



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ÖLMEZ AND TURGAY v. TURKEY

*(Applications nos. 2318/09, 12616/09, 23563/09, 26801/09, 26837/09,
26846/09, 26851/09 and 26859/09)*

JUDGMENT

STRASBOURG

5 October 2010

FINAL

05/01/2011

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Ölmez and Turgay v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Registrar*,

Having deliberated in private on 14 September 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in eight applications (nos. 2318/09, 12616/09, 23563/09, 26801/09, 26837/09, 26846/09, 26851/09 and 26859/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Turkish nationals, Mr Erdal Ölmez and Mr Ali Turgay (“the applicants”), on the dates indicated in the appendix.

2. The applicants were represented by Mr Ö. Kılıç, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. At the time of lodging the applications, the applicants' representative requested that the respondent Government be notified of the introduction of the applications in accordance with Rule 40 of the Rules of Court and that the cases be given priority under Rule 41.

4. On 1 September 2009 the President of the Second Section decided to give priority to the applications under Rule 41 of the Rules of Court and to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

5. The applicants were both born in 1983 and live in Istanbul.

A. The prosecution of the newspapers

6. At the material time, the applicants were the owners, executive directors and editors-in-chief of five weekly newspapers published in Turkey: *Politika*, *Yedinci Gün*, *Özgür Yorum*, *Analiz* and *Ayrıntı*. The publication of these newspapers was suspended pursuant to section 6 (5) of Law no. 3713 (the Prevention of Terrorism Act) by various Chambers of the Istanbul Assize Court on different dates between 8 October 2008 and 14 March 2009 for a period of one month on account of various news reports and articles. The impugned publications were mainly deemed to be propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL¹, and to constitute the approval of crimes committed by that organisation and its members.

7. Neither the applicants nor their representative participated in these *ex parte* procedures, and their written objections to the suspension orders were dismissed. Consequently, the orders were executed.

B. The prosecution of the applicants

8. According to the documents in the case file, the applicant Erdal Ölmez was prosecuted on five occasions on account of the various news reports and articles published in *Politika*, *Ayrıntı* and *Özgür Yorum*. The applicant Ali Turgay was similarly prosecuted for material published in *Yedinci Gün*. It appears that these cases are currently pending before the domestic courts.

II. RELEVANT DOMESTIC LAW

9. A description of the relevant domestic law and practice may be found in *Ürper and Others v. Turkey* (nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, §§ 12-14, 20 October 2009).

THE LAW

10. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

1. Kurdistan Workers' Party, an illegal organisation.

I. ADMISSIBILITY

11. The Government argued that the applicants had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention as the criminal proceedings against them were still pending. Moreover, in the absence of any convictions, the applicants could not be considered to have victim status.

12. The Court notes that the applicants' complaints under the Convention relate solely to the assize court's decisions suspending the publication of the newspapers, therefore, the fact that there were no convictions against the applicants has no effect on their victim status for the purposes of the present applications. The Court further notes in this connection that the applicants exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention by filing objections to the various suspension decisions (see *Ürper and Others*, cited above, § 21). The Court accordingly rejects the Government's objections.

13. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

II. MERITS

A. Alleged violation of Article 10 of the Convention

14. The applicants alleged under Article 10 of the Convention that the suspension of the publication and distribution of *Politika*, *Yedinci Gün*, *Özgür Yorum*, *Analiz* and *Ayrıntı*, which had been based on section 6(5) of Law no. 3713, constituted an unjustified interference with their freedom of expression. They claimed in particular that the banning, for such lengthy periods, of the publication of the newspapers as a whole, whose future content was unknown at the time of the national court's decisions, had amounted to censorship.

15. The Government submitted that the national court's decisions had pursued several legitimate aims, including the protection of national security, territorial integrity and public safety. Moreover, taking into account the content of the articles in question, the measures taken had been proportionate to the legitimate aims pursued and necessary in a democratic society.

16. The Court notes that it has recently examined a similar complaint and found a violation of Article 10 of the Convention in the case of *Ürper and Others* (cited above, §§ 24-45), where it noted in particular that the practice of banning the future publication of entire periodicals on the

basis of section 6(5) of Law no. 3713 went beyond any notion of “necessary” restraint in a democratic society and, instead, amounted to censorship. The Court finds no particular circumstances in the instant cases which would require it to depart from this jurisprudence.

17. There has accordingly been a violation of Article 10 of the Convention.

B. Alleged violations of Articles 6, 7 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention

18. The applicants complained under Article 6 §§ 1 and 3 of the Convention that they had been unable to participate in the proceedings before the Istanbul Assize Court and that the latter had decided to suspend publication and distribution of the aforementioned newspapers without obtaining their submissions in defence. They further contended under Article 13 of the Convention that they had not had a domestic remedy by which to challenge the lawfulness of the national court decisions, as their objections to the suspension orders had been dismissed without trial. The applicants also complained under Article 6 § 2 that these orders had violated their right to be presumed innocent, since the national courts had held that criminal offences had been committed through the publication of news reports and articles in the aforementioned newspapers, for which they had been responsible. The applicants further submitted under Article 7 of the Convention that the decisions to suspend the publication and distribution of the newspapers amounted to a “penalty” without a legal basis. Lastly, they complained under Article 1 of Protocol No. 1 that the decisions to suspend the publication of *Politika*, *Yedinci Gün*, *Özgür Yorum*, *Analiz* and *Ayrıntı* had constituted an unjustified interference with their right to property.

