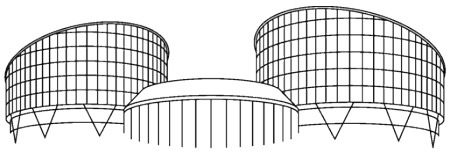

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CUMHURİYET VAKFI AND OTHERS v. TURKEY

(Application no. 28255/07)

JUDGMENT

STRASBOURG

8 October 2013

FINAL

08/01/2014

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

In the case of Cumhuriyet Vakfı 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,
András Sajó,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 17 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 28255/07) 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 İlhan Selçuk ("the first applicant") and Mr Güray Tekin Öz ("the second applicant") and by Yeni Gün Haber Ajansı Basın ve Yayıncılık A.Ş., a joint-stock publishing company ("the third applicant") and Cumhuriyet Vakfı, an association, ("the fourth applicant"), on 2 July 2007.

2. The applicants were represented by Mr M. S. Gemalmaz and Mr A. Atalay, lawyers practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 22 March 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The first applicant, born in 1925, was the chief editorial writer of the daily national newspaper *Cumhuriyet* ("the Republic") at the material time and lived in Istanbul. The second applicant, born in 1949, was the editor-in-chief of the newspaper and lives in Istanbul. The third applicant, a joint-stock company established under Turkish law with its registered office

in Istanbul, is the publisher of *Cumhuriyet*. The fourth applicant, an association founded in Istanbul, is the owner of the newspaper.

A. Background to the case

5. On 27 November 1995 *The Guardian* newspaper published an article written by Jonathan Rugman entitled "Turkish Islamists aim for power", based on an interview held with Mr Abdullah Gül, a Member of Parliament ("MP") for *Refah Partisi* ("the Welfare Party") at the material time. The relevant part of the article read as follows:

> "Abdullah Gül is dressed in a well-cut suit and tie. The MP may be the deputy leader of Turkey's Islamic revivalist Welfare Party, Refah, but he speaks good English and seems to have been schooled within the political traditions of the West.
>
> Such is his charm that Mr Gül is often given the task of explaining Welfare's policies to suspicious foreigners. Yet his message is unmistakably radical, a direct challenge to Turkey's unique status as the only secular democracy among 52 Muslim countries.
>
> 'This is the end of the republican period' Mr Gül says flatly, 'if 60 per cent of Ankara's population is living in shacks, then the secular system has failed and we definitely want to change it'."

6. On 28 November 1995 a Turkish daily newspaper, *Posta*, reported on the article published in *The Guardian* with the following headline: "Here is the Welfare Party's real aim: the chilling confession". The news piece, which included a copy of the *Guardian* article and a summary thereof, indicated that Mr Gül had "openly defied the secular system and the republic".

7. On 15 December 1995 *The Guardian* published another article by Jonathan Rugman, headed "Turkey hails customs deal as step nearer EU", the relevant part of which read as follows:

> "The Turkish press was rejoicing yesterday at the European Parliament's decision to ratify a customs union with Ankara, 22 years after it was initiated.
>
> ...
>
> Abdullah Gül, deputy leader of the pro-Islamic Welfare Party, said state prosecutors planned to take him to court because of a Guardian article which quoted him as saying that his party wanted to change Turkey's secular system.
>
> Mr Gül said that he did not mean to abolish the Turkish republic, simply to end an era of public unhappiness."

8. Following the dissolution of the Welfare Party by the Turkish Constitutional Court, Mr Gül played a leading role in the founding of *Adalet ve Kalkınma Partisi* ("Justice and Development Party" or "AKP") in 2001. In November 2002, he formed the 58th Government of the Turkish Republic as Prime Minister, and subsequently served as Deputy Prime Minister and Foreign Minister in the 59th Government from 2003 to 2007.

