

FREEDOM OF EXPRESSION AND TERRORISM

The defeat of terrorism is a public interest of the first importance in a democratic society. Journalists and other media actors have a responsibility to make available accurate and comprehensive information on terrorist acts and potential threats. While the press must not overstep the bounds set, *inter alia*, for the protection of vital interests of the State such as national security or territorial integrity, it is nevertheless incumbent on it to impart information and ideas on political or topical issues. Not only has the press the task of imparting such information and ideas; the public has a right to receive them.

All measures taken by States to fight terrorism which limit the freedom of expression must respect the principle of the rule of law and should exclude any form of arbitrariness, as well as any discriminatory treatment. The relevant national law must be formulated with sufficient precision to enable media actors – if need be with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

Domestic authorities in Member States must refrain from adopting measures equating media reporting on terrorism with support for terrorism while, at the same time, media actors must bear in mind their particular responsibilities in the context of terrorism. They should, in particular, refrain from publishing shocking pictures or disseminating images of terrorist acts which violate the privacy and human dignity of victims. They should take care not to add to the feeling of fear that terrorist acts can create, and not to offer a platform to terrorists by giving them disproportionate attention. Restrictions designed to deny representatives of known terrorist organisations and their political supporters the possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisations and conveying the impression of their legitimacy are not incompatible with the right to free expression.

Cartoonist's conviction for complicity in condoning terrorism following publication of a caricature

Leroy v. France - [36109/03](#)

Judgment on 2.10.2008

On 11 September 2001, the day of the attack on the twin towers of the World Trade Centre, the applicant, a cartoonist, submitted to the editorial team of a Basque weekly a drawing representing the

¹ This document presents a non-exhaustive selection of the European Court of Human Rights' relevant case law and of other relevant Council of Europe's tools in the field of the freedom of the press and terrorism. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to amount to a hindrance of Article 10 of the Convention. This information is not a legal assessment of the alerts and should not be treated or used as such.

attack with a caption which parodied the advertising slogan of a famous brand: “*We have all dreamt of it... Hamas did it*”. The drawing was published in the newspaper on 13 September 2001. Following a complaint by the prefect, the public prosecutor brought proceedings in the criminal court against the applicant and the newspaper’s publishing director on charges of condoning terrorism and complicity. A full page in the next issue of the newspaper was devoted to extracts from letters and e-mails that had been received in reaction to the drawing and to support for the publishing director, who explained his reasons for publishing the drawing. The criminal court convicted the applicant and the publishing director of the charges and ordered them to pay a fine of EUR 1,500 each. It found that by explicitly showing the tragic and violent destruction of the twin towers on 11 September 2001 and adding a caption referring to a dream, thereby glamorising an act of death, the newspaper had condoned terrorism.

The European Court of Human Rights considered that the drawing had assumed special significance in the circumstances of the case, as the applicant must have realised. It was published two days after of the attacks, with no precautions as to language, at a time when the entire world was still in a state of shock at the news. The timing of the publication could only increase the applicant’s responsibility. In addition, the impact of such a message in a politically sensitive region was not to be overlooked; the publication of the drawing had provoked a reaction that could have stirred up violence and suggested that it may well have affected public order in the region. By publishing the drawing, the applicant had expressed his moral support for and solidarity with those whom he presumed to be the perpetrators of the attacks, demonstrated approval of the violence and undermined the dignity of the victims. Provocation did not necessarily need to cause a reaction to constitute an offence. While in the applicant’s case it had taken the form of satire, a form of artistic device and social commentary whose natural aim, though its intrinsic characteristics of exaggeration and distortion of the truth, was to provoke and cause agitation, anyone relying on freedom of expression undertook duties and responsibilities.

For the Court, the applicant’s conviction had thus been based on relevant and sufficient grounds and only a modest fine had been imposed. In the circumstances, regard being had in particular to the context in which the caricature had been published, the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.

Conclusion: no violation of Article 10 of the Convention (freedom of expression)

Conviction of journalists for having published an article containing a statement by an illegal armed organization

**Belek and Velioğlu v. Turkey - no. [44227/04](#)
Judgment on 6.10.2015**

The case concerned the applicants’ conviction for publishing an article in a daily newspaper containing a statement by an illegal armed organisation. The applicants are the proprietor and editor respectively of the daily newspaper *Günlük Evrensel*. On 21 May 2003 the newspaper published an article containing a statement by members of KADEK (Kurdistan Freedom and Democracy Congress) who were in prison at the time. The activists in question called for a democratic solution to the Kurdish question and stressed the importance of, and need for, an amnesty law. The article also criticised the conditions of detention of Abdullah Öcalan, the head of KADEK, and the law on remorse. On 22 May 2003 the public prosecutor issued an indictment against the applicants. On 10 December 2003 a State Security Court ordered Mr Belek and Mr Velioğlu to pay fines equivalent to approximately 575 EUR and EUR 285 respectively. It

also banned the publication of the newspaper for three days. After a change in the legislation the Assize Court lifted the ban on publication of the newspaper and held that the relevant part of the judgment against the applicants should not be executed.

