

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. 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.

Cartoon 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 relevant case-law and of other relevant 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.

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 that they could not be regarded as sufficient to justify the right to freedom of expression.

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

See also, on the same topic,

- *Erdal v. Turkey* (application no. [77650/01](#))
- *Yıldız and others v. Turkey* (nos. [14333/03](#), [14334/03](#) and [14335/03](#))
- *Falakaoğlu and others v. Turkey* (no. [1461/03](#))
- *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 having criticised in his articles the Azeri Government.

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 State with terrorist acts had been arbitrary. Thereafter had thus been a grossly disproportionate restriction.

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 prints by terrorist organisations” and contained no 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

Sik v. Turkey and [53418/11](#) and [38270/11](#) v. Turkey
Judgments on 8.7.2014

The applicants are two investigative journalists 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 2014.

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 detention.

Moreover, the Court found that the application of 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 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 exercise their right to freedom of expression. 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 material leader which led to his prosecution and conviction

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

overstepped the narrow margin of appreciation afforded to them and unjustly 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.

The necessity that safeguards against arbitrariness are embedded in domestic systems

Mehmet Hasan Altan (n° 13237/17) and Ahmet Hüsrev Altan v. Turkey

Judgment 20.3.2018

Prior to the attempted military coup of 15 July 2016, the applicant, an economics professor and a journalist, presented a political discussion programme on a television channel that was closed down following the adoption of Legislative Decree no. 668, issued on 27 July 2016. In the course of a criminal investigation relating to suspected members of FETÖ ("Parallel State Structure") arrested on 10 September 2016 and taken into police custody on suspicion of having links to the organisation's media wing. On 10th Magistrate's Court detention and various dates Mr Altan applied without success to be released pending trial. On 8 November 2016 Mr Altan lodged an individual application with the Constitutional Court. On 14 April 2017 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court in respect of several individuals including Mr Altan, in particular accusing them of attempting to overthrow the constitutional order, the Turkish Grand National Assembly and the government by force and violence, and of committing offences on behalf of a terrorist organisation without being members of it. On 11 January 2018 the Constitutional Court gave judgment, holding that there had been a violation of the right to liberty and security and the right to freedom of expression and of the press. Despite the Constitutional Court's judgment the Assize Court rejected Mr Altan's subsequent application. The Assize Court sentenced Mr Altan to aggravated life imprisonment for attempting to overthrow the constitutional order.

Under Article 5 § 1, the European Court of Human Rights found in particular that pre-trial detention, after the Constitutional Court's finding a violation of Article 19 § 3 of the Constitution, could not be in accordance with a procedure prescribed by law" as in connection the Court observed, in particular, that the reasons given by the Istanbul 26th Assize Court in rejecting the application for Mr Altan's release, the supreme constitutional judicial authority, could not be regarded as satisfying the requirements of Article 5 § 1 of the Convention. The Court held that for another court to call into question the powers conferred on a constitutional court to give final and binding judgments on individual applications ran counter to the fundamental principles of the rule of law and legal certainty, which were inherent in the protection afforded by Article 5 of the Convention and were the cornerstones of the guarantees against arbitrariness.

Under Article 10, the Court held in particular that there was no reason to reach a different conclusion from that of the Constitutional Court, which had found that the applicant's detention, following his expression of his opinions, constituted a severe measure that could not be regarded as a necessary and proportionate interference in a democratic society. In that regard, the Court pointed out in particular that criticism of governments and publication of information regarded by a country's leaders as endangering national security and serious offences such as belonging to or assisting a terrorist organisation, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda.

Conclusion: violation of Articles 5 § 1 and of the Convention

See also, on the same issue, *Şahin Alp* [16538/17 Judgment](#) 20.3.2018: violation of Article 10 of the Convention

For other examples of **pending** applications concerning detained Turkish journalists on suspicion of having committed offences on behalf of terrorist organisations and disseminating propaganda for them, see:

- *Atila Taş* (*Aksu v. Turkey*) ([80/17](#)): communicated
- *Ayşe Nazlı* ([1210/17](#)): communicated
- *Ali Bulaç v. Turkey* ([25939/17](#)): communicated
- *Sabuncu and Others v. Turkey* ([23199/17](#)): communicated

365-day suspension of the company's broadcasting licence
Özgür Radyo-Ses Radyo Televizyon At. İşleri v. Turkey ([11369/08](#)) *Spk v. Turkey* Judgment 4.12.2007

The applicant company, *Özgür Radyo-Ses Radyo Televizyon At. İşleri*, is a radio and television station which used to broadcast in Istanbul. The case concerned in particular the 365-day suspension of the company's operating licence on the part of the National Council of Television and Radio (Radyo ve Televizyon Üst Kurulu – the RTÜK) took the view that the words of the offending song infringed the principle set forth in section 4(g) of Law no. 3984, prohibiting the broadcasting of material likely to incite the population to violence, terrorism or ethnic discrimination, and of a nature to arouse feelings of hatred among them.

Conclusion: violation of Article 10 (freedom of expression)

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”
[Doc. 13664 Report 2015 \(G. S. FLEGO\)](#) “Protection of media freedom”

3. Commissioner for Human Rights

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

See also, for more references [here](#), the Commission

4. Other

➤ [“Speaking of terror”, Terrorism legislation on freedom of the media in Europe](#), by Davis Banisar (2008)

➤ [Council of Europe’s Colloquium on the role](#)

[“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)