9. On 24 April 2007 Mr Gül was named as the AKP candidate for the upcoming Presidential elections.

10. On 29 April 2007 the daily *Cumhuriyet* ran an advertisement that headlined the first page, which consisted of the following quote by Mr Gül, printed in white letters against a red background covering approximately one quarter of the page:

> "It is the end of the republic in Turkey ... We definitely want to change the secular system −Abdullah Gül."

The quote was followed by a slogan, "Take care of your *Republic*", followed by an inset picture of the newspaper.

11. It appears that in the following day's issue, *Cumhuriyet* published a short article regarding the background of this advertisement, explaining that it was a direct quote from an interview that Mr Gül had given to *The Guardian* on 27 November 1995.

12. On 1 May 2007 *Cumhuriyet* ran the same advertisement, with an identical layout.

13. On 2 May 2007 another major Turkish daily newspaper, *Hürriyet*, reported that Jonathan Rugman, the *Guardian* journalist who had conducted the contentious interview with Mr Gül in 1995, had confirmed that Mr Gül had uttered the statement "we will change the secular system" during the interview.

B. Presidential elections

14. On 27 April 2007 the first round of the Presidential elections was held at the Grand National Assembly of Turkey ("the Parliament"). Mr Gül, the only candidate running for Presidency, failed to receive the requisite qualified majority for election in the first round, which necessitated the holding of a second round.

15. However, before the second round of elections could be held, the Constitutional Court of Turkey, upon a request from the main opposition party (*Cumhuriyet Halk Partisi*), annulled the first round of the elections on 1 May 2007 on the ground that the required quorum had not been reached. Subsequent attempts to repeat the first round of the elections proved unsuccessful on account of the failure to meet the necessary quorum due to boycotts from opposition MPs. In view of the deadlock in the Parliament over the election of the President, it was decided on 9 May 2007 to postpone the elections.

16. As a result of the failure of the Parliament to elect a President, the Parliamentary elections, which were originally scheduled to be held subsequent to the election of the President, were brought forward in accordance with the terms of the now defunct Article 102 of the Turkish Constitution. Accordingly, on 22 July 2007, Parliamentary elections were

held, which resulted in the incumbent AKP securing its second term in office.

17. In August 2007, the newly elected Parliament restarted the Presidential election process. Mr Gül was renominated by his party as President.

18. On 28 August 2007 Mr Gül was elected by the Parliament as the President of the Republic of Turkey from amongst three candidates.

C. The compensation proceedings brought against the applicants by Mr Gül

19. In the meantime, on 2 May 2007 Mr Gül brought a civil action for compensation against the applicants before the Ankara Civil Court of First Instance, arguing that the fictitious and defamatory statement published in *Cumhuriyet* on 29 April and 1 May 2007 carried the sole aim of damaging his reputation and thus constituted an attack on his personality rights. He highlighted that following the publication of the impugned article on 27 November 1995, he had informed *The Guardian* that he had not made the statements published therein, and requested a correction. The said newspaper had accordingly rectified its error in a subsequent article published on 15 December 1995, explaining that Mr Gül had not pronounced upon the "republic" or "secularity" in his interview, but had only referred to the public discontent in a socio-economic context. He claimed that *Cumhuriyet* itself had acknowledged the inaccuracy of the statement it had published in its issue of 30 April 2007. He further contended that the statement attributed to him did not serve a "public interest" in any event, for it lacked "currency", and that the publication of such dated news was a further sign of bad faith on the part of *Cumhuriyet*. Mr Gül requested compensation for non-pecuniary damage in the amount of 50,000 Turkish liras (TRY) from the Ankara Civil Court of First Instance, as well as an interim injunction against the statement in question. He submitted the relevant copies of *Cumhuriyet*, as well as a number of Court of Cassation decisions in support of his claim, but not the copies of the *Guardian* articles in question.

