



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

SECOND SECTION

CASE OF ALI GÜRBÜZ v. TURKEY

(Application no. 52497/08)

JUDGMENT

STRASBOURG

12 March 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ali Gürbüz v. Turkey,

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

Robert Spano, *President*,
Paul Lemmens,
Işıl Karakaş,
Valeriu Griţco,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Darian Pavli, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 12 March 2019,

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

PROCEDURE

1. The case originated in seven applications (nos. 52497/08, 6741/12, 7110/12, 15056/12, 15057/12, 15058/12 and 15059/12) 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 a Turkish national, Mr Ali Gürbüz (“the applicant”), on 22 September 2008, 16 January 2012, 9 January 2012, 17 November 2011, 9 December 2011, 16 December 2011 and 29 December 2011 respectively.

2. The applicant was represented by Mr İ. Akmeşe a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant complained of an infringement of his right to freedom of expression on account of the criminal proceedings brought against him.

4. By decision of 8 April 2014, the complaints under Article 6 § 1 of the Convention concerning the length of proceedings in the framework of applications nos. 52497/08, 7110/12, 15056/12, 15057/12, 15058/12 and 15059/12 were declared inadmissible. On 4 October 2017 the complaint concerning the alleged infringement of the applicant’s right to freedom of expression in the framework of all the applications was communicated to the Government, and the remainder of applications nos. 52497/08 and 6741/12 was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Cologne, Germany.

6. At the material time he was the owner of the *Ülkede Özgür Gündem* daily newspaper.

A. Application no. 52497/08

7. On 25 December 2004 two articles titled “In Xinêrê the formation process has begun” (“*Xinêrê’de eğitim devresi başladı*”) and “Christmas message from Kongra-Gel” (“*Kongra-Gel’den Noel mesajı*”) were published in issue no. 300 of the *Ülkede Özgür Gündem* daily newspaper. The first article stated that the reconstruction committee of the PKK (the Kurdistan Workers’ Party, an illegal armed organisation) had launched its formation process and that statements had been published on this matter by M.K., President of the Executive Council of Kongra-Gel (a branch of the PKK). The second article comprised the Christmas message which Z.A., the President-General of PKK/Kongra-Gel, had broadcast on behalf of that organisation.

8. By bill of indictment of 28 December 2004 the Istanbul public prosecutor formally charged the applicant with having breached Law no. 3713 by publishing the articles in question.

9. On 2 October 2007 the Istanbul Assize Court (“the Assize Court”) found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine of 3,035 Turkish lire (TRY) (1,785 euros [EUR] under the exchange rate in force at the material time). It held that the publication of the aforementioned articles had constituted the offence laid down in that section of Law No. 3713. Furthermore, the article titled “In Xinêrê the formation process has begun” had overstepped the bounds of Article 10 of the Convention and had flouted press obligations concerning the prevention of hatred and hostility and incitement to violence.

10. On 22 March 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of a judgment delivered on 18 June 2009 by the Constitutional Court, in which the latter had decided to delete the word “owners” from section 6 (4) of Law no. 3713 (see paragraph 44 below).

11. On 9 May 2011 the Assize Court acquitted the applicant on the grounds that further to the above-mentioned judgment of the Constitutional Court, the criminal liability of press owners could no longer be incurred and that, consequently, the applicant’s indictment had no legal basis.

B. Application no. 6741/12

12. On 3 December 2005 an article titled “HPG: 50 soldiers killed in November” (“*HPG: Kasım ayında 50 asker öldü*”) was published in issue no. 643 of the *Ülkede Özgür Gündem* daily newspaper. That article took

stock of recent armed conflicts between the HPG (a branch of the PKK) and the Iranian and Turkish armed forces.

13. By bill of indictment of 2 January 2006 the Beyoğlu public prosecutor formally charged the applicant with having breached Law no. 3713 by publishing that article.

14. On 7 June 2007 the Assize Court found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine of 4,148 Turkish lire (TRY) (2,343 euros [EUR] under the exchange rate in force at the material time). It held that the publication of the above-mentioned articles had constituted the offence laid down in that section of Law No. 3713.

15. On 15 February 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of the aforementioned Constitutional Court judgment.

16. On 27 September 2011 the Assize Court acquitted the applicant on the grounds that the above-mentioned judgment of the Constitutional Court had deprived the applicant's indictment of any legal basis.

