

# European Court of Human Rights: Cases of Ayse Öztürk v. Turkey and Karakoç and Others v. Turkey

**IRIS 2002-10:1/4**

*Dirk Voorhoof  
Human Rights Centre, Ghent University and Legal Human Academy*

With the adoption of friendly settlements in the cases of Altan v. Turkey on 14 May 2002 (see IRIS 2002-7: 2-3), Ali Erol v. Turkey on 20 June 2002, Özler v. Turkey on 11 July 2002, Sürek (no. 5) v. Turkey on 16 July 2002 (see IRIS 2002-9: 4) and Mehmet Bayrak v. Turkey on 3 September 2002 (see IRIS 2002-10: 3), several violations of the right to freedom of expression were recognised by the Turkish authorities. In two recent cases, the European Court of Human Rights again came to the conclusion that Article 10 of the European Convention on Human Rights had not been respected by the Turkish authorities.

In the case of Ayse Öztürk, the Court was asked to decide on the alleged violations of the right to freedom of expression after various seizures in 1994 of the fortnightly review Kizil Bayrak ("The Red Flag"), of which Ayse Öztürk was the owner and editor-in-chief at that time. The applicant was sentenced to imprisonment and fines, with these sentences being suspended for three years. The impugned articles published in the review were considered to amount to inciting hostility and hatred based on a distinction according to race or ethnic origin, or separatist propaganda. The seizures and convictions were based on Article 28 of the Constitution, Articles 36 para. 1, 86 and 312 of the Criminal Code and Article 8 para. 1 of the Prevention of Terrorism Act.

In its judgment of 15 October 2002, the Court, without underestimating the difficulties inherent in the fight against terrorism and referring to the security situation in south-east Turkey, came to the conclusion that the seizures of the review and the conviction of the applicant could not be considered as "necessary in a democratic society". The Court especially emphasised that none of the impugned articles constituted an incitement to violence and that the comments in those articles took the form of political speech. As regards the fact that the sentences were suspended, the Court was of the opinion that such measures were tantamount to a ban on the applicant exercising her profession, as it required her to refrain from criticising the government or other authorities in a way that could be considered contrary to the interests of the State. This measure restricted her ability to express ideas, notably regarding the Kurdish Issue, that were part of a public debate and forced her to restrict her freedom of expression - as a journalist - to ideas that were generally accepted or regarded as inoffensive or as a matter of indifference. According to the Court, the measures in question were to be

considered a violation of Article 10 of the Convention.

In the case of Karakoç and others, the applicants, two trade union leaders and a representative of a newspaper, complained of an infringement of their right to freedom of expression after they had been convicted for committing the offence of separatist propaganda under Article 8 of the Prevention of Terrorism Act. The applicants were sentenced to several months' imprisonment in 1994 because of the publication of a statement in the press criticising the policy of the Turkish authorities in southeast Turkey and in which reference was made to "massacres and extrajudicial executions". Taking into consideration the essential role of the press and its role of public watchdog, the applicants were considered to have alerted public opinion to concrete acts that were liable to infringe fundamental rights. The statement of the applicants was therefore considered as political speech by representatives of unions and the press, criticising the policy of the government, without inciting to violence or terrorism. Consequently, the Court held that there had been a violation of Article 10, as the applicants' sentences were disproportionate to the aims pursued and not necessary in a democratic society. The Court also found (once more) a breach of Article 6 para. 1 of the Convention, as civilians accused of terrorist offences should not be tried by a court that includes a military judge: this indeed constituted a legitimate ground for fearing bias on the part of the court in the instant case.

***Arrêt de la Cour européenne des Droits de l'Homme (deuxième section), affaire Ayse Öztürk c. Turquie, requête n° 24914/94 du 15 octobre 2002***

<http://www.echr.coe.int>