20. On 5 May 2007 the 25th Chamber of the Ankara Civil Court of First Instance examined the claimant's request and decided, in the light of the evidence submitted by Mr Gül and without hearing the applicants' arguments, to grant the interim injunction. The injunction in question was formulated as follows:

> "In accordance with Articles 24 and 25 of the Civil Code and Article 103 and the succeeding provisions of the Code of Civil Procedure, the publication of the material attributed to the claimant Abdullah Gül, as published on the front page of the newspaper Cumhuriyet in the issues of 29 April 2007 and 1 May 2007, as well as any

news that may be subject to the [present] court proceedings, be suspended/prevented as a precautionary measure."

The court ordered the notification of the injunction decision to the applicants.

21. On 7 May 2007 the Ankara Civil Court of First Instance held a preliminary hearing in the main compensation proceedings in the absence of the parties, at which it ordered that the claimant's request and other material submitted by him be communicated to the applicants together with the injunction decision. It also invited the applicants to submit their defence on the merits of the case, along with any objections they might have against the interim injunction, and scheduled the first hearing for 6 June 2007.

22. On 24 May 2007 the applicants submitted their written defence submissions to the first-instance court, together with a request for the lifting of the interim injunction. The applicants argued, *inter alia*, that the statement under consideration in the present case was a direct quote from an interview that Mr Gül had given to a journalist from *The Guardian* on 27 November 1995; that this interview had also been reported in the Turkish daily *Posta*; that the subsequent article published by *The Guardian* on 15 December 1995 did not constitute a "correction" as alleged, as it did not entail a denial or retraction of the previous statement; that in a statement he had made to the newspaper *Hürriyet*, the *Guardian* journalist Jonathan Rugman had verified that Mr Gül had indeed made the impugned declaration; that the London correspondent of *Cumhuriyet* had been informed by the foreign affairs editor of *The Guardian* that there were no correction requests from Mr Gül in their archives in relation to the article of 27 November 1995; and that the article published in *Cumhuriyet* on 30 April 2007 was an objective account of the background to Mr Gül's quote, and not an acknowledgment of the inaccuracy of this statement as alleged. The applicants added that contrary to the claimant's allegations, the statement in question was of great public interest pending the Presidential elections, as the public had the right to be informed about the background and political opinions of Presidential candidates. On the procedural side, the applicants claimed that the interim injunction based on Article 25 of the Civil Code amounted to a "ban" on the publication of the relevant material, whereas Article 26 of the Turkish Constitution only allowed for the "limitation" of the freedom of the press in certain conditions, including for the purposes of the protection of the reputation of others. Moreover, the second part of the injunction, which ordered the suspension/prevention of the publication of "news that might be subject to the court proceedings" in a sweeping manner, was set out in extremely vague terms. It thus had the effect of preventing the publication of *any* news, articles or commentaries about Mr Gül, thereby granting him quasi-immunity from criticism as a Presidential candidate. For the foregoing reasons, the applicants requested the lifting of the interim injunction.

23. At the first hearing in the main compensation proceedings held on 6 June 2007, the 25th Chamber of the Ankara Civil Court of First Instance dismissed the applicants' request for the interim injunction to be lifted without any explanation. According to the information in the case file, the subsequent hearings on 10 July and 23 October 2007 dealt with procedural matters.

24. On 15 February 2008 Mr Gül instructed his lawyer to withdraw the case from the Ankara Civil Court of First Instance. He stated that although he considered his personality rights to have been violated by reason of the publications in question, he did not deem it appropriate to pursue this case in view of his newly acquired constitutional status as the President of the Republic.

25. On 27 March 2008 Mr Gül's lawyer conveyed his client's request to the first-instance court.

26. On the same day the Ankara Civil Court of First Instance dismissed the case as requested and lifted the interim injunction effective of that date.

II. RELEVANT DOMESTIC LAW

27. Article 26 of the Turkish Constitution, on the freedom of expression and dissemination of thought, reads as follows:

> "Everyone has the right to express and disseminate his thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities...
>
> The exercise of these freedoms may be restricted for the purposes of ... protecting the reputation and rights and private and family life of others, ... or ensuring the proper functioning of the judiciary.
>
> The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law".