C. Application no. 7110/12

17. On 2 April 2006, two articles titled "The KKK declares that the democratic reaction will continue: the people must be taken into consideration" ("*KKK demokratik tepkinin süreceğini söyledi: Halk dikkate alınmalı*") and "Karayılan: we cannot expect the people to remain silent" ("*Karayılan: Halka sus diyemeyiz*") were published in issue no. 763 of the *Ülkede Özgür Gündem* daily newspaper. These articles quoted the words of the President of the Executive Council of the KKK (a branch of the PKK), M.K., concerning demonstrations organised in a number of towns and cities.

18. By bill of indictment of 19 April 2006 the Beyoğlu public prosecutor formally charged the applicant with having breached Law no. 3713 by publishing those articles.

19. On 10 July 2007 the Assize Court found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine of 4,232 Turkish lire (TRY) (2,418 euros [EUR] under the exchange rate in force at the material time). It held that the articles in question had been aimed not at informing the public but at publicising the activities of a terrorist organisation, and that publishing statements by such an organisation was not protected by the freedom to impart information.

20. On 29 March 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of the aforementioned Constitutional Court judgment.

21. On 4 October 2011 the Assize Court acquitted the applicant on the grounds that the above-mentioned judgment of the Constitutional Court had deprived the applicant's indictment of any legal basis.

D. Application no. 15056/12

22. On 25 April 2005 an article titled "We share in the peoples' suffering" ("*Halkların acısını paylaşıyoruz*") was published in issue no 421 of the *Ülkede Özgür Gündem* daily newspaper. That article comprised a statement from the President's Office of the PKK/Kongra-Gel on the occasion of the anniversary of the Armenian genocide.

23. By bill of indictment issued on the same day, the Istanbul public prosecutor formally charged the applicant with having breached Law no. 3713 by publishing the article in question.

24. On 7 June 2007 the Assize Court found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine of 3,800 Turkish lire (TRY) (2,146 euros [EUR] under the exchange rate in force at the material time). It held that the article in question had been aimed not at informing the public but at publicising the activities of a terrorist organisation, and that publishing statements by such an organisation was not protected by the freedom to impart information and that there had been no public interest in publishing the article.

25. On 8 March 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of the aforementioned Constitutional Court judgment.

26. On 4 October 2011 the Assize Court acquitted the applicant on the grounds that the above-mentioned judgment of the Constitutional Court had deprived the applicant's indictment of any legal basis.

E. Application no. 15057/12

27. On 16 June 2004 an article titled "Prisoners appointed İmralı" ("*Tutuklular İmralı'yı adres gösterdi*") was published in issue no. 108 of the *Ülkede Özgür Gündem* daily newspaper. The article contained statements by prisoners, who were alleged members of the PKK/Kongra-Gel, to the effect that the only solution to the Kurdish problem entailed dialogue with Abdullah Öcalan.

28. By bill of indictment issued on 17 June 2004, the public prosecutor with the Istanbul State Security Court formally charged the applicant with having breached Law no. 3713 by publishing the article in question.

29. On 31 May 2007 the Assize Court found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine

of 2,592 Turkish lire (TRY) (1,464 euros [EUR] under the exchange rate in force at the material time). It held that the statements of the prisoners in question constituted a communiqué by a terrorist organisation and considered that the offence laid down in the aforementioned provision had therefore been established.

30. On 19 April 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of the aforementioned Constitutional Court judgment.

31. On 4 October 2011 the Assize Court acquitted the applicant on the grounds that the above-mentioned judgment of the Constitutional Court had deprived the applicant's indictment of any legal basis.

F. Application no. 15058/12

32. On 7 June 2004 two articles titled "Our agenda does not concern individual persons" ("*Gündemimiz kişiler değil*") and "The aim is separation, not break-up" ("*Ayrılık var, kopma yok*") were published in issue no. 99 of the *Ülkede Özgür Gündem* daily newspaper. Those articles contained statements by the PKK's President-General, Z.A., concerning the restructuring of the organisation and specific persons who had left the organisation.

33. By bill of indictment issued on 17 June 2004, the public prosecutor with the Istanbul State Security Court formally charged the applicant with having breached Law no. 3713 by publishing the articles in question.

