

European Court of Human Rights: Case of E.K. v. Turkey

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In 1994, E.K., the secretary of the Istanbul section of the Human Rights Association, was convicted in two separate judgments by the State Security Court, which found that she had expressed support for the activities of the PKK and that she had undermined the territorial integrity and unity of the Turkish Nation. The first conviction related to an article by E.K., published in the Istanbul daily newspaper, *Özgür Gündem*, and entitled, "The world owes a debt to the Kurdish people". The article contained the text of a lecture by E.K. at a conference held in the Belgian Parliament. The article criticised the repressive approach of Turkish policy in Kurdistan and the violation of human rights by the Turkish army. The second case concerned an article in a book that was edited by E.K. The article described the situation in Turkish prisons. The State Security Court sentenced E.K. to terms of two years' and of six months' imprisonment and imposed substantial fines on her, pursuant to the Anti-terrorism Act.

The applicant complained that her conviction in relation to the publication of the book constituted a violation of Article 7 (no punishment without law) and that both convictions infringed Article 10 (freedom of expression) and Article 6 (fair trial) of the European Convention on Human Rights and Fundamental Freedoms.

The Court unanimously declared the conviction in relation to the publication of the book to be an infringement of Article 7 of the Convention, as according to Turkish law, prison sentences could only be imposed on the editors of periodicals, newspapers and magazines - and not books. The Court also unanimously declared that both convictions were in breach of Article 10 of the Convention. The conviction in relation to the publication of the book applied a law which was no longer applicable at the time of the conviction by the State Security Court. Hence this interference by the Turkish public authorities was considered not to be prescribed by law. In more general and principled terms, the Court also found a breach of Article 10, as the Court emphasised once more the importance of freedom of expression, the role of the press in a genuine democracy and the right of the public to be properly informed. According to the Court, the impugned article published in *Özgür Gündem* did indeed sharply criticise the Turkish authorities, but it did not contain any incitement to violence, hostility or hatred between citizens. Nor was the conviction of the applicant as editor of the book to be considered "necessary in a democratic society". The Court emphasised that the impugned article was rather to be seen as a strong protest referring to a difficult political situation, and not as incitement to an armed struggle. Finally,

with regard to the alleged violation of Article 6, the Strasbourg Court attached great importance to the fact that a civilian (lawyer, editor and human rights activist) had to appear before a court composed, even if only in part, of members of the armed forces. Hence the applicant could legitimately fear that because one of the judges of the State Security Court was a military judge, it might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, E.K. had a legitimate cause and there were objective reasons to doubt the independence and impartiality of the State Security Court, which led to the finding of a violation of Article 6 of the Convention.

***Arrêt de la Cour européenne des Droits de l'Homme (Troisième section),
Affaire E.K. c. Turquie, n° 28496/95 du 7 février 2002***

Judgment by the European Court of Human Rights (Third Section), Case of E.K. v. Turkey, Application no. 28496/95 of 7 February 2002

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