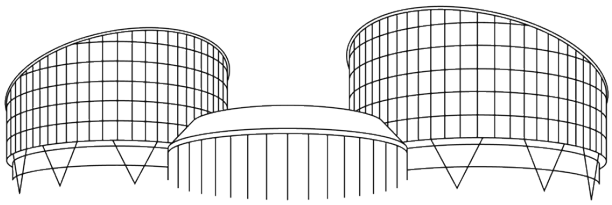

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SAYGILI AND BİLGİÇ v. TURKEY

(Application no. 33667/05)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

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

In the case of Saygılı and Bilgiç v. Turkey**,**

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 33667/05) 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 Fevzi Saygılı and Mr Nizamettin Taylan Bilgiç ("the applicants"), on 3 April 2002.

2. The applicants were represented by Mr Kamil Tekin Sürek, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that the seizure of their newspaper for a period of 30 days had been in breach of Article 10 of the Convention.

4. On 22 November 2005 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1966 and 1972 respectively and live in Istanbul. Mr Saygılı ("the first applicant") is the owner of a daily newspaper, *Günlük Evrensel*, and Mr Bilgiç ("the second applicant") is its

editor-in-chief. Until 22 July 2001 the first applicant owned another daily newspaper named *Yeni Evrensel*.

6. On 23 November 2000 the First Chamber of the Istanbul State Security Court convicted Mr Bülent Falakaoğlu, the editor-in-chief of *Yeni Evrensel*, of the offence defined in Article 312 § 2 of the Penal Code for certain articles published therein. The conviction entailed certain measures being taken against *Yeni Evrensel*. Pursuant to Additional Article 2 § 1 of the Press Act (law no. 5680) then in force, the court ordered the newspaper to cease publication for a period of one month.

7. On 18 June 2001, while the closure order was yet to be executed, the applicants notified the office of the Istanbul Governor of their intention to publish a new newspaper, named *Günlük Evrensel*.

8. On 22 July 2001 Mr Saygılı ceased *Yeni Evrensel*'s publication. The following day he launched *Günlük Evrensel* with a new editor-in-chief, Mr Bilgiç, and a new team of columnists.

9. On 8 September 2001 a number of police officers came to the applicants' printing headquarters to execute the closure order. They found that the applicants had discontinued *Yeni Evrensel* and started to publish *Günlük Evrensel*. The officers informed the public prosecutor in Zeytinburnu who, in return, concluded that *Günlük Evrensel* was *Yeni Evrensel*'s successor.

10. On 13 September 2001 the public prosecutor applied to the Zeytinburnu Magistrates' Court (*Sulh Ceza Mahkemesi*) for a seizure warrant. The court issued the warrant authorising the seizure of *Günlük Evrensel*'s two recent issues.

11. The same day the applicants filed an objection with the higher criminal court, the Zeytinburnu Criminal Court of First Instance (*Asliye Ceza Mahkemesi*), asserting that *Günlük Evrensel* was not *Yeni Evrensel*'s successor. Unconvinced by the applicants' assertions, the court rejected the application without giving any reasons, other than stating that "it was established that *Günlük Evrensel* was *Yeni Evrensel*'s successor".

12. For the following 29 days the same sequence of events took place; the prosecutor requested a seizure warrant for the latest issue, the Magistrates' Court granted it and the applicants unsuccessfully lodged a number of objections against those decisions with the Zeytinburnu Court, which repeated its above conclusion in each of its decisions. In their objections the applicants drew the Zeytinburnu Court's attention to the fact that as *Günlük Evrensel* had first been published on 23 July 2001 and *Yeni Evrensel* was not officially closed down until 8 September 2001, it could not possibly be *Yeni Evrensel*'s successor. Moreover, *Günlük Evrensel* had a different editorial team than that of *Yeni Evrensel*. The applicants also argued that the seizure of *Günlük Evrensel* was in breach of Articles 6 and 10 of the Convention because, *inter alia*, the seizure decisions were not adequately reasoned.

13. On 25 September 2001 the applicants wrote to the Ministry of Justice and requested that a written order be issued against the seizure orders. They repeated their arguments under Articles 6 and 10 of the Convention.