34. On 26 June 2007 the Assize Court found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine of 2,592 Turkish lire (TRY) (1,228 euros [EUR] under the exchange rate in force at the material time). It held that the publication of the above-mentioned articles had constituted the offence laid down in that section of Law No. 3713.

35. On 21 April 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of the aforementioned Constitutional Court judgment.

36. On 20 October 2011 the Assize Court acquitted the applicant on the grounds that the above-mentioned judgment of the Constitutional Court had deprived the applicant's indictment of any legal basis.

G. Application no. 15059/12

37. On 12 April 2006 two articles titled "Bozan world champion" ("*Bozan dünya şampiyonu*") and "The KJB commemorates Aynur Yaşlı" ("*KJB Aynur Yaşlı'yı andı*") were published in issue no. 773 of the *Ülkede Özgür Gündem* daily newspaper. The first article reported that the President

of the KKK's Executive Council had congratulated İ.B. on his sporting success, while the second concerned statements by the KJB (the PKK's women's section) on a protest carried out by a woman.

38. By bill of indictment of 27 April 2006 the Beyoğlu public prosecutor formally charged the applicant with having breached Law no. 3713 by publishing those articles.

39. On 12 July 2007 the Assize Court found the applicant guilty of the offence of publishing statements issued by a terrorist organisation, and, pursuant to section 6 (2) and (4) of Law No. 3713, ordered him to pay a fine of 4,232 Turkish lire (TRY) (2,432 euros [EUR] under the exchange rate in force at the material time). It held that the publication of the above-mentioned articles had constituted the offence laid down in that section of Law No. 3713.

40. On 16 March 2011 the Court of Cassation, adjudicating on an appeal on points of law lodged by the applicant, set aside the first-instance judgment on the basis of the aforementioned Constitutional Court judgment.

41. On 14 October 2011 the Assize Court acquitted the applicant on the grounds that the above-mentioned judgment of the Constitutional Court had deprived the applicant's indictment of any legal basis.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Section 6 of Law no. 3713

42. Section 6 of Law no. 3713 of 12 April 1991 on the fight against terrorism provided as follows, prior to its amendment under Law no. 5532 of 29 June 2006:

“...
...

Anyone who prints or publishes statements or tracts by terrorist organisations shall be subject to a fine of between five and ten million Turkish lire.

...
...

Where the acts mentioned in the foregoing paragraphs are committed by means of the periodicals mentioned in section 3 of Law no. 5680 on the press, the publisher shall also be ordered to pay a fine equal to 90% of the average sales figures for the previous month, where the periodical is published more than once a month, or of the sales figures for the latest issue of the periodical if it is published monthly or less frequently... However, the minimum fine is fifty million Turkish lire. The editor-in-chief of the periodical shall be ordered to pay a fine equal to half the amount of the fine imposed on the publisher.”

43. Further to the amendment introduced under Law no. 5532 of 29 June 2006, this provision read as follows:

“ ...
...

Anyone who prints or publishes statements or tracts by terrorist organisations shall be subject to a prison sentence of between one and three years.

...

Where the acts mentioned in the foregoing paragraphs are committed by means of the press and other publications, owners and editors-in-chief of the organs of the press and publications who were not involved in the commission of the acts shall also be ordered to pay between one thousand and ten thousand day-fines. However, the upper limit on this penalty is five thousand day-fines.”

44. By judgment of the Constitutional Court of 18 June 2009 (Dossier no. 2006/121 and Judgment no. 2009/90), the word “owner” was deleted from the fourth indent of that provision.

45. Section 6 of Law no. 3713 was further amended under Law no. 6459 of 11 April 2013. That provision now reads as follows:

“...

Anyone who prints or publishes statements or tracts by terrorist organisations condoning, praising or encouraging methods [using] coercion, violence or threats shall be subject to a penalty of three years’ imprisonment.

...

Where the acts mentioned in the foregoing paragraphs are committed by means of the press and other publications, the editors-in-chief of the organs of the press and publications who were not involved in the commission of the acts shall also be ordered to pay between one thousand and five thousand day-fines.”

B. Recommendation CM/REC(2016)4 of the Committee of Ministers to member States

46. The relevant parts of Recommendation CM/REC(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted on 13 April 2016, under the heading “Chilling effect”, read as follows:

“...