Paying particular attention to the language used in the article in question and to the context of its publication, and taking into account the difficulties linked to the fight against terrorism, the European Court of Human Rights noted that the text, taken as a whole, had not contained any call for violence, armed resistance or insurrection and had not amounted to hate speech, which was the main factor to be taken into consideration. The Court examined the grounds for the applicants' conviction and found that they could not be regarded as sufficient to justify the interference with Mr Belek and Mr Velioğlu's right to freedom of expression.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

See also, on the same topic,

- *Erdal Taş v. Turkey* (application no. [77650/01](#))
- *Yıldız and Taş v. Turkey* (nos. 1, 2, 3 and 4) (nos. [77641/01](#), [77642/01](#), [477/02](#) and [3847/02](#))
- *Falakaoğlu and Saygılı v. Turkey* (no. [11461/03](#))
- *Yarar v. Turkey* (no. [57258/00](#))

Arbitrary application of anti-terrorism legislation to convict a newspaper editor

Fatullayev v. Azerbaijan - [40984/07](#)

Judgment on 22.4.2010

The applicant, a newspaper editor, was sentenced to a total of eight and a half years' imprisonment for having criticised in his articles the Azeri Government's foreign and domestic political moves.

The European Court of Human Rights noted that, as a journalist, the applicant had clearly not been in a position to influence or exercise any degree of control over any of the hypothetical events discussed in the articles. Nor had he voiced any approval or argued in favor of any such attack. It had been his task, as a journalist, to impart information and ideas on the relevant political issues and to express opinions about the possible future consequences of specific decisions taken by the Government. The domestic courts' finding that the applicant had threatened the State with terrorist acts had been arbitrary. There had thus been a grossly disproportionate restriction on the applicant's freedom of expression.

Conclusion: violation of articles 10 (freedom of expression). Journalist to be released immediately

Virtually automatic conviction of media professionals for publishing written material of banned organisations

Gözel and Özer v. Turkey [43453/04](#) and [31098/05](#)

Judgment on 6.7.2010

The applicants, who were respectively the owner and editor, and publisher and editor, of two periodicals, were fined, with the first magazine being suspended for a week and the second closed for a fortnight, on the ground that they had published three articles that the domestic courts characterised as statements by a terrorist organisation.

The European Court of Human Rights noted that the grounds given by the Turkish courts for the conviction of the applicants, who were media professionals, whilst pertinent, were not sufficient to justify the interference in question. Their reasoning simply referred to the wording of section 6(2) of Law no. 3713, which provided for conviction of “anyone who print[ed] or publishe[d] statements or leaflets by terrorist organisations” and contained no obligation for the domestic courts to carry out a textual or contextual examination of the writings, applying the criteria established and implemented by the Court under Article 10 of the Convention. Such automatic repression, without taking into account the objectives of media professionals or the right of the public to be informed of another view of a conflictory situation, could not be reconciled with the freedom to receive or impart information or ideas. The Court found that the interference could not be regarded as necessary in a democratic society.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Pre-trial detention for over a year of investigative journalists accused of aiding and abetting a criminal organization

**Sık v. Turkey and Nedim Şener v. Turkey - [53413/11](#) and [38270/11](#)
Judgments on 8.7.2014**

The applicants are two investigative journalists. In March 2011 the police searched the applicants’ homes and took them both into police custody. They were accused, in particular, of having been involved in the production of publications criticising the government and/or serving as propaganda for the criminal organisation Ergenekon, whose members were convicted in 2013 of fomenting a coup d’état. The applicants were not released until March 2012.

The European Court of Human Rights noted that, in classifying the offences of which the applicants were accused as serious terrorist offences from the outset of the investigation and therefore applying the legal presumption in favour of keeping them in pre-trial detention, the authorities had not provided “relevant and sufficient” reasons to justify detaining the applicants for the period in question.