28. Article 28 of the Turkish Constitution, on the freedom of the press, provides that:

> "The press is free, and shall not be censored.
>
> ...
>
> The State shall take the necessary measures to ensure freedom of the press and freedom of information.
>
> In the limitation of the freedom of the press, Article 26 ... of the Constitution [is] applicable.
>
> ...
>
> No ban shall be placed on the reporting of events, except by decision of a judge with an aim to ensure the proper functioning of the judiciary, within the limits specified by law.

...”

29. Article 141 paragraphs 3 and 4 of the Turkish Constitution provide the following:

“All court decisions shall be reasoned.

It is the duty of the judiciary to conclude trials as quickly as possible and at the minimum cost.”

30. Article 3 of the Press Law (Law no. 5187) provides as follows:

“The press is free. This freedom includes the rights of accessing, disseminating, criticising, interpreting [information] ...

The exercise of the freedom press can only be limited as necessary in a democratic society, for the protection of the reputation and rights of others, public health and morals, national security, public order, public safety and territorial integrity, for preventing the disclosure of State secrets or commission of crimes, [and] maintaining the authority and impartiality of the judiciary.”

31. The relevant provisions of the Civil Code (Law no. 4721) read as follows:

Article 24

“A person subject to an unlawful attack on his/her personal rights may claim protection from a judge against the individuals who made the attack.

Any such attack shall be deemed unlawful, unless ... it is justified by a superior private or public interest or by the use of power conferred by law.”

Article 25 § 1

“The plaintiff may ask a judge to prevent the threat of attack, to stop the continuation of an attack ...”

32. Article 49 of the Code of Obligations (Law no. 818) in force at the material time provided as follows:

“Any person who alleges that his/her personality rights have been unlawfully violated can claim compensation for non-pecuniary damage.

In determining the amount of this compensation, the judge shall take into account the parties’ respective positions, occupations and other social and economic factors ...”

33. The relevant provisions of the Code of Civil Procedure (Law no. 1086) in force at the material time (repealed on 1 October 2011) provided as follows:

Article 103

“... The judge may order the execution of an interim measure in circumstances where the deferral [of action] may be dangerous or may cause significant harm, with a view to averting such danger or damage.”

Article 105

"A request for an interim measure shall be submitted to the judge by a written petition. Immediately after the request and as a matter of urgency both parties shall be summoned and the required decision shall be given even if they do not attend.

In urgent cases or in a case where the immediate protection of the claimant's rights necessitates, an interim measure may be applied without summoning the parties."

Article 107

"Objection to an interim measure granted *in absentia* is permissible. Such objection shall not postpone the enforcement [of the interim measure], unless a decision for the stay of enforcement is given."

Article 112

"Following the pronouncement or delivery of the judgment on the merits, the interim measure is lifted. Nevertheless, the court may decide to prolong the measure for a period that it shall set to ensure the execution of the judgment."

Article 113/A

"A person who does not comply with the order set out in the interim injunction decision ... shall be sanctioned by imprisonment for a period of between one and six months, unless the action in question entails a heavier sanction under the Turkish Criminal Code."

III. RELEVANT COMPARATIVE LAW

A. Law and practice in Council of Europe Member States

34. The Court has reviewed the legislations of nineteen Council of Europe Member States1 with the aim of obtaining comparative data regarding procedural guarantees afforded in other Member States in interim injunction proceedings concerning personality rights.

35. It appears that although there is an adversarial hearing at some stage of the injunction proceedings in most of the States surveyed, the domestic court is nevertheless authorised by law to grant an interim injunction in the absence of an adversarial hearing in very urgent or exceptional cases (see, for example, section 12 § 2 of the Human Rights Act of 1998 of the United Kingdom). In Bosnia and Herzegovina, the defendant then has a possibility to object to the injunction, which must be reviewed by the court in an oral hearing to be held in the following three days (Civil Procedure Act Sections 268-290). This period is fifteen days in Italy (Article 669 of the Civil Procedural Code).

1. Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Italy, Latvia, Poland, Serbia, Spain, Ukraine and the United Kingdom (England and Wales).

36. The relevant legislation and case-law in a number of Member States also indicate that an interim injunction should not be construed too broadly and that any decision ordering one should be reasoned.

37. A further procedural safeguard observed in some Member States concerns the issue of placing a time-limit on interim injunctions. For instance, in Austria, an interim injunction should specify the time period for which it has been issued. There are also various examples from the Belgian case-law of interim injunctions being limited to a specific time period.

B. Other international material

38. As part of its International Standards Series, "Article 19" (a non-governmental organisation specialising in freedom of expression based in London) published a study on the "Principles on Freedom of Expression and Protection of Reputation" in July 2000. One of the principles mentioned therein is the procedural requirement for "courts to ensure that each stage of defamation proceedings is conducted with reasonable dispatch, in order to limit the negative impact of delay on freedom of expression"1. Another principle concerns the necessity for "any application of a restriction on freedom of expression to be subject to adequate safeguards against abuse".

THE LAW

I. PRELIMINARY ISSUES

39. The Court notes that in their letter of 11 October 2010 the second, third and fourth applicants informed the Registry of the Court that the first applicant, Mr İlhan Selçuk, had died on 21 June 2010. While confirming their willingness to maintain their applications, neither they nor their lawyers indicated whether any of the applicant's heirs wished to pursue his claims before the Court.

40. The Court finds no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which require it to continue the examination of the application in respect of the first applicant. Accordingly, the application should be struck out of the Court's list of cases in so far as it relates to the first applicant, Mr İlhan Selçuk, in accordance with Article 37 § 1 *in fine* of the Convention (see, amongst others, *Danilenkov and Others v. Russia*, no. 67336/01, §§ 109-11, 30 July 2009 (extracts)).

1. http://www.ipu.org/splz-e/sfe/definition.pdf.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

41. The applicants complained under Article 10 of the Convention that the interim injunction ordered by the Ankara Civil Court of First Instance constituted an unjustified interference with their right to freedom of expression and freedom to impart information, as well as with the right of the public to receive such information.

42. Article 10 of the Convention provides 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. 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."

43. The Government did not submit any observations.

A. Admissibility

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. The applicants claimed that the interference with their freedom of expression was particularly serious considering that it occurred in the run up to the Presidential elections, where the duty to disseminate information regarding the candidates and to contribute to the political debate surrounding the elections gained even more significance as a matter of public interest. The applicants also complained about certain procedural and substantial defects in the first-instance court's examination of the injunction, including the court's failure to hear both parties and review all the relevant evidence prior to handing down the injunction, and to strike a balance between the competing interests at issue. The applicants highlighted the second leg of the interim injunction in this connection, which introduced a blanket ban on publishing "any news" pertaining to the proceedings in an exceedingly broad and vague manner.

46. The Court notes that upon the request of the claimant, Mr Gül, the Ankara Civil Court of First Instance ordered an interim injunction against the re-publication of a political advertisement containing a statement allegedly made by him, along with the publication of any news that might be subject to the pending defamation proceedings regarding the same advertisement. Before the domestic court could deliver its decision on the merits, however, the case was withdrawn by the claimant and the defamation proceedings were thus discontinued. The Court finds that despite the lack of a final determination on the merits of the main claim, the interim injunction, which remained in effect for over ten months, constituted in itself an interference with the applicants' right to freedom of expression under the first paragraph of Article 10 (see *RTBF v. Belgium*, no. 50084/06, § 94, ECHR 2011 (extracts)), considering in particular the specific political circumstances in which it was applied.

47. Such interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 10. It must therefore be determined whether it was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve those aims.