33. A chilling effect on freedom of expression arises when an interference with this right causes fear, leading to self-censorship and ultimately the impoverishment of public debate, which is to the detriment of society as a whole. Accordingly, State authorities should avoid taking measures or imposing sanctions that have the effect of discouraging participation in public debate.

34. Legislation and how it is applied in practice can give rise to a chilling effect on freedom of expression and public debate. Interferences that take the form of criminal sanctions have a greater chilling effect than those constituting civil sanctions. Thus, the dominant position of State institutions requires the authorities to show restraint in resorting to criminal proceedings. A chilling effect on freedom of expression can arise not only from any sanction, disproportionate or not, but also the fear of sanction, even in the event of an eventual acquittal, considering the likelihood of such fear discouraging one from making similar statements in the future.

...

36. Actual misuse, abuse or threatened use of different types of legislation to prevent contributions to public debate, including defamation, anti-terrorism, national

security, public order, hate speech, blasphemy and memory laws can prove effective as means of intimidating and silencing journalists and other media actors reporting on matters of public interest. The frivolous, vexatious or malicious use of the law and legal process, with the high legal costs required to fight such law suits, can become a means of pressure and harassment, especially in the context of multiple law suits. The harassment can prove particularly acute when it concerns journalists and other media actors who do not benefit from the same legal protection or financial and institutional backing as those offered by large media organisations. In this respect, it should be recalled that it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side. States are therefore required to take appropriate measures, which could include the institution of a legal aid scheme, in order to ensure that each side is afforded a reasonable opportunity to present his or her case.

...”

THE LAW

I. JOINDER OF THE APPLICATIONS

47. In view of their similar factual and legal backgrounds, the Court decided to join the applications in pursuance of Rule 42 § 1 of the Rules of Court.

II. PRELIMINARY OBJECTION CONCERNING APPLICATION NO. 52497/08

48. The Government raised an objection as to the inadmissibility of application no. 52497/08. They pointed out that that application had been lodged with the Court before the end of the proceedings brought before the Court of Cassation by the applicant, and submitted that it should be declared inadmissible as being premature.

49. The applicant made no submissions on that objection.

50. The Court reiterates that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations were submitted to it (see, among other authorities, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). It also reiterates that it accepts that the last stage of domestic remedies may be reached after the application has been lodged but before its admissibility has been determined (see *Karoussiotis v. Portugal*, no. 23205/08, § 57, ECHR 2011 (extracts)). In the present case, it notes that the criminal proceedings brought against the applicant in the framework of application no. 52497/08 ended with the judgment delivered by the Assize Court on 9 May 2011 (see paragraph 11 above). Accordingly, even if the application might have seemed premature on its date of lodging, that is to say on 22 September 2008, it ceased to be premature when the Assize Court

delivered the aforementioned judgment on 9 May 2011. The Government's objection must therefore be rejected.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

51. The applicant complained that even though he had been acquitted at the end of the criminal proceedings brought against him, on account of their length those proceedings had exerted pressure on him as a media professional, and had therefore infringed his right to freedoms of expression. In that regard he relies on Article 10 of the Convention, which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

52. The Government raised an objection as to inadmissibility on the grounds that the applicant lacked victim status. They submitted that after the criminal proceedings against him, he had ultimately been acquitted, that no penalty had been imposed on him in the form of a custodial sentence, and that, in any event, he had only been liable to judicial fines. Furthermore, those proceedings could not have infringed the applicant's freedom of expression, as he had merely owned the daily newspaper in question. The Government also submitted that the applicant had provided no concrete evidence concerning the pressure he claimed to have endured or his alleged problems caused by the said proceedings in publishing his newspaper.

53. The Government therefore considered that the criminal proceedings against the applicant had neither had a chilling effect on his exercise of freedom of expression nor amounted to an interference with his freedom of expression. They therefore invited the Court to declare the application inadmissible on the grounds of the applicant's lack of victim status.

54. The applicant made no submissions on that objection.

55. The Court considers that the objection raises questions closely linked to the examination of possible interference with the applicant's exercise of his right to freedom of expression, and therefore to the substance of the

complaints under Article 10 of the Convention (see *Dilipak v. Turkey*, no. 29680/05, § 38, 15 September 2015). It decides therefore to join it to the merits.

56. Noting, moreover, that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds, the Court declares them admissible.

B. Merits

1. Existence of an interference

57. The applicant considered that the criminal proceedings brought against him on account of articles published in the daily newspaper which he had owned amounted to interference with the exercise of his freedom of expression.