14. Meanwhile, the Zeytinburnu prosecutor filed a number of criminal charges against the applicants on the ground that they had breached the shutdown order by issuing a successor newspaper. The charges were joined and examined by the Zeytinburnu Criminal Court of First Instance. On 26 December 2001 the court acquitted the applicants as it found that the two newspapers in question were unrelated. The court also revoked the seizure warrants, which had already been executed by then.

II. RELEVANT DOMESTIC LAW

15. Additional Article 2 of the Press Act:

> "Where offences [prescribed in Article 312 § 2 of the Penal Code] ... and those threatening national security and general morals are committed via the press, the relevant publication may be ordered to be shut down by the competent court for a period of three days to one month.
>
> Any publication which manifestly succeeds a previous publication that was so ordered ... shall be seized by a warrant to be issued by a magistrates' court."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

16. The applicants complained that the seizure of *Günlük Evrensel* for a period of thirty days infringed their right to freedom of expression, guaranteed by Article 10 of the Convention, which reads insofar as relevant as follows:

> "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. ...
>
> 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, ... for the prevention of disorder or crime, ..."

17. The Government contested that argument.

A. Admissibility

18. The Government submitted that the complaint was inadmissible on account of the applicants' failure to exhaust domestic remedies. They were of the opinion that in the course of the domestic proceedings the applicants had not relied on, or raised any arguments in respect of, their right to freedom of expression. Furthermore, the applicants had only lodged one objection against the seizure orders and that had been on 19 September 2001. Finally, the applicants had failed to bring proceedings against the relevant administration in order to claim compensation for damage stemming from the seizure of the newspaper.

19. The applicants argued that judicial decisions were not administrative actions and that it was not possible to bring an action against a judicial decision before the Administrative Courts.

20. As for the Government's submissions that the applicants had only lodged one objection against thirty seizure orders and had failed to rely on their Convention rights at the national level, the Court observes that, according to the documents submitted to it by the applicants – copies of which were forwarded to the Government at the time of giving notice of the application – the applicants lodged at least 16 objections against the seizure orders and relied on their rights under Articles 6 and 10 of the Convention. Moreover, they also asked the Ministry of Justice to issue a written order to set aside the seizure orders and once again referred to their Convention rights.

21. Concerning the Government's reference to the applicants' failure to bring an action before the administrative courts, it is to be observed that, at the time of giving notice of the application, the Government were requested by the Court to clarify whether there was an effective remedy by which the applicants could have obtained compensation for damage resulting from the judicial error in the issue of the seizure orders. In response, the Government argued that the applicants could have approached the administrative courts and claimed compensation.

22. The Court observes at the outset that the remedy referred to by the Government concerns damage resulting from acts or omissions of the administrative authorities. Indeed, the Government, beyond referring to the general modalities of the administrative procedure, did not seek to provide the Court with any domestic court decision in which persons who had sustained damage in similar circumstances as a result of mistakes made by criminal courts had been awarded damages.

23. In light of the foregoing, the Court rejects the Government's objections as to the admissibility of this complaint. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The applicants complained that their right to freedom of expression had been violated on account of the seizure of their newspaper for a period of 30 days. They argued that their objections against the seizure orders had not been examined adequately and that the decisions rejecting their objections had not been adequately reasoned.

25. The Government considered that the seizure orders could not be regarded as an interference with the applicants' rights under Article 10 of the Convention. In any event, even assuming that there had been such an interference, it had been prescribed by law and had been justified under Article 10 § 2 of the Convention.

26. As for the Government's submissions concerning the existence or otherwise of an interference, the Court notes that it has already examined and rejected similar arguments by the Government in previous cases (see, most recently, *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, § 18, 20 October 2009, and the cases cited therein). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. It observes that the applicants were the editor-in-chief and owner of *Günlük Evrensel*, and considers that there can be no doubt that their exercise of the freedom to impart information was directly affected by the seizure orders.

27. The Court notes that it is not contested that this interference was prescribed by law under Additional Article 2 of the Press Act (see "Domestic Law" above) and pursued a legitimate aim, namely the prevention of crime for the purposes of Article 10 § 2. In the present case what is in issue is whether the interference was "necessary in a democratic society".

28. The Court reiterates the basic principles laid down in its judgments concerning Article 10 (see, in particular, *Şener v. Turkey*, no. 26680/95, §§ 39-43, 18 July 2000; *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I; *Lingens v. Austria*, 8 July 1986, §§ 41-42, Series A no. 103; and *Erdoğdu v. Turkey*, no. 25723/94, §§ 51-53, ECHR 2000-VI). It will examine the present case in the light of these principles.

