



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

SECOND SECTION

CASE OF GÜDENOĞLU AND OTHERS v. TURKEY

*(Applications nos. 42599/08, 30873/09, 38775/09, 38778/09, 40899/09,
40905/09, 43404/09, 44024/09, 44025/09, 47858/09, 53653/09, 5431/10
and 8571/10)*

JUDGMENT

STRASBOURG

29 January 2013

FINAL

29/04/2013

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

In the case of Güdenoğlu and Others v. Turkey,

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

Guido Raimondi, *President*,

Danutė Jočienė,

Peer Lorenzen,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 8 January 2013,

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

PROCEDURE

1. The case originated in thirteen applications (nos. 42599/08, 30873/09, 38775/09, 38778/09, 40899/09, 40905/09, 43404/09, 44024/09, 44025/09, 47858/09, 53653/09, 5431/10 and 8571/10) 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 six Turkish nationals ("the applicants") whose names appear in the appendix.

2. The applicants were represented by Ms O. Aslan, Mr B. Aşçı, Mr T. Tanay, Ms E. Timtik, Mr B. Timtik, Ms Ö. Gümüştas and Mr Ö. Kılıç, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 10 May 2010 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

4. On 14 April, 3, 8 and 30 July, 6 and 28 August, 25 September 17 December 2009, the applicants' representatives 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. However, no such request was made in respect of application no. 42599/08.

5. On 10 February 2010 the President of the Second Section decided that applications nos. 30873/09, 38775/09, 38778/09, 40899/09, 40905/09, 43404/09, 44024/09, 44025/09, 47858/09, 53653/09, 5431/10 and 8571/10 should be given priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, whose names appear in the appendix hereto, are Turkish nationals. They were born in 1958, 1971, 1974, 1983, 1986 and 1987 respectively and live in Istanbul and Ankara. They are the owners, executive directors, editors-in-chief and editors of six weekly and three daily newspapers: *Bağımsızlık Demokrasi Sosyalizm için Yürüyüş*, *Ezilenlerin Sosyalist Alternatifi Atılım*, *Özgür Mezopotamya*, *Günlük*, *Siyasi Alternatif*, *Özgür Görüş*, *Süreç*, *Rojev* and *Demokratik Açılım*.

A. The prosecution of the newspapers

7. On various dates between 30 March 2008 and 3 December 2009, the Istanbul Assize Court decided to suspend the publication and distribution of the above-mentioned nine newspapers for periods ranging from fifteen days to one month under section 6 (5) of the Prevention of Terrorism Act (Law no. 3713), on the ground that the newspapers had published propaganda material in favour of various illegal organisations. All copies of the relevant issues were seized. The applicants raised objections to the suspension orders but these objections were dismissed shortly afterwards by the Istanbul Assize Court. Neither the applicants nor their representatives were permitted to participate in any of the proceedings held before the Istanbul Assize Court.

The details of the proceedings may be found in the appended table.

B. The prosecution of the applicants

8. The applicants Ayhan Bilgen and Filiz Koçali, the executive editors-in-chief of the newspaper “Günlük”, were prosecuted. The criminal proceedings against the former were concluded with a decision of non-prosecution and the proceedings against the latter ended with her acquittal.

9. The applicant Cesur Yılmaz, the owner and editor-in-chief of the newspapers *Özgür Mezopotamya*, *Siyasi Alternatif*, *Özgür Görüş*, *Süreç* and *Rojev* (Kurdish), was prosecuted five times, on 27 April 2009, 21 May 2009, 10 June 2009 (two indictments) and 18 June 2009 under sections 6 (2) and 7 (2) of Law no. 3713, as well as Articles 215 and 218 of the Criminal Code, for disseminating propaganda in favour of an illegal organisation and for praising crimes committed by that organisation and its members, on account of various articles published in the said newspaper. According to

the limited information in the case file, the applicant Ziya Çiçekçi was similarly prosecuted. It appears that the criminal proceedings brought against the aforementioned applicants are still pending.

II. RELEVANT DOMESTIC LAW

10. The description of the relevant domestic law and practice may be found in the case of *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).

11. Within the context of the “Judicial Reform Strategy Action Plan”, on 5 July 2012 a new law amending various laws with a view to rendering judicial services more effective and to suspending cases and sentences given in cases concerning crimes committed through the press and media (Law no. 6352) entered into force. Section 105 (2) of Law no. 6352 abolished section 6 (5) of the Prevention of Terrorism Act (Law no. 3713).