1. "Prescribed by law"

48. The applicants contended that the legislation underlying the interim injunction decision and its application was contrary to Article 28 of the Turkish Constitution, which unequivocally established the freedom of the press, as it amounted to an all-out publication ban on certain matters that moreover lasted for an extended period of time.

49. The Government did not submit any observations.

50. The Court reiterates that the expression "prescribed by law", within the meaning of Article 10 § 2, requires firstly that the impugned measure should have some basis in domestic law. However, it also refers to the quality of the law, which requires that legal norms should be accessible to the person concerned, their consequences foreseeable and their compatibility with the rule of law ensured (see, among others, *Association Ekin v. France*, no. 39288/98, § 44, ECHR 2001−VIII*)*.

51. As to the question of whether the impugned measure had a basis in domestic law, the Court observes that the interference in question was based on Articles 24 and 25 of the Civil Code, concerning the protection of personality rights, and Article 103 *et seq*. of the Code of Civil Procedure, which regulates the application of interim measures (see paragraphs 31 and 33 above). This fact is not contested by the applicants.

52. The Court further notes that while the Turkish Constitution does indeed protect the freedom of the press in its Article 28, this is in no way an absolute protection. The fourth paragraph of this provision in fact refers to Article 26 of the Constitution as regards the possible limitations on the

freedom of the press, which include restrictions for the purposes of "protecting the reputation and rights and private and family life of others" and "ensuring the proper functioning of the judiciary". Moreover, paragraph 6 of Article 28 of the Constitution also expressly authorises reporting bans, such as the one embodied in the latter part of the interim injunction in question, where necessary to ensure the proper functioning of the judiciary.

53. The Court accepts, therefore, that the restriction in question had a basis in domestic law.

54. As to the quality of the relevant law, the Court has doubts about the foreseeability of the consequences of the provisions in question, particularly as regards their permissible scope and duration. However, having regard to its examination of these matters below from the point of view of the "necessity" of the measure (see paragraphs 60-76), including as regards the clarity of the scope of the interim injunction in question (see paragraphs 62 and 63), the Court considers that it is not required to reach a final conclusion on the lawfulness issue (see *Association Ekin*, cited above, § 46; and *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 116, 14 September 2010).

2. Legitimate aim

55. The Court is satisfied that the interference in question pursued the legitimate aim of protecting the reputation or rights of others within the meaning of Article 10 § 2. It further considers that the second head of the interim injunction, banning the publication of any news that might be subject to the court proceedings, also aimed to maintain the authority and impartiality of the judiciary.

3. "Necessary in a democratic society"

(a) General principles

56. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. The Court has, moreover, repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular the protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 71, ECHR 2004-XI; *Axel Springer AG*

v. Germany [GC], no. 39954/08, § 79, 7 February 2012*;* and *Küchl v. Austria*, no. 51151/06, § 61, 4 December 2012*).*

57. Although freedom of expression may be subject to exceptions, as indicated in the second paragraph of Article 10 of the Convention, these must be narrowly interpreted and the "necessity" of any restriction in a democratic society must be convincingly established (see *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). The scope for restrictions on freedom of expression is even narrower in the area of political speech or debate – where freedom of expression is of the utmost importance (see *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006) – or in matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

58. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III; and *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 88, ECHR 2004-XI*).*

59. In particular, the Court must determine whether the measure taken was "proportionate to the legitimate aims pursued" (see The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30; and *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many others, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997-VII). In addition, the fairness of the proceedings and the procedural guarantees afforded are factors to be taken into account when assessing the proportionality of an interference with respect to the freedom of expression guaranteed by Article 10 (see *Association Ekin*, cited above, § 61; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II; *Lombardi Vallauri v. Italy*, no. 39128/05, §§ 45-46, 20 October 2009; and *Igor Kabanov v. Russia,* no. 8921/05, § 52, 3 February 2011).

