

AYSE CELIK and HER SUPPORTERS



PERSONS:

Ayşe Çelik has for a while been a teacher in Diyarbakir before she was arrested. She is publicly known as “*Teacher Ayşe*” because she stated her profession when she joined the Beyaz Show via phone.

Beyazıt Öztürk, also known as Beyaz, is a famous TV presenter who has been the host of the Beyaz Show, which has been aired by Kanal D for more than twenty years.

CASE:

What Ayşe Celik said on 8th January 2016 when she joined the Show was as follows: “*Are you aware of what has been happening in the southeast of the country? Unborn babies and mothers have been killed here (...) Do not let our children die, do not let mothers cry.*” She was then charged with “**making propaganda of terrorist organization**” for her words.

President Erdogan also described her words as “*propaganda of terrorism*” in his speech delivered at the mass inauguration ceremony held on January 14th in Ankara.

INVESTIGATION:

The Bakirkoy Chief Public Prosecutor’s Office launched investigations against Ayse Celik, Beyazıt Öztürk and Kadir Turnali, respectively, for making propaganda of terrorist organization, asking the audience to applaud her words, and not taking the Show off air. While the charge against Beyazıt Öztürk was dropped, the prosecutor requested Ayse Celik and Kadir Turnali be sentenced to imprisonment from 1 year up to 5 years.

“The person named Ayse Celik, who joined the Show via phone on 8th January 2016, described the military operations carried out by our armed forces against the violence, bombings,

assassinations and other subversive and disturbing actions committed by PKK as if they were launched against local people“

The Radio and Television Supreme Council (RTUK in Turkish acronyms) considered Celik's words to be *“using the language of the terrorist organization”* and fined Kanal D 900.000 Turkish Liras.

VOLUNTEER “ACCOMPLICES”:

After an investigation was launched against Ayse Celik, a group of 38 people that consists of lawyers, musicians, academics and journalists from Istanbul, Ankara and Izmir filed criminal complaints against themselves, declaring that they were party to the alleged crime. The courts in Istanbul, Ankara and Izmir, however, ruled differently.

Ankara Chief Public Prosecutor's Office decided that there were no grounds for prosecution, referring to *“the principle of individual criminal responsibility”*:

“Those who filed criminal complaints against themselves have had no intention to commit a crime. The suspects' action, which was aimed at acting in solidarity with and defending the incriminated defendant or defendants, constituted no crime. There were therefore no grounds for prosecution. ”

Izmir Chief Public Prosecutor's Office rejected to receive the criminal complaints. Ayse Celik's supporters then posted their complaints to the Office.

Istanbul Bakirkoy Chief Public Prosecutor's Office initiated an investigation against Celik's supporters, with the claim of 'making propaganda of terrorist organization':

“Those who declared that they were party to the crime perpetrated by Ayse Celik, who maliciously both slandered our armed forces' military operations against the terrorist organization and distorted the facts by attempting to create false perception that the terrorist organization was innocent and thus its activities legitimate, made propaganda of the terrorist organization”

PROSECUTION:

First hearing of the trial was held on September 23rd 2016 at the Bakirkoy 2nd Assize Court. Ayse Celik's supporters gave a joint statement during the hearing, emphasizing that her words do not constitute a crime.

The prosecutor requested in the third hearing held on March 1st 2017 that she be sentenced pursuant to the Article 7/2 of Anti-Terror Law. The prosecutor requested Celik's supporters, who declared that they were party to the crime, be acquitted.

While Ayse Celik was sentenced to 1 year and 3 month imprisonment in the last hearing held on April 26th 2017, her supporters and Kadir Turnali were acquitted. Her sentence was not suspended.

Istanbul Regional Court affirmed the judgment on September 27th 2017:

“Defendant Ayse Celik joined a TV show via phone and attempted to create a false perception about Turkish armed forces' military operation against PKK militants' activities such as

constructing barricades, digging trenches, setting bomb traps, using civilians as human shield, attempting to occupy provinces and districts and taking civilians hostages. She described the operations as if they were launched against local people, meaning that the defendant justified PKK's activities. It is therefore that the reasons underlying the ruling are accurate."

SUSPENSION OF THE EXECUTION:

Ayse Celik received imprisonment warrant on December 23rd 2017. Her lawyer appealed the Diyarbakir Public Prosecutor's Office for the execution of her sentence to be suspended so that she could breastfeed her baby at home for first six months. Ayse Celik was re-imprisoned on April 20th 2018 after her suspension expired.

RELEASE (or RE-SUSPENSION):

Ayse Celik was released on May 4th 2018. The Diyarbakir Chief Public Prosecutor's Office stated that the execution of Celik's sentence was suspended for six months so that she could breastfeed her baby.

3rd SUSPENSION:

On October 19th 2018, the execution of Celik's sentence was suspended for another six months until April 17th, 2019 by the Diyarbakir Chief Public Prosecutor's Office.

CONSTITUTIONAL COURT:

Ayse Celik appealed the Constitutional Court, claiming that her "*freedom of thought and expression*" (Article 25 of the Constitution), "*freedom of expression*" (Article 26 of the Constitution and Article 10 of European Convention on Human Rights), and "*right to fair trial*" (Article 36 of the Constitution and Article 6 of European Convention on Human Rights) have been violated.

It is stated in the appeal that Ayse Celik is one of the victims of armed clashes, which escalated in the second half of 2015. Her words for which she has been sentenced are therefore defined as "*call for help*".

The Constitutional Court is yet to decide.

JUDGING THE JUDICIARY

1. What Ayse Celik said when she joined the Beyaz Show via phone is undoubtedly within the boundaries of "*freedom of expression*" and protected by the Constitution (Article 25 and 26 of the Constitution, and Article 10 of European Convention on Human Rights). That she has been sentenced is violation of that freedom.