Moreover, the Court found that the applicants’ pre-trial detention in the context of criminal proceedings for offences which carried a heavy sentence did not constitute a purely hypothetical risk but was a real and effective constraint and thus amounted to “interference” with the exercise of their right to freedom of expression. The Government argued that the interference in question had been aimed at preventing crime. The Court wondered whether the aim had not been rather to stifle any criticism or commentary on the conduct of a trial that had already been the subject of widespread public debate. In detaining the applicants for such a lengthy period without relevant or sufficient reasons, the judicial authorities had had a chilling effect on the applicants’ willingness to express their views on matters of public interest. Applying such a measure was liable to create a climate of self-censorship for the applicants and for any investigative journalist planning to carry out research and comment on the conduct and actions of State bodies.

Conclusion: violation of articles Article 5 § 3 and 10 of the Convention

Applicant’s denial of responsibility for materials related to the PKK (Kurdistan Workers’ Party) and its leader which led to his prosecution and conviction

**Müdür Duman v. Turkey - [15450/03](#)
Judgment 6.10.2015**

The applicant was the director of a district branch of a political party. In 2000, in the aftermath of a public demonstration, the police conducted a search of the branch premises and found various items related to the PKK and its leader. As a consequence, the applicant was prosecuted, and subsequently convicted to six months' imprisonment for praising and condoning acts proscribed by law.

The European Court of Human Rights observed that the offence the applicant had been convicted for was indisputably directed at activities falling within the scope of freedom of expression and he had been sanctioned for engaging in such activities, despite his denial of any knowledge of the materials. In such circumstances, his conviction constituted an interference with his right to freedom of expression. As to the necessity of the interference, the applicant had been prosecuted and convicted merely for keeping illegal material in the party's office, an act interpreted by the domestic courts as an indication of support for and approval of an illegal organisation and its leader. However, neither in the domestic court decisions nor in the Government's submissions was there any indication that the material in question advocated violence, armed resistance or an uprising. The applicant's conduct could not therefore be construed as support for or approval of unlawful acts committed by Mr Öcalan and the PKK. Moreover, the domestic courts' reasoning failed to indicate whether they had examined the proportionality of the interference and the balancing of rights taking into account freedom of expression. Accordingly, the reasons given by the domestic courts for convicting and sentencing the applicant could not be considered relevant and sufficient to justify the interference with his right to freedom of expression.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Orders suspending publication and dissemination of newspapers, considered propaganda in favor of terrorist organisations

Ürper and Others v. Turkey - [14526/07](#)

Judgment on 20.10.2009

The applicants were the owners, executive directors, editors-in-chief, news directors and journalists of four daily newspapers whose publication and distribution was repeatedly suspended in 2006 and 2007 for periods ranging from fifteen days to a month by court orders issued under anti-terrorist legislation. The newspapers were accused of publishing propaganda in favour of a terrorist organisation, condoning crimes the organisation had committed, and revealing the identity of officials engaged in the fight against terrorism, so making them targets for terrorist attack. The applicants lodged unsuccessful objections to the suspension orders.

The European Court of Human Rights recalled that, although prior restraints on the media were not *per se* incompatible with the Convention, those in the applicants' case had been imposed not on particular types of article, but on the future publication of entire newspapers, whose content was unknown at the time the court orders were made. In the Court's view, both section 6(5) of the Prevention of Terrorist Act and the court orders had stemmed from the hypothesis that the applicants, whose "guilt" was established without trial in proceedings from which they were excluded, would recommit the same kind of offences in the future. The preventive effect of the suspension orders thus entailed implicit sanctions to dissuade the applicants from publishing similar articles in the future and to hinder their professional activities, when less draconian measures – such as the confiscation of particular issues or restrictions on the publication of specific articles – could have been envisaged. Accordingly, by suspending the publication and distribution of the newspapers, albeit for short periods, the domestic courts had largely

overstepped the narrow margin of appreciation afforded to them and unjustifiably restricted the press's essential role as a public watchdog.

The practice of banning the future publication of entire periodicals under section 6(5) went beyond any notion of necessary restraint in a democratic society and, instead, amounted to censorship.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

See also, on the same topic,

- ***Turgay and Others v. Turkey***, judgment of 15 June 2010;
- ***Aslan and Sezen v. Turkey*** and ***Aslan and Sezen v. Turkey (no. 2)***, judgments of 17 June 2014

General ban to broadcast live interviews with the spoke persons of organizations condoning terrorist activities

**Betty Purcell and others v. Ireland - no. [15404/89](#)
Decision 16.04.1991**

This case concerns a general prohibition falling on journalists from broadcasting any interviews or recording of statements uttered by any person whom they know to be a member of one of the proscribed organizations listed in a ministerial order.