58. The Government submitted that the impugned criminal proceedings had not led to any interference with the applicant's freedom of expression. They argued, in that connection, that the applicant had not been required to disclose information on anonymous sources, no preventive measure had been taken against him or his property, he had not been arrested or taken into custody, he had been acquitted after the criminal proceedings against him and he had been completely free to exercise his profession at all stages of proceedings. The Government therefore considered that the proceedings in question could not be deemed to have constituted interference with the applicant's exercise of his right to freedom of expression or to have had a chilling effect on his publishing activities.

59. The Court reiterates its case-law, with particular reference to paragraphs 44-47 of its *Dilipak* judgment cited above, to the effect that certain circumstances which have a chilling effect on freedom of expression can in fact confer on those concerned – persons who have not been finally convicted – the status of victim of interference in the exercise of their right to that freedom. It also reiterates that in the case of *Döner and Others v. Turkey* (no. 29994/02, §§ 85-88, 7 March 2017) the criminal proceedings against the applicants, which had lasted over a year and four months, and at the end of which the applicants had been acquitted, but which had been accompanied by measures such as house searches, periods of police custody and longer detention, had amounted to an interference with their right to freedom of expression.

60. The Court also reiterates that the existence of legislation very broadly suppressing the expression of specific types of opinion, leading the potential perpetrators to adopt a kind of self-censorship, can amount to interference with freedom of expression (see *Dilipak*, cited above, § 47). For example, in the case of *Vajnai v. Hungary* (no. 33629/06, § 54, ECHR 2008) it considered that the uncertainties resulting from a broad ban

imposed by legislation on a symbol, in this case the red star, could have a chilling effect on the exercise of freedom of expression and lead to press self-censorship, in the light of the meanings of the symbol. The Court also found that the fact of being threatened with criminal prosecution on account of complaints lodged under Article 301 of the Turkish Penal Code – which at the material time had penalised, *inter alia*, denigration of Turkishness, a vague concept – had conferred on the applicant (who had not been prosecuted, let alone finally convicted) the status of victim of interference with freedom of expression (see *Altuğ Taner Akçam v. Turkey*, no. 27520/07, §§ 70-75, 25 October 2011).

61. The Court observes that in the instant case, seven sets of criminal proceedings were commenced against the applicant for publishing articles comprising statements by leaders of illegal organisations in the daily newspaper which he owned. In the framework of those proceedings, the applicant was initially fined under section 6 §§ 2 and 4 of Law no. 3713, before being acquitted on account of the abolition of the criminal liability of the owners of organs of the press for such publications, by judgment of the Constitutional Court of 18 June 2009 deleting the word “owner” from that provision (see paragraph 44 above).

62. The Court notes that the applicant was at no stage remanded in custody in the framework of the proceedings criticised in the present case (see, to converse effect, *Nedim Şener v. Turkey*, no. 38270/11, §§ 94-96, 8 July 2014, and *Şık v. Turkey*, no. 53413/11, §§ 83-85, 8 July 2014). It further notes that no other restrictive measures were imposed on the applicant for the purposes of those proceedings.

63. The Court therefore observes that the present case raises the question whether, since no other punitive measures were imposed on the applicant, the impugned proceedings can in themselves amount to an interference with the applicant’s right to freedom of expression.

64. With reference to the passages on the “chilling effect” in the Recommendation of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (see paragraph 46 above), the Court, in order to answer the aforementioned question, will scrutinise the legislation on the basis of which the impugned proceedings were instigated, the length of the proceedings in question and the total number of proceedings conducted.

65. As regards the legislation in question and its application in practice, the Court notes that the impugned criminal proceedings were commenced on the basis of section 6 §§ 2 and 4 of Law no. 3713, which, in its wording at the material time, penalised the publication of any statement from terrorist organisations, regardless of its content and context. It thus notes that in the present case a set of criminal proceedings was systematically commenced against the applicant for each publication containing statements made by representatives of an organisation classified as terrorist in Turkish

law, even where those statements were harmless messages such as Christmas greetings (see paragraph 7 above) or congratulations on a sporting success (see paragraph 37 above). It considers in that regard that such automatic application of section 6 §§ 2 and 4 of Law no. 3713 to any statement issued by a terrorist organisation could have had a chilling effect on freedom of expression and public debate.