2. President Erdogan committed the crime of *“attempting to interfere with the fair trial”* by expressing feeling and thoughts against the defendant (Article 288 of Turkish Penal Code).
3. The Ankara Chief Public Prosecutor’s Office’s ruling based on *“principal of individual criminal responsibility”* that there were no grounds for prosecution against those who declared to have committed the same crime was unlawful and illegitimate. This is because Celik’s supporters not only defended her freedom of expression but also publicly declared to have committed the same crime. The Prosecutor’s Office therefore, at the minimum, committed the crime of *“misconduct in a public office”* (Article 257 of Turkish Penal Code).
4. That the Izmir Chief Public Prosecutor’s Office even rejected to receive the criminal complaints was a violation of *“right to submit petition”*, which is protected by the Constitution. The Prosecutor’s Office therefore, at the minimum, committed the crime of *“misconduct in a public office”* (Article 257 of Turkish Penal Code).
5. Ayse Celik, who was sentenced allegedly for making propaganda of terrorist organization, was accused also of *“saying nothing against the terrorist organization”*. She was therefore punished not for what she said, but for what she did not. It is clear that this judgment has no legitimacy.
6. It is a violation of *“equality before the law”* (Article 10 of the Constitution) that she has been jailed for making propaganda of a terrorist organization while her supporters who declared to have committed the same crime have been acquitted. The reason behind the judgment that *“Celik’s supporters had no criminal intention”* seems ill-founded when it is considered that the supporters declared to have committed the same crime both in front of the Justice Palace and at the court room.
7. If her words constitute a crime, is it then legitimate to acquit those who publicly declared that they had committed the same crime? Let’s imagine that your friend punches someone and you join him doing so. Is it possible to say, *“You have no intention to fight”*? The judgment violates the Article 10 of the Constitution.

Reasoned Judgment

The case filed against Ayse Celik is a typical example not only of violation of **freedom of expression** (Article 26 of the Constitution) but also of to what degree **freedom of thought** (Article 25 of the Constitution) has been violated.

To comprehend the distinction between freedom of expression and freedom of thought, we need to look into the relevant articles of the Constitution.

The Article 25/1 of the Constitution states, *“everyone has the freedom of thought and opinion”*.

The article also states that nobody can be forced to express his/her thoughts and opinions and that nobody can be denounced for his/her thoughts and opinions.

The Article 26 of the Constitution states, “everyone has the right to individually or collectively express and disseminate his/her thoughts and opinions in speech, writing, pictures, or using other means. The former also contains the freedom of exchanging information or opinions without interference from public authorities”.

It means that the Constitution clearly prohibits forcing someone to express his/her thoughts and opinions and denouncing him/her for them. That prohibition may be violated in two ways: either creating de facto situations through torture or threat, or penalization.

Not only freedom of expression but also freedom of thought was violated during her trial because Ayse Celik was forced to repeat her words under the threat of penalization.

To comprehend better how freedom of thought has been violated in Turkey, let's cite Celik's words, for which she was sentenced, as stated in the indictment.

Ayşe Çelik: *Are you aware of what is going on in the southeast of the country? Unborn children and mothers are being killed here. You as an artist and a human being should somehow not remain silent and do something to stop it. I would like to say one more thing. There are contemptible people who rejoice seeing children being killed. Shame on them!*

Beyazıt Öztürk: *You are right.*

Ayşe: *I am sorry but I would like to say one more thing. I, as a teacher, want to address those teachers who left their students because of armed clashes. How will they justify what they do now when they come back and stand before those innocent and pure-hearted children? I am speechless, really. The media misreports what is happening here. I am really speechless. Do not remain silent. Do not let people die. Do not let children die. Do not let mother cry. That is all I want to say. Thank you.*

Beyaz: *Mrs Ayse... Let's applaud her, please.*

Ayşe: *Actually, I want to tell more, but my emotions are so intense now that I can't.*

Beyaz: *Excuse me. I can't hear you. Excuse me.*

Ayşe: *My voice is quavering.*

Beyaz: *Yes, we can feel that.*

Ayşe: *Sounds of bombs and bullets... People suffer from water shortage and starvation. Especially babies and children. Do not remain silent, please.*

Beyaz: *Thank you very much, Mrs. Ayse.*

Ayşe: *I thank you for letting me join the Show.*

Beyaz: *You are welcome.*

Ayşe: *I hope I could make our voice heard.*

Beyaz: *You did. Thank you. I want to thank you also for your sensitivity. I would like to ensure you that we do whatever we can to make pro-peace voices*

heard. We will make more efforts. We send our greetings to everyone there. We hope all those issues will be resolved as soon as possible. Thank you very much, Mrs. Ayse.

Ayşe: *Thank you, too.*

Beyaz: *Thank you, again. All those issues should be raised and discussed, no matter where and when. Her sensitivity and quavering voice, I believe, deserve to be applauded once more.*

As seen above, Ayse Celik was imprisoned for words, which cannot be considered to be crime. She was then temporarily released to breastfeed her newborn baby. She would soon be re-imprisoned to serve her sentence.

The Constitutional Court is now reviewing her case. The Court is yet to decide. If the Court does not rule in favor of Ayse Celik, she will be re-imprisoned for her thoughts.

Intellectuals, members of civil society organizations and opinion leaders protested her trial by organizing a civil disobedience action. They declared to have committed the same crime and submitted criminal complaints against themselves. Do not let the punishment meted out to Ayse Celik reverberate more in the country and abroad, the relevant courts either did not file cases against or acquitted those who acted in solidarity with Ayse Celik.

That case is aimed not only at penalizing Ayse Celik but also at intimidating people to impose **self-censor**.