THE LAW

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

I. ADMISSIBILITY

13. The Government contested the victim status of the applicants Ayhan Bilgen and Filiz Koçali, the executive editors-in-chief of the newspaper “Günlük”, against whom criminal proceedings had been instituted. They submitted in this connection that criminal proceedings against the former had been concluded with a decision of non-prosecution and the cases against the latter had ended with her acquittal.

14. The applicants submitted that they had all been affected by the suspension of the publication of the newspapers.

15. The Court notes that it has already examined and rejected similar objections by the Government in previous cases (see *Tanrıkulu, Çetin, Kaya and Others v. Turkey* (dec.), nos. 40150/98, 40153/98 and 40160/98, 6 November 2001; *Yıldız and Others* (dec.), no. 60608/00, 26 April 2005; and *Ürper and Others*, cited above, § 18). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. The Court accordingly rejects the Government’s objection.

16. 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

17. The applicants alleged under Article 10 of the Convention that the suspension of the publication and distribution of Bağımsızlık Demokrasi Sosyalizm için Yürüyüş, Ezilenlerin Sosyalist Alternatifi Atılım, Özgür Mezopotamya, Günlük, Siyasi Alternatif, Özgür Görüş, Süreç, Rojev and Demokratik Açılım, 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 courts' decisions, had amounted to censorship.

18. The Government submitted that the national courts' 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.

19. The Court notes that it has already 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 case which would require it to depart from this jurisprudence.

20. 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

21. 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 *Bağımsızlık Demokrasi Sosyalizm için Yürüyüş*, *Ezilenlerin Sosyalist Alternatifi Atılım*, *Özgür Mezopotamya*, *Günlük*, *Siyasi Alternatif*, *Özgür Görüş*, *Süreç*, *Rojev* and *Demokratik Açılım* had constituted an unjustified interference with their right to property.

22. The Government contested these allegations.

23. Having regard to the circumstances of the cases and to its finding of a violation of Article 10 of the Convention (see paragraphs 19-20 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; *Turgay and Others v. Turkey*, § 27, 15 June 2010; and *Ölmez and Turgay v. Turkey*, § 20, 5 October 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

1. Pecuniary damage

24. The applicants claimed 221,000 euros (EUR) in pecuniary damage for the commercial loss which the newspapers had suffered as a result of the suspension decisions.

25. The Government submitted that the applicants had failed to submit evidentiary documents establishing their claims for pecuniary damages, referring to the judgment in the case of *Incal v. Turkey*, (9 June 1998, § 82, *Reports of Judgments and Decisions* 1998-IV).

26. In support of their claims, the applicant Cesur Yılmaz submitted publication invoices of the newspapers *Süreç* and *Özgür Görüş* in the amount of 12,654 Turkish liras (TL), and Ziya Çiçekçi, the owner and executive director of the newspaper *Günlük*, submitted receipts in the amount of 80,305 TL.

27. The Court considers that, while it may be accepted that copies of the invoices submitted by the applicants show certain incomes and expenses of *Süreç*, *Özgür Görüş* and *Günlük*, nevertheless these documents do not sufficiently establish the exact amount of the loss of the newspapers. As commercial entities, the newspapers in the present cases should have had other income and expenses which have not been documented by the applicants. The Court is therefore unable to determine the exact amount of pecuniary damage suffered on the basis of the documents submitted by the applicants (see *Ürper and Others v. Turkey*, cited above, § 57).

28. 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 periods ranging from 15 days to a month (see, *mutatis mutandis*, *Özgür Gündem v. Turkey*, no. 23144/93, § 80, ECHR 2000-III; *Ürper and Others*, cited above, §§ 57-58; and *Ölmez and Turgay*, cited above, § 25). Taking into account the particular circumstances of the case and making its own estimate based on the information contained in the case file, the Court awards Ziya Çiçekçi and Cesur Yılmaz EUR 1,000 and EUR 1,500 respectively for pecuniary damage. On the other hand, it rejects the pecuniary damage claim made by the other applicants on account of their failure to submit any documents to substantiate their claims.

2. Non-pecuniary damage

29. The applicants claimed EUR 45,000 in total in respect of non-pecuniary damage.

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

31. The applicant Halit Güdenoğlu failed to submit a claim for just satisfaction within the time prescribed by the Court. Accordingly, the Court considers that there is no call to award him any sum under this head.

32. The Court considers that all other 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

33. The applicants also claimed EUR 16,000 for the costs and expenses incurred before the domestic courts and before the Court. In this connection, they submitted documents indicating the time spent by their legal representative on the applications, as well as tables of costs and expenditure.