(b) Application of these principles to the facts of the case

60. As established in paragraph 46 above, the interference in the instant case arose from an interim injunction which was granted to provide immediate relief to the claimant from the alleged attack on his personality rights by the applicants (see *Obukhova v. Russia*, no. 34736/03, § 21, 8 January 2009). Interim injunctions, by their very nature, are temporary measures which merely aim to provide provisional protection to the party concerned pending the examination of the claim on its merits, in cases

where the postponement of such measure until after a final decision on the merits would risk causing irreparable harm to the person seeking the injunction or where the judicial examination of the claim would otherwise be impeded. As such, they are not conclusive as to the competing rights of the parties and are granted at the discretion of the judge on the basis of a *prima facie* examination of the evidence only.

61. While Article 10 of the Convention does not prohibit interim injunctions, even where they entail prior restraints on publication, the apparent dangers inherent in such measures call for the most careful scrutiny by the Court (see *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV), including a close examination of the procedural safeguards embedded in the system to prevent arbitrary encroachments upon the freedom of expression (see, mutatis mutandis, *Steel and Morris*, cited above, § 95). The Court will, therefore, turn to the question of whether sufficient safeguards were available to the applicants in the instant case.

(i) Scope of the interim injunction

62. The Court takes note, in the first place, of the sheer scope of the interim injunction imposed by the domestic court, particularly as regards its second prong, which set out in very general and unqualified terms that the applicants could not publish any news whatsoever that might be subject to the court proceedings. The Court considers that there is lack of clarity as to what material could and could not be published under the interim injunction: hypothetically, the ban could extend to any political opinion uttered by the claimant Mr Gül, in the past or at the material time, as regards the principle of secularity or its application in Turkey, or certain institutions of the Republic. In the Court's opinion, this ambiguity surrounding the interim injunction decision fell foul of the principle of legal certainty and rendered that decision vulnerable to abuse.

63. The Court considers it quite possible that this lack of certainty may have also had a general chilling effect on the reporting of these matters at a period of intense political debate regarding the Presidential elections, thereby affecting not only *Cumhuriyet* as the measure's direct addressee but all media outlets in the country. The applicants in fact claim that neither *Cumhuriyet* nor the other major newspapers in Turkey had even reported on the interim injunction order obtained by Mr Gül.

(ii) Duration of the interim injunction

64. The Court secondly notes that as a result of the absence of a specific time-limit for its duration, coupled with the lack of a periodic review as to its continuing necessity or a prompt determination on the merits of the main case, the interim injunction, which was supposed to be only a temporary measure, stayed in force for over ten months, thus stretching over the two successive stages of the election. Accordingly, and bearing also in mind its

exceptionally wide scope, this measure had the effect of hampering the contribution of *Cumhuriyet* to the discussions surrounding the elections and the candidature of Mr Gül at a critical time in Turkish political history. As such, it also prevented the public, which heavily rely on the press for learning about, and forming an opinion on, the ideas and attitudes of political leaders (see *Lingens v. Austria*, 8 July 1986, Series A no. 103, § 42) from receiving this information.

65. The Court stresses that the publication of material on the restricted subjects after the lifting of the interim injunction, when Mr Gül had already been elected as President, would not have had the same value and impact, for news is a perishable commodity and to delay its publication for indeterminate periods as in the instant case may well deprive it of all its value and interest (see Observer *and* Guardian, cited above, § 60).

66. The restriction on the applicants' freedom of expression was, therefore, made unduly onerous by reason of the unexplained delays in the procedure (see, *mutatis mutandis*, *Ekin Association*, cited above, § 61), and the failure to limit the impugned measure to a reasonable period of time. The Court emphasises that what is required here is not the setting of strict time-limits for interim injunctions with absolute certainty, which is neither attainable nor desirable in view of the excessive rigidity it would entail. There must, nevertheless, be rules and safeguards available to ensure that an interim injunction does not extend beyond a reasonable period commensurate with its rationale and amount to an abusive practice. However, under Article 112 of the Code of Civil Procedure in force at the material time, an interim injunction would remain in place until the pronouncement or service of the judgment on the merits, unless its extension was required for the execution of the judgment.

