



## Glorifying violence is not covered by freedom of expression, but criminal proceedings must meet fairness requirements

In today's Chamber judgment<sup>1</sup> in the case of [Altıntaş v. Turkey](#) (application no. 50495/08) the European Court of Human Rights held:

- unanimously, that there had been a **violation of Article 6 § 1 (right of access to a court)** of the European Convention on Human Rights, and
- by a majority, that there had been **no violation of Article 10 (freedom of expression)**.

The case concerned a judicial fine imposed on Mr Altıntaş for an article published in 2007 in his periodical *Tokat Demokrat*, describing the perpetrators of the “Kızildere events”, among others as “idols of the youth”. The events in question took place in March 1972, when three British nationals working for NATO were abducted and executed by their kidnappers.

Mr Altıntaş was convicted in 2008 by the Criminal Court, which found that the article glorified the insurgents involved in those events.

The Court held as follows:

- Mr Altıntaş had suffered a disproportionate restriction of his right of access to a court as he had not been able to appeal on points of law against a conviction decided at first instance because the amount of the judicial fine did not reach the statutory threshold for such an appeal. The Court drew attention to its relevant case-law.
- The interference with Mr Altıntaş's right to freedom of expression had not been disproportionate to the legitimate aims pursued. The Court took the view, in particular, that the expressions used in the article, about the perpetrators of the “Kızildere events” and their acts, could be seen as glorifying, or at least as justifying, violence. It took account of the margin of appreciation afforded to national authorities in such cases and the reasonable amount of the fine imposed on Mr Altıntaş.

Furthermore, it was important not to minimise the risk that such writings might encourage or drive certain young people, in particular the members or sympathisers of some illegal organisations, to commit similar violent acts with the aim of becoming, “idols of the youth” themselves. The expressions used had given the impression to public opinion – and in particular to people who shared similar political opinions to those promoted by the perpetrators of the events in question – that, in order to fulfil a purpose that those individuals regarded as legitimate in terms of their ideology, the use of violence could be necessary and justified.

### Principal facts

The applicant, Cihan Altıntaş, is a Turkish national who was born in 1984 and lives in Ankara. At the relevant time he was the editor of the monthly periodical *Tokat Demokrat*, distributed in the province of Tokat (Turkey).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In March 1972 members of two illegal organisations (Türkiye Halk Kurtuluş Partisi/Cephe (THKP/C) – Turkish People’s Liberation Party/Front; and Türkiye Halk Kurtuluş Ordusu (THKO) – Turkish People’s Liberation Army) took hostage three British nationals who were working on a NATO military base in Ünye (Turkey). The aim of the hostage-taking was to prevent the carrying out of the death penalty on three well-known founders of THKO. The hostages were taken to a house in Kızıldere, a village in Tokat province, where other members of the two illegal organisations were located.

A few days later the military police laid siege to the Kızıldere house. However, the kidnappers refused to surrender and exchanged gunfire with the police before executing their three hostages. All but one of the insurgents were killed in the fighting.

In March 2007 an article about those events was published in Mr Altıntaş’s periodical under the heading “M. and his friends are still living idols of the youth”. It thus described the insurgents as “idols” and as having been “slaughtered”. A few days later he was charged with the offence of glorifying crimes or criminals as a result of the article’s content, under Articles 215 and 218 of the Criminal Code.

In April 2008 Tokat Criminal Court ordered Mr Altıntaş to pay a judicial fine of about 430 euros (EUR), taking the view that the article glorified the insurgents involved in the “Kızıldere events”.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court), Mr Altıntaş complained that he had been unable to lodge an appeal on points of law against the first-instance judgment as the fine imposed on him had fallen below the statutory threshold for such an appeal.

Under Article 10 (freedom of expression) he complained of a breach of his freedom of expression on account of his criminal conviction and sentence to a judicial fine.

The application was lodged with the European Court of Human Rights on 10 October 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,  
Valeriu Grițco (the Republic of Moldova),  
Egidijus Kūris (Lithuania),  
Ivana Jelić (Montenegro),  
Arnfinn Bårdsen (Norway),  
Darian Pavli (Albania),  
Saadet Yüksel (Turkey),

and also Hasan Bakırcı, *Deputy Section Registrar*.

## Decision of the Court

### Article 6 (right of access to a court)

The Court observed that, in many cases concerning the lack of a possibility to lodge an appeal on points of law against a first-instance decision, it had found a violation of Article 6 § 1 of the Convention. In the present case the Court found that Mr Altıntaş had suffered a disproportionate restriction of his right of access to a court, of which the very essence had been impaired. **There had thus been a violation of Article 6 § 1 of the Convention.**

### Article 10 (freedom of expression)

The Court observed, firstly, that Mr Altıntaş's criminal conviction had constituted an interference with the exercise of his right to freedom of expression. This interference had pursued the following legitimate aims: the protection of national security and public safety, the preservation of territorial integrity and the prevention of crime.

Secondly, the article had been published in a tense social context, particularly in view of the sensitivity of part of Turkish society regarding the "Kızildere events", which was likely to be heightened among the population of Tokat owing to their geographical proximity to the site of the incidents and to the date of publication, which marked the 35th anniversary of those events.

Thirdly, the article had described violent acts committed by individuals – at the time members of illegal organisations – and had presented them in approving terms as heroic behaviour by "young revolutionaries", which was said to have made them "idols of the youth". It had also described the death of most of the insurgents following the armed confrontation with the police as a "slaughter".

In the Court's view, it was unquestionable that, notwithstanding the aim of the perpetrators of those events – possibly regarded as legitimate by some – which had been to prevent their friends suffering the death penalty, the acts committed against the abducted persons, who had moreover been executed by their captors, and against the security forces, could clearly be described as violent.

Therefore the expressions used in the article about the perpetrators of the "Kızildere events" and their acts could be seen as glorifying, or at least as justifying, violence.

Furthermore, it was important not to minimise the risk that such writings might encourage or drive certain young people, in particular the members or sympathisers of some illegal organisations, to commit similar violent acts with the aim of becoming "idols of the youth" themselves.

The expressions used had given the impression to public opinion – and in particular to people who shared similar political opinions to those promoted by the perpetrators of the acts in question – that, in order to fulfil a purpose that those individuals had regarded as legitimate in terms of their ideology, the use of violence could be necessary and justified.

Consequently, taking account of the margin of appreciation afforded to national authorities in such cases and the reasonable level of the fine imposed on Mr Altıntaş, the Court found that the impugned interference could not be regarded as incompatible with Article 10 of the Convention and that it was not disproportionate to the legitimate aims pursued.

**There had thus been no violation of Article 10 of the Convention.**

### Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Altıntaş 1,500 euros in respect of non-pecuniary damage.

### Separate opinion

Judge Bårdsen expressed a dissenting opinion, joined by Judge Pavli.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.