29. The Court stresses at the outset that the present case is unusual in that the interference with the applicants' rights under Article 10 of the Convention emanated from a closure order issued in respect of another newspaper, namely *Yeni Evrensel* (see paragraph 6 above). That closure order and the conviction of *Yeni Evrensel*'s editor-in-chief have already been examined by the Court and the conviction of that applicant was held to be in breach of Article 10 of the Convention (see *Falakaoğlu v. Turkey*, no. 77365/01, §§ 30-37, 26 April 2005). This makes it unnecessary for the Court to examine the impugned articles published in *Yeni Evrensel*. What

the Court must determine in the present case is whether the reasons adduced by the national authorities to justify the seizure orders for *Günlük Evrensel* are "relevant and sufficient" (see *Erdoğdu*, cited above, § 60) and whether the "need" for the interference was convincingly established (*ibid*, § 53).

30. *Günlük Evrensel* was closed down for a period of 30 days because it was considered to be *Yeni Evrensel*'s successor. Although the domestic courts subsequently realised that *Günlük Evrensel* was not connected with *Yeni Evrensel* and revoked the seizure orders, it was by then too late as the newspaper had not been distributed for a period of 30 days.

31. As described above, on many occasions the applicants drew the domestic courts' attention to the mistake, and maintained that the continued seizure of the newspaper was incompatible with, *inter alia*, Article 10 of the Convention because the seizure decisions were not adequately reasoned (see paragraph 12 above). On each occasion the domestic court deciding the applicants' objections repeated its stereotyped conclusion that "it was established that *Günlük Evrensel* was *Yeni Evrensel*'s successor". No reasons were given by those courts as to exactly why and how they considered that a newspaper, which had been in publication for a period of 48 days at the time of the official closure of another newspaper, could be the latter's successor.

32. Against this background the Court considers that, in the absence of any convincing reasons by the domestic courts, it cannot find that the interference with the applicants' right to freedom of expression was justified.

33. Having regard to the above considerations, the Court concludes that the seizure of the newspaper was not "necessary in a democratic society".

Accordingly, there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. Under Article 6 of the Convention the applicants complained that they had not received a fair hearing in the proceedings concerning the seizure of the newspaper on account of the following:

(i) the magistrates' court failed to seek their defence submissions;
(ii) the criminal court of first instance overlooked their objections;
(iii) the courts issued contradictory rulings; and lastly
(iv) Turkish criminal courts were not independent or impartial because the judges were supervised by the Supreme Council of Judges and Prosecutors (*Hakimler Savcılar Yüksek Kurulu*), which included the Minister of Justice and the Minister's adviser as two of its seven members.

35. The Government contested these complaints.

36. The Court considers that these complaints may be declared admissible. However, having regard to the circumstances of the case and to

its finding of a violation of Article 10 of the Convention above (see paragraph 34), it is of the view that it has examined the main legal question raised in the present application. It concludes therefore that there is no need for a separate ruling in respect of these complaints (see, *mutatis mutandis*, *Demirel and Others v. Turkey*, no. 75512/01, § 27, 24 July 2007; and *Ürper and Others*, cited above, § 49).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicants claimed 30,000 euros (EUR) in respect of pecuniary damage and EUR 3,000 in respect of non-pecuniary damage.

39. The Government invited the Court not to make any awards in respect of pecuniary damage on account of the applicants' failure to submit any evidence in support of their claims. The Government also considered that the claim for non-pecuniary damage was excessive and therefore unacceptable.

40. The Court observes that the applicants have not submitted any evidence to enable the Court to assess and calculate the damage stemming from the seizure of the newspaper; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicants, jointly, the sum of EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicants also claimed EUR 2,000 for costs, expenses and legal fees.

42. The Government objected to the claim as being unsubstantiated.

43. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicants have not substantiated that they have actually incurred the costs claimed. In particular they failed to submit documentary evidence, such as bills, receipts, a contract, a fee agreement or a breakdown of the hours spent by their lawyer on the case. Accordingly, the Court makes no award under this head.

C. Default interest

44. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine the complaints under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President