thoughts, to reach them in a free discussion environment and to ensure pluralism.
2. It should be noted that the limits of acceptable criticism of public authorities are much wider than those of private individuals. The press release in which the applicant participated should be regarded as part of the public's scrutiny of the university administration's policies.
3. Public authorities have the opportunity to respond and react to criticisms directed at them through different means. The university may refute the allegations made in the press release, inform the public correctly against the statements it considers to be false, and may oppose with evidence against certain imputations. Due to the existence of these opportunities, the rector and the university administration should limit themselves to resorting to disciplinary investigation or criminal

investigation and prosecution, as in the concrete case, in the face of verbal attacks that they think are unjust - unless they include incitement to violence. (*Zübeyde Füsün Üstel et al.*, §107)

4. Freedom of expression is not just for information and ideas that are accepted by society or considered harmless or irrelevant; it also applies to information and thoughts that are hurtful, shocking, or worrying. In many of its decisions, the Constitutional Court has affirmed that opinions that offend state officials or a part of society are among the requirements of pluralism, tolerance and open-mindedness, which are essential for a democratic society. Freedom of expression should be interpreted broadly, allowing a degree of exaggeration or even provocation.
5. Moreover, the press release does not arbitrarily target the Rector, but contains statements for social discussion on a subject that is closely related to many people. Statements in the press release are about issues of public interest. That an interference with such a statement of thought corresponds to a pressing social need must be demonstrated by rigorous considerations.
6. In the decisions regarding the disciplinary punishments to be imposed on university students, the possible or current effect of the action subject to the intervention on the institutional order must be shown by the administration and the courts. Disciplinary rules may also apply to students' statements or other actions outside of school. However, it is possible for students to be subject to sanctions for their actions outside the school only if the action taken outside the institution seriously affects the order of the institution. (*Ahmet Batur*, §41)
7. As the degree of education increases, the interference with the student's freedom of expression should also decrease. In universities, which are the cradles of free thought and critical mind, more tolerance should be shown to students who have different opinions. (*Ahmet Batur*, §43)

As a result, no evaluation has been made in the court's grounds regarding the extent to which the press release subject to the punishment of the applicant affected the order of the University, in what way it disrupted or threatened to disrupt it. It is not constitutionally possible for students to be punished with disciplinary punishment for disrupting the order of the educational institution based on hypothetical evaluations for reasons such as the honor and prestige of public authorities, and thus to limit their education rights. The one-month suspension from school imposed on the applicant, who used her freedom of expression, was not considered to be proportionate as well as not meeting a mandatory requirement.

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Should you have any queries on the above, please do not hesitate to contact us.

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