The European Court of Human Rights noted that the purpose of those restrictions was to deny representatives of known terrorist organisations and their political supporters the possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisations and conveying the impression of their legitimacy. Although such restrictions may cause the journalists some inconvenience in the exercise of their professional duties, they do not amount to disproportionate restrictions on their right to freedom of expression.

The Court highlighted in this regard that radio and television are media of considerable power and influence. Their impact is more immediate than that of the print media, and the possibilities for the broadcaster to correct, qualify, interpret or comment on any statement made on radio or television are limited in comparison with those available to journalists in the press. Live statements could also involve a special risk of coded messages being conveyed, a risk which even conscientious journalists cannot control within the exercise of their professional judgment. Given the limited scope of the restrictions imposed on the applicants and the overriding interests they were designed to protect, they can reasonably be considered "necessary in a democratic society".

Conclusion: manifestly ill founded

Obligation imposed on former leader of the Basque separatist organisation to refrain from disseminating any work or audiovisual production

**Bidart v. France [52363/11](#)
Judgment 12 November 2015**

This case concerned the obligation imposed on the applicant, the former leader of the Basque separatist organisation *Iparretarrak*, in the context of his release on licence, to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning the offences of which he had been convicted, and from speaking publicly about those offences.

The European Court of Human Rights held that there had been **no violation of Article 10** (right to freedom of expression) of the Convention. It noted in particular that the impugned measure was limited in time and concerned only the offences committed by the applicant. He had also been able to have the measure reviewed by the courts. The Court therefore found that, in imposing on the applicant, in the context of his release on licence, an obligation to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been convicted, and from speaking publicly about those offences, the French courts had not overstepped their margin of appreciation.

Journalists placed in police custody and subsequently in pre-trial on suspicion of having committed offences on behalf of terrorist organisations and disseminating propaganda for them

Sabuncu and Others v. Turkey [23199/17](#)

Pending

Ten journalists from the daily newspaper *Cumhuriyet* (“the Republic”) were placed in police custody and subsequently in pre-trial detention in October and November 2016 on suspicion of having committed offences on behalf of terrorist organisations and disseminating propaganda for them. The applicants challenged the relevant detention orders before judges of the peace and applied, unsuccessfully, for release. They also lodged individual petitions before the Constitutional Court; those proceedings are currently pending.

Relying in particular on Article 5 §§ 1, 3 and 4 (right to liberty and security / right to speedy review of the lawfulness of detention), Article 10 (freedom of expression) and Article 18 (limitation on use of restrictions on rights), the ten journalists complained before the ECtHR about their pre-trial detention and its duration, and also submit that there has been a breach of their freedom of expression. They further allege that their detention is a sanction against them for criticising the government and amounts to politically-motivated judicial harassment.

See, for other examples of **pending** applications concerning detained Turkish journalists,

- Atilla Taş (72/17) and Murat Aksoy v. Turkey ([80/17](#)) : communicated
- Ayşe Nazlı Ilıcak v. Turkey ([1210/17](#)) : communicated
- Mehmet Hasan Altan (n° 13237/17) and Ahmet Hüsrev Altan v. Turkey ([13252/17](#)) : communicated
- Şahin Alpay v. Turkey ([16538/17](#)) : communicated
- Ali Bulaç v. Turkey ([25939/17](#)) : communicated

II. Other relevant Council of Europe instruments

1. Committee of Ministers

- [Declaration](#) on freedom of expression and information in the media in the context of the fight against terrorism (2005)

- [Declaration](#) by the Committee of Ministers on the protection and promotion of investigative journalism (2007)
- [Guidelines on Human Rights and the fight against terrorism](#) (2002)
- [Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014](#)
- [Guidelines](#) of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (2007)

2. Parliamentary assembly

- [Recommendation 1706](#) (2005) of the Parliamentary Assembly “Media and terrorism”
- [Resolution 2035 \(2015\)](#) and [Recommendation 2062 \(2015\)](#) of the Parliamentary Assembly “Protection of the safety of journalists and of media freedom in Europe” and [Doc. 13664 Report 2015 \(G. S. FLEGO\)](#) “Protection of media freedom in Europe”

3. Commissioner for Human Rights

- [Positions on human rights during counter-terrorism efforts](#)

See also, for more references, the Commissioner’s thematic page [here](#)

4. Other

- [“Speaking of terror”, A survey of the effects of counter-terrorism legislation on freedom of the media in Europe](#), by Davis Banisar (2008)
- **Council of Europe’s Colloquium on the role of media actors in confronting terrorism:**

[***“A difficult equation between the right to be informed, media freedom and media ethics”***](#) (June 2017)
- [Terrorism and the Media: A Handbook for Journalists](#) (March 2017)