34. The Government contested this claim.

35. The Court rejects Halit Güdenoğlu's claim under this head as he failed to submit a claim for just satisfaction within the time prescribed by the Court.

36. As regards the other applicants, the Court reiterates that according to its 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 they were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 1,000 (one thousand euros) to the applicant Sibel Bulut (application no. 30873/09) and EUR 1,000 (one thousand euros) jointly to the rest of the applicants (applications nos. 38775/09, 38778/09, 40899/09, 40905/09, 43404/09, 44024/09, 44025/09, 47858/09, 53653/09, 5431/10 and 8571/10) for their costs before the Court.

C. Default interest

37. 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 1,000 (one thousand euros), in respect of pecuniary damage, to the applicant Ziya Çiçekçi;
 - (ii) EUR 1,500 (one thousand five hundred euros), in respect of pecuniary damage, to the applicant Cesur Yılmaz;

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

- Sibel Bulut
- Cesur Yılmaz
- Ziya Çiçekçi
- Ayhan Bilgen
- Filiz Koçali

(iv) EUR 1,000 (one thousand euros) to the applicant Sibel Bulut (application no. 30873/09) and EUR 1,000 (one thousand euros) jointly to the rest of the applicants (applications nos. 38775/09, 38778/09, 40899/09, 40905/09, 43404/09, 44024/09, 44025/09, 47858/09, 53653/09, 5431/10 and 8571/10) in respect of costs and expenses, plus any tax that may be chargeable to them;

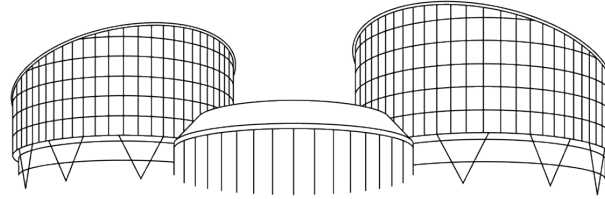
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 January 2013 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President



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

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by	Name of the newspaper and the duration of the suspension of its publication and distribution	Date of suspension of publication and distribution	Date of dismissal of applicants' objections to the suspensions
1.	42599/08	27/08/2008	HALİT GÜDENOĞLU 23/08/1983 Istanbul	O. Aslan, B. Aşçı, T. Tahay, E. Timtik and B. Timtik	<i>Bağımsızlık Demokrasi Sosyalizm için Yürüyüş</i> (weekly newspaper) Duration of suspension: one month	30/03/2008 (Istanbul 12 th Assize Court- case no. 2008/309)	3/04/2008 (Istanbul 12 th Assize Court- case no. 2008/321)
2.	30873/09	14/04/2009	SİBEL BULUT 01/04/1986 Istanbul	Ö. Gümüştaş	<i>Ezilenlerin Sosyalist Alternatifi Atılım</i> (weekly newspaper) Duration of suspension: one month	3/10/2008 (Istanbul 14 th Assize Court- case no. 2008/604)	14/10/2008 (Istanbul 14 th Assize Court- case no. 2008/624)
3.	38775/09	03/07/2009	CESUR YILMAZ 25/11/1987 Istanbul	Ö. Kılıç	<i>Özgür Mezopotamya</i> (weekly newspaper) Duration of suspension: one month	11/04/2009 (Istanbul 13 th Assize Court- case no. 2009/700)	6/05/2009 (Istanbul 13 th Assize Court- case no. 2009/425)

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by	Name of the newspaper and the duration of the suspension of its publication and distribution	Date of suspension of publication and distribution	Date of dismissal of applicants' objections to the suspensions
4.	38778/09	03/07/2009	ZİYA ÇİÇEKÇİ 10/05/1974 İstanbul FİLİZ KOÇALI 23/01/1958 İstanbul AYHAN BİLGEN 28/01/1971 Ankara	Ö. Kılıç	<i>Günlük</i> (daily newspaper) Duration of suspension: the publication and distribution of the newspaper was suspended on two separate occasions, each for a one-month period	8/06/2009 (Istanbul 12 th Assize Court- cases nos. 2009/701 and 2009/711 ¹)	12/06/2009 (Istanbul 12 th Assize Court- cases nos. 2009/592 and 2009/591)
5.	40899/09	10/07/2009	CESUR YILMAZ 25/11/1987 İstanbul	Ö. Kılıç	<i>Siyasi Alternatif</i> (weekly newspaper) Duration of suspension: one month	6/06/2009 (Istanbul 11 th Assize Court- case no. 2009/928)	17/06/2009 (Istanbul 11 th Assize Court- case no. 2009/582)
6.	40905/09	10/07/2009	CESUR YILMAZ 25/11/1987 İstanbul	Ö. Kılıç	<i>Özgür Görüş</i> (weekly newspaper) Duration of suspension: one month	30/05/2009 (Istanbul 10 th Assize Court- case no. 2009/485)	17/06/2009 (Istanbul 10 th Assize Court- case no. 2009/537)
7.	43404/09	06/08/2009	CESUR YILMAZ 25/11/1987 İstanbul	Ö. Kılıç	<i>Özgür Mezopotamya</i> (weekly newspaper) Duration of suspension: one month	23/05/2009 (Istanbul 14 th Assize Court-case no. 2009/639)	1/06/2009 (Istanbul 14 th Assize Court-case no. 2009/676)