66. As regards the length of the various sets of proceedings brought against the applicant, the Court notes that they lasted between five years, five months and nine days and seven years, four months and ten days. It notes that even though those criminal proceedings in fact ended with the applicant's acquittal, they remained pending for lengthy periods of time. Having regard to their duration, the Court considers that the fear of conviction during the proceedings must inevitably have brought pressure to bear on the applicant, inducing him, as a media professional, to self-censor (see paragraph 34 of the aforementioned Recommendation of the Committee of Ministers quoted in paragraph 46 above).

67. Finally, the Court has regard to the number of criminal proceedings brought against the applicant. In this connection, it subscribes to the affirmation set out in the aforementioned Committee of Ministers Recommendation to the effect that the frivolous, vexatious or malicious use of the law and legal process can become a means of pressure and harassment, especially in the context of multiple law suits (see paragraph 46 above). The Court considers that in the instant case the seven sets of criminal proceedings brought against the applicant pursuant to the same criminal law provision for similar facts between 2004 and 2006 could be regarded as a form of harassment of the applicant. At all events, the Court takes the view that the number and duration of those proceedings were such as to intimidate the applicant and to deter him from publishing articles on matter of public interest.

68. The Court therefore considers that in view of the chilling effect which the criminal proceedings against the applicant could have caused, remaining pending for considerable periods of time, they cannot be viewed as solely comprising purely hypothetical risks to the applicant. They constituted genuine and effective restrictions *per se*. The applicant's acquittal after all the sets of proceedings merely put an end to the aforementioned risks but did not alter the fact that those risks had placed the applicant under pressure for a substantial period of time (see *Dilipak*, cited above, § 50, and, to converse effect, *Metis Yayıncılık Limited Şirketi and Sökmen v. Turkey* (dec.), no. 4751/07, § 35, 20 June 2017).

69. Having regard to the foregoing considerations and to the specific circumstances of the present case, the Court rejects the Government's objection as to the applicant's lack of victim status and finds that the proceedings amounted to an "interference" with his exercise of the right to freedom of expression secured under Article 10 of the Convention.

2. *Justification of the interference*

70. The applicant submitted that the criminal proceedings against him amounted to a violation of Article 10 of the Convention.

71. The Government explained that the impugned interference had been laid down in section 6 of Law no. 3713 and had pursued the legitimate aims of safeguarding national security and territorial integrity, and preventing disorder and crime. They further submitted that that interference had been necessary in a democratic society inasmuch as, in their view, the articles published in the applicant's daily newspaper had provided propaganda for a terrorist organisation and incited to violence.

72. The Court notes that there is no disagreement between the parties as to the fact that the interference, consisting in bringing criminal proceedings against the applicant for the offence laid down in section 6 §§ 2 and 4 of Law no. 3713, had been prescribed by law and had pursued a legitimate aim, that is to say safeguarding national security and territorial integrity, and preventing disorder and crime, within the meaning of Article 10 § 2 of the Convention.

73. As regards the necessity of the interference, the Court refers to the principles established in its case-law in relation to freedom of expression, which are summarised in the *Bédat v. Switzerland* judgment ([GC], no. 56925/08, § 48, 29 March 2016). It further observes that in cases raising issues similar to those in the present case, it has found a violation of Article 10 of the Convention (see *Gözel and Özer*, nos. 43453/04 and 31098/05, § 64, 6 July 2010; *Bayar v. Turkey* (nos. 1-8), nos. 39690/06, 40559/06, 48815/06, 2512/07, 55197/07, 55199/07, 55201/07 and 55202/07, §§ 34-35, 25 March 2014; and *Bayar and Gürbüz v. Turkey* (no. 2), no. 33037/07, §§ 30 and 31, 3 February 2015). It will consider the present case in the light of that case-law, while bearing in mind that unlike the applicants in the cases cited above, the applicant was acquitted at the end of the criminal proceedings which are the subject of the present case.