19. The Government contested these allegations.

20. Having regard to the circumstances of the cases and to its finding of a violation of Article 10 of the Convention (see paragraph 17 above), the Court considers that it has examined the main legal question raised in the present applications. It concludes therefore that there is no need to make separate rulings in respect of these other complaints (see, *mutatis mutandis*, *Demirel and Others v. Turkey*, no. 75512/01, § 27, 24 July 2007; *Demirel and Ateş v. Turkey* (no. 3), no. 11976/03, § 38, 9 December 2008; *Ürper and Others*, cited above, § 49).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

1. Pecuniary damage

21. The applicants claimed 108,000 Turkish liras (TRY) (approximately 54,000 euros (EUR)) in pecuniary damage for the commercial loss which the newspapers had suffered as a result of the suspension decisions. Under the same head, the applicants further claimed EUR 10,000 for the damage which they had suffered individually.

22. In support of these claims, the first applicant submitted copies of eight invoices in relation to two of the newspapers owned by him, namely *Özgür Yorum* and *Ayrıntı*. Four invoices, dated 6, 13, 20 and 27 March 2009, demonstrate the amounts paid by *Özgür Yorum* and *Ayrıntı* to printing companies. Four other invoices, dated 7, 13, 20 and 27 March 2009 show the amounts paid to the aforementioned newspapers by distribution companies. The second applicant, on the other hand, did not produce any documentary evidence in support of his claims for pecuniary loss.

23. The Government contested these claims, arguing that the purported pecuniary damage had not been duly documented.

24. The Court considers that, while it may be accepted that copies of the invoices submitted by the first applicant show certain income and expenses of *Özgür Yorum* and *Ayrıntı*, these documents nevertheless fail to establish sufficiently the exact amount of the loss of the newspapers concerned. As commercial entities, the newspapers in the present cases should have had other income and expenses which have not been documented by the applicant. The Court is therefore unable to determine the exact amount of pecuniary damage suffered on the basis of the documents submitted by the first applicant.

25. However, the Court accepts that some pecuniary loss must have resulted from the violation found in relation to the suspension of the publication of the newspapers for one month (see, *mutatis mutandis*, *Özgür Gündem v. Turkey*, no. 23144/93, § 80, ECHR 2000-III; *Ürper and Others*, cited above, §§ 57 and 58). Taking into account the particular circumstances of the cases and making its own estimate based on the information contained in the case file, the Court awards the first applicant, Erdal Ölmez, EUR 3,000 for pecuniary damage. On the other hand, it rejects the pecuniary damage claim made by the second applicant, Ali Turgay, on account of his failure to submit any documents to substantiate this claim.

2. Non-pecuniary damage

26. The applicants claimed EUR 10,000 in total in respect of non-pecuniary damage.

27. The Government considered this sum to be excessive and submitted that awarding such an amount would lead to unjust enrichment.

28. The Court considers that the applicants may be deemed to have suffered a certain amount of distress and frustration which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the particular circumstances of the case and the type of violation found, the Court awards the applicants EUR 1,800 each for non-pecuniary damage.

B. Costs and expenses

29. The applicants also claimed EUR 8,640 for the costs and expenses incurred before the domestic courts and before the Court. In this connection they submitted documentation indicating the time spent by their legal representative on the applications, as well as tables of costs and expenditure.

30. The Government contested this claim.

31. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present cases, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 2,000 for their costs before the Court.

C. Default interest

32. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds* that there is no need to examine separately the complaints under Articles 6, 7 and 13 of the Convention and Article 1 of Protocol No. 1;

5. *Holds*

(a) that the respondent State is to pay the applicants within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) to Erdal Ölmez in respect of pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage to each of the applicants, plus any tax that may be chargeable;

(iii) EUR 2,000 (two thousand euros) to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable to them;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

Appendix

File No.	Case Name	Date of lodging	Introduced by	Newspaper's name
2318/09	Ölmez v. Turkey	16.12.2008	Erdal Ölmez	<i>Politika</i>
12616/09	Turgay v. Turkey	24.12.2008	Ali Turgay	<i>Yedinci Gün</i>
23563/09	Ölmez II v. Turkey	6.04.2009	Erdal Ölmez	<i>Özgür Yorum</i>
26801/09	Ölmez III v. Turkey	16.01.2009	Erdal Ölmez	<i>Analiz</i>
26837/09	Ölmez IV v. Turkey	16.01.2009	Erdal Ölmez	<i>Ayrıntı</i>
26846/09	Ölmez V v. Turkey	26.01.2009	Erdal Ölmez	<i>Politika</i>
26851/09	Ölmez VI v. Turkey	8.02.2009	Erdal Ölmez	<i>Özgür Yorum</i>
26859/09	Ölmez VII v. Turkey	20.02.2009	Erdal Ölmez	<i>Ayrıntı</i>