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LEGAL BRIEFING – Dispute Resolution & Restructuring

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Social media in Court proceedings: Does the judge "Like" it? *

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The increasing use of social media has significant legal parameters.

A recent judgement of the European Court of Human Rights (ECHR) in the case Melike v. Turkey (application no. 35786/19) sheds light on the crucial dimension of their perception as platforms within which the constitutional freedom of speech is exercised.

I[1]. The case concerned the dismissal of Ms Melike, a contractual employee at the Ministry of National Education of Turkey, for having clicked "Like" on various Facebook articles. Those articles have been posted on the social networking site by a third party. The Turkish authorities considered that the posts in question were likely to disturb the peace and tranquility of the workplace, on the grounds that they alleged that teachers had committed rapes, contained accusations against political leaders and related to political parties.

The ECHD noted that the content in question consisted of virulent political criticism of allegedly repressive practices by the authorities, calls and encouragement to demonstrate in protest against those practices, expressions of indignation about the murder of the president of a bar association, denunciations of the alleged abuse of pupils in establishments controlled by the authorities and a sharp reaction to a statement, perceived as sexist, made by a well-known religious figure.

[1] Abstracts from the official Press Release of the ECHR.

II[2]. The ECHD held that these were essentially and indisputably matters of general interest. It reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two areas: political speech and matters of public interest. It also noted that the disciplinary committee and the national courts had not taken account of all the relevant facts and factors in reaching their conclusion that the applicant's actions were such as to disturb the peace and tranquility of her workplace. In particular, the national authorities had not sought to assess the potential of the relevant "Likes" to cause an adverse reaction in Ms Melike's workplace, having regard to the content of the material to which they related, the professional and social context in which they were made and their potential scope and impact. Accordingly, the reasons given in the present case to justify the applicant's dismissal could not be regarded as relevant and sufficient. The Court also held that the penalty imposed on Ms Melike (immediate termination of her employment contract without entitlement to compensation) had been extremely severe, particularly in view of the applicant's seniority in her post and her age. Lastly, it concluded that, given their failure to provide relevant and sufficient reasons to justify the impugned measure, the national courts had not applied standards which were in conformity with the principles enshrined in Article 10 of the Convention. In any event, there had been no reasonable relationship of proportionality between the interference with Ms Melike's right to freedom of expression and the legitimate aim pursued by the national authorities.

III. While international judiciary tends to deal mostly with this “constitutional dimension” of the social media activity, the above case has also a secondary implicit aspect which is oriented to the procedural value of the relevant content and especially its aptitude to be invoked as means of evidence before Courts.

The internal case-law is more revealing on this matter:

In a series of cases related to children custody and other family law issues, the Court has accepted such use as admissible proof and substantiation of allegations (Court of First Instance: Thess. 16791/2009, Ath. 11183/2012, Thess. 4623/2014, Thess. 5604/2015, Piraeus. 55/2020, Court of Appeal: Piraeus. 214/2016, Larissa. 201/2019, Piraeus. 130/2020). The correlation between the nature of these cases and the concept of social media should not be neglected. The Court has acknowledged that social media constitute appropriate means of evidence mainly in cases involving an assessment of the everyday life of the users.

Nevertheless, the determinant criterion appears to be the consent of the users in respect with the processing of their personal data. Admissibility of the content is thus connected to the prior granting of such consent. The latter is usually sought through the “privacy settings” of the profile/account, which determines the circle of persons to which the relevant information becomes accessible. In this context, material posted under the regime of such publicity/availability does not fall under the protective scope of the provisions of Law 2472/1997 and is deemed as admissible means (Athens Court of Appeal 175/2014, Order of Athens Criminal Court 1281/2014). On the contrary, posts deprived of such accessibility to the public are not considered as evidence material admissible before Courts (Supreme Court 996/2010, 981/2009, Thessaloniki Court of Appeal 389/2002, Thessaloniki Court of First Instance 13748/2017, Larissa Court of Appeal 188/2019).

[2] Idem.

Therefore, the use of social media posts in the evidence process should not be ruled out a priori, on the grounds that it violates the right to privacy, but should be considered ad hoc as appropriate or not (Niki Georgiadou, "Το facebook ως μέσο απόδειξης στην πολιτική δίκη" ΔΕΝ 2019,300).

IV. This dual approach of the social media framework in Court proceedings sets the limits of their increased legal value. Social media is a growing "paperless documentation" but the formation of their legal treatment is much slower than their technical evolution.

The question is crucial: Are the legislature and the judiciary ready to follow the future technological progress by way of effectively assessing the legal implications of the human behavior expressed therein? How ready is our legal culture to get familiar with new means of expression and activity that go beyond the "traditional" toolkit?