74. The Court observes in the instant case that the competent authorities initiated and conducted the criminal proceedings against the applicant on account of the publication of certain articles in his daily newspaper. It notes that the articles criticised by the authorities quoted statements by members and representatives of specific organisations considered as terrorist under Turkish law. The articles covered a range of subjects: the process of forming an organisation (see paragraph 7 above), a Christmas message from an organisation (see paragraph 7 above), the outcome of the armed conflicts conducted by an organisation (see paragraph 12 above), demonstrations held in various towns (see paragraph 17 above), the Armenian genocide (see paragraph 22 above), the solution to the Kurdish problem (see paragraph 27 above), the restructuring of an organisation (see paragraph 32 above), an organisation's congratulations on a sporting success (see paragraph 37 above) and a protest action (see paragraph 37 above).

75. The Court notes that the judicial authorities initiated the proceedings in question exclusively on account of the fact that the applicant's newspaper had published articles from organisations classified in Turkish law as involved in terrorism, concluding exclusively from that fact that the applicant had committed the offence laid down in section 6 § 2 of Law no. 3713 (see paragraphs 8, 9, 13, 14, 18, 19, 23, 24, 28, 29, 33, 34, 38 and 39 above). It notes in particular that those authorities failed to conduct any appropriate analysis of the content of the impugned articles or of the context of their publication, in the light of the criteria set out and implemented by the Court in cases concerning freedom of expression (see *Gözel and Özer*, cited above, § 51). It further observes that the domestic authorities did not allege that the impugned articles, taken as a whole, called for the use of violence, armed resistance or rebellion, or that they amounted to hate speech, which it sees as the main factor to be considered (see *Sürek v. Turkey* (no. 4) [GC], no. [24762/94](#), § 58, 8 July 1999, and *Belek and Velioglu v. Turkey*, no. [44227/04](#), § 25, 6 October 2015).

76. In those circumstances, the commencement of proceedings against the applicant can be regarded as a reaction by the competent authorities aimed at penalising the publication of statements by leaders of organisations classified as terrorist in Turkish law while disregarding the content of those statements, even though they might be considered as contributing to a public debate on questions of general interest concerning the conflict between the organisations in question and the law enforcement agencies (see, *mutatis mutandis*, *Dilipak*, cited above, § 69).

77. The Court also considers that the criminal proceedings repeatedly brought against the owners, publishers and editors-in-chief of newspapers and magazines, like the applicant, on the sole grounds that they had published statements of the type governed by section 6 § 2 of Law no. 3713, may also have the effect of partly censuring media professionals and limiting their ability publicly to express an opinion which has its place in a public debate – with the obvious proviso of refraining from promoting the perpetration of terrorist offences –. The Court considers, in particular, that mechanically punishing media professionals on the basis of the aforementioned provision without taking account of the intentions of those involved or of the general public's right to be informed of a different viewpoint on a situation of conflict is irreconcilable with the freedom to receive or impart information and ideas (see *Gözel and Özer*, cited above, § 63).

78. Having regard to the foregoing considerations, the Court considers that the impugned measure, that is to say the continuation for a substantial period of time of the many criminal proceedings against the applicant on the basis of serious criminal charges, did not meet a pressing social need, that it was by no means proportionate to the legitimate aims sought to be achieved and that, therefore, it was not necessary in a democratic society.

79. In the light of the foregoing considerations, the Court finds that in the present case there was a violation of Article 10 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

81. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

82. The Government considered that the claim in respect of non-pecuniary damage was excessive and did not correspond to the amounts awarded by the Court in its case-law.

83. The Court considers that the applicant should be awarded EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant also claimed 44,604 Turkish lire (TRY) in respect of legal fees. Furthermore, he claimed a total of TRY 4,800 in respect of translation, stationery and postal expenses. He did not submit any documents in support of those claims, but pointed out that his lawyer had confirmed reality, reasonableness and necessity of those costs and expenses.

85. The Government pointed out that the applicant had failed to submit documents in support of his claims in respect of costs and expenses. They added that the legal fees were higher than in similar proceedings and that the applicant had provided no breakdown of the hours of work for which the lawyer had required payment.

86. According to the case-law of the Court, costs and expenses may be recovered by applicants only in so far as they have been actually and necessarily incurred and are reasonable as to quantum. In the instant case the Court rejects the claim for costs and expenses in view of the applicant's failure to submit supporting documents.

C. Default interest

87. The Court considers it appropriate that the default interest rate 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. *Joins to the merits* the Government's preliminary objection concerning the applicant's lack of victim status and *rejects* it;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 10 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 applicant's claim for just satisfaction.

Done in French, and notified in writing on 12 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President