1. On 8 June 2009 the Istanbul Assize Court rendered two decisions suspending the publication and distribution of *Günlük*, each for separate one-month periods: case no. 2009/701 related to the 1 June 2009 issue of *Günlük* and case no. 2009/711 to the 2 June 2009 issue.

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by	Name of the newspaper and the duration of the suspension of its publication and distribution	Date of suspension of publication and distribution	Date of dismissal of applicants' objections to the suspensions
8.	44024/09	24/07/2009	CESUR YILMAZ 25/11/1987 Istanbul	Ö. Kılıç	<i>Özgür Görüş</i> (weekly newspaper) Duration of suspension: fifteen days	9/05/2009 (Istanbul 11 th Assize Court- case no. 2009/676)	20/05/2009 (Istanbul 11 th Assize Court- case no. 2009/467)
9.	44025/09	31/07/2009	CESUR YILMAZ 25/11/1987 Istanbul	Ö. Kılıç	<i>Süreç</i> (weekly newspaper) Duration of suspension: fifteen days	13/06/2009 (Istanbul 12 th Assize Court- case no. 2009/609)	31/06/2009 (Istanbul 12 th Assize Court- case no. 2009/650)
10.	47858/09	23/08/2009	CESUR YILMAZ 25/11/1987 Istanbul	Ö. Kılıç	<i>Rojev</i> (daily newspaper in Kurdish) Duration of suspension: one month	27/04/2009 (Istanbul 12 th Assize Court- case no. 2009/427)	No decision.
11.	53653/09	30/09/2009	ZİYA ÇİÇEKÇİ 10/05/1974 Istanbul FİLİZ KOÇALI 23/01/1958 Istanbul AYHAN BİLGİN 28/01/1971 Ankara	Ö. Kılıç	<i>Günlük</i> (daily newspaper) Duration of suspension: one month	22/08/2009 (Istanbul 13 th Assize Court- case no. 2009/824)	4/09/2009 (Istanbul 13 th Assize Court- case no. 2009/837)

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by	Name of the newspaper and the duration of the suspension of its publication and distribution	Date of suspension of publication and distribution	Date of dismissal of applicants' objections to the suspensions
12.	5431/10	24/12/2009	CESUR YILMAZ 25/11/1987 Istanbul	Ö. Kılıç	<i>Özgür Görüş</i> <i>Siyasi Alternatif</i> <i>Özgür Mezopotamya</i> (weekly newspapers) Duration of suspension: one month	- <i>Özgür Görüş</i> 17/10/2009 (Istanbul 13 th Assize Court- case no. 2009/1927) - <i>Siyasi Alternatif</i> 24/10/2009 (Istanbul 10 th Assize Court- case no. 2009/941) - <i>Özgür Mezopotamya</i> 21/11/2009 (Istanbul 12 th Assize Court- case no. 2009/1024) - <i>Özgür Görüş</i> 3/12/2009 (Istanbul 10 th Assize Court- case no. 2009/1040)	- <i>Özgür Görüş</i> 12/11/2009 (Istanbul 13 th Assize Court- case no. 2009/1019) - <i>Siyasi Alternatif</i> 2/11/2009 (Istanbul 10 th Assize Court- case no. 2009/956) - <i>Özgür Mezopotamya</i> 16/12/2009 (Istanbul 12 th Assize Court- case no. 2009/1101) - <i>Özgür Görüş</i> 9/12/2009 (Istanbul 10 th Assize Court- case no. 2009/1065)
13.	8571/10	17/12/2009	ZİYA ÇİÇEKÇİ 10/05/1974 Istanbul	Ö. Kılıç	<i>Demokratik Açılım</i> (daily newspaper) Duration of suspension: one month	22/09/2009 (Istanbul 14 th Assize Court- case no. 2009/1077)	1/10/2009 (Istanbul 14 th Assize Court- case no. 2009/1114)