



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

SECOND SECTION

CASE OF ÜRPER AND OTHERS v. TURKEY (No. 2)

*(Applications nos. 55036/07, 55564/07, 1228/08, 1478/08, 4086/08,
6302/08 and 7200/08)*

JUDGMENT

STRASBOURG

26 January 2010

FINAL

26/04/2010

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

In the case of Ürper and Others v. Turkey (No. 2),

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 5 January 2010,

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

PROCEDURE

1. The case originated in seven applications (nos. 55036/07, 55564/07, 1228/08, 1478/08, 4086/08, 6302/08 and 7200/08) 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 nineteen Turkish nationals (“the applicants”), whose names appear 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. On 6, 11 and 27 December 2007 and 18, 25 and 29 January 2008 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. On 18 January, 4 and 13 February and 3 March 2008, the President of the Second Section granted that priority to the cases.

4. On 10 April 2008 the President of the Second Section decided 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 CASE

A. The prosecution of the newspapers

5. At the material time the applicants were the owners, executive directors, editors-in-chief, news directors and journalists of two daily and three weekly newspapers published in Turkey: *Gündem*, *Yedinci Gün*, *Haftaya Bakış*, *Yaşamda Demokrasi* and *Gerçek Demokrasi*. The publication of all five 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 between 9 October and 15 December 2007, for periods ranging from fifteen days to a 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.

6. 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

7. The applicant Lütfi Ürper, the owner of *Gündem*, was prosecuted 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 the aforementioned 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 applicants Ali Turgay, Hüseyin Aykol and Hüseyin Bektaş were similarly prosecuted.

8. It appears that the criminal proceedings brought against the aforementioned applicants are still pending.

II. RELEVANT DOMESTIC LAW

9. A description of the relevant domestic law and practice may be found in *Ürper and Others v. Turkey*² (nos. 14526/07, 14747/07, 15022/07,

1. Kurdistan Workers' Party, an illegal organisation.

2. The judgment is not yet final.

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.

I. ADMISSIBILITY

11. The Government submitted that the applicants other than Lütfi Ürper, Ali Turgay, Hüseyin Bektaş and Hüseyin Aykol, who are the owners, executive directors and/or editors-in-chief of the relevant newspapers and against whom criminal proceedings have been instituted, did not have victim status.

12. Referring to the Court's decision in the case of *Yıldız and Others v. Turkey* ((dec.), no. 60608/00, 26 April 2005)) and to the judgment in the case of *Halis Doğan and Others v. Turkey* (no. 50693/99, 10 January 2006), the applicants submitted that they had all been affected by the suspension of the publication of the newspapers.

13. 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*, cited above; *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.

14. 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 violations of Article 10 of the Convention

15. The applicants alleged under Article 10 of the Convention that the suspension of the publication and distribution of *Gündem*, *Yedinci Gün*, *Haftaya Bakış*, *Yaşamda Demokrasi* and *Gerçek Demokrasi*, 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.

16. 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.

17. 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 case which would require it to depart from this jurisprudence.

18. 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

19. 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 *Gündem*, *Yedinci Gün*, *Haftaya Bakış*, *Yaşamda Demokrasi* and *Gerçek Demokrasi* had constituted an unjustified interference with their right to property.

20. The Government contested these allegations.

21. Having regard to the circumstances of the cases and to its finding of a violation of Article 10 of the Convention (see paragraph 18 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*

22. The applicants claimed 975,000 Turkish liras (TRY) (approximately 480,000 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 78,000 for the damage which they had suffered individually. However, they did not produce any documentary evidence in support of their claims for pecuniary loss.

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

24. The Court notes the applicants' failure to submit any documents to substantiate this claim. Accordingly, it must be rejected.

2. *Non-pecuniary damage*

25. The applicants next claimed EUR 105,000 in total in respect of non-pecuniary damage.

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

27. The Court considers that all 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

28. The applicants also claimed EUR 20,840 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.

29. The Government contested this claim.

30. 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 case, 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

31. 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 1,800 (one thousand eight hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to each of the following applicants:
 - Lütfi Ürper;
 - Yüksel Genç;
 - Nurettin Fırat;
 - Salih Sezgi;
 - Cengiz Kapmaz;
 - Bayram Balcı;

- Memet Ali Çelebi;
- Hüseyin Aykol;
- Fuat Bulut;
- Ramazan Pekgöz;
- Mehmet Samur;
- Musa Demir;
- Zeriman Dağdelen;
- Ali Erden;
- Ersin Öngel;
- Turabi Kişin;
- Şinasi Tur;
- Ali Turgay;
- Hüseyin Bektaş;

(ii) 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 26 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

Appendix

File No	Case Name	Date of lodging	Introduced by
55036/07	ÜRPER and Others (V) v. Turkey	6.12.2007	Lütfi Ürper, Yüksel Genç, Nurettin Fırat, Salih Sezgi, Cengiz Kapmaz, Bayram Balcı, Memet Ali Çelebi, Hüseyin Aykol, Fuat Bulut, Ramazan Pekgöz, Mehmet Samur, Musa Demir, Zeriman Dağdelen, Ali Erden, Ersin Öngel, Turabi Kişin and Şinasi Tur
55564/07	TURGAY and AYKOL v. Turkey	11.12.2007	Ali Turgay and Hüseyin Aykol
1228/08	ÜRPER and Others (VI) v. Turkey	27.12.2007	Lütfi Ürper, Yüksel Genç, Nurettin Fırat, Bayram Balcı, Turabi Kişin, Hüseyin Aykol, Musa Demir, Cengiz Kapmaz, Fuat Bulut, Ersin Öngel, Salih Sezgi, Memet Ali Çelebi, Zeriman Dağdelen, Mehmet Samur and Ali Erden
1478/08	TURGAY and AYKOL (II) v. Turkey	27.12.2007	Ali Turgay and Hüseyin Aykol
4086/08	TURGAY and Others v. Turkey	18.01.2008	Ali Turgay, Hüseyin Aykol, Nurettin Fırat and Ramazan Pekgöz
6302/08	BEKTAŞ (II) v. Turkey	25.01.2008	Hüseyin Bektaş
7200/08	BEKTAŞ (III) v. Turkey	29.01.2008	Hüseyin Bektaş