(iii) Reasoning for the interim injunction

67. Another procedural problem tainting the interim injunction decision in question was the failure of the domestic court to provide any reasoning for its decision, either when granting the injunction or when refusing the ensuing request for it to be lifted (see, *mutatis mutandis*, *Boldea v. Romania*, no. 19997/02, § 61, 15 February 2007; and *Nur Radyo ve Televizyon Yayıncılığı A.Ş. v. Turkey (no. 2)*, no. 42284/05, §§ 49-50, 12 October 2010). The Court reiterates that the obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing against the decision, and also serves to justify the reasons for a judicial decision to the public (see *Suominen v. Finland*, no. 37801/97, §§ 36-37, 1 July 2003*).*

68. This general rule, moreover, translates into specific obligations under Article 10 of the Convention, by requiring domestic courts to provide "relevant" and "sufficient" reasons for an interference (see, for example,

Lindon, Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV; *Obukhova v. Russia*, no. 34736/03, § 25, 8 January 2009; and *Sapan v. Turkey*, no. 44102/04, §§ 40-42, 8 June 2010). This obligation enables individuals, amongst other things, to learn about and contest the reasons behind a court decision that limits their freedom of expression, and thus offers an important procedural safeguard against arbitrary interferences with the rights protected under Article 10 of the Convention (see *Lombardi Vallauri*, cited above, § 46). The Court is, therefore, of the opinion that the failure of the Ankara Civil Court of First Instance to provide relevant and sufficient reasons to justify its interim injunction decision stripped the applicants of the procedural protection that they were entitled to enjoy by virtue of their rights under Article 10 (see *Lombardi Vallauri*, cited above, § 55).

69. The Court further considers that the absence of reasoning in the domestic court's decision not only deprived the applicants of an important procedural safeguard, but also prevented the Court from examining whether the domestic court duly balanced the parties' interests at stake by taking into account questions such as: whether the applicants had, in the way they presented the statement allegedly made by Mr Gül, complied with their duties and responsibilities to act in good faith to provide accurate and reliable information in accordance with the ethics of journalism (see *Bladet Tromsø and Stensaas*, cited above, § 65); whether the statement allegedly made by Mr Gül was of public interest in the context of the ongoing Presidential elections (see *Sürek,* cited above, § 61, ECHR 1999-IV); and whether the advertisement campaign by *Cumhuriyet* constituted a gratuitous personal attack on Mr Gül or strictly targeted his political persona, in the latter of which cases the limits of acceptable criticism would be much wider (see *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001-VIII).

(iv) The applicants' inability to contest the interim injunction before its granting

70. Lastly, the Court takes note of the applicants' complaint that the interim injunction had been granted on the basis of arguments and evidence presented by the claimant only, at least initially.

71. The Court reiterates in this connection the fundamental importance of the principle of the equality of arms as a procedural guarantee for fair proceedings. It also concedes, however, that certain procedural safeguards may apply only to the extent allowed by the special nature and purpose of interim proceedings, which most often deal with matters of urgency requiring rapid action (see *Micallef v. Malta* [GC], no. 17056/06, § 86, ECHR 2009). Article 105 § 2 of the Turkish Code of Civil Procedure accordingly allows domestic courts to dispense with hearing submissions from the defendant party prior to granting an injunction where the need for immediate protection of the claimant's rights so necessitates. It appears that

this is also the practice in many other Member States (see paragraph 35 above).

72. While, therefore, it acknowledges the special circumstances under which interim injunction requests are dealt with, the Court nevertheless considers that the disadvantage that arises from the initial inability of a defendant to be heard in court should be remedied by offering the latter the opportunity to make submissions soon afterwards.

73. In the instant case, the first opportunity for the applicants to present their counter-arguments was at the first hearing, which took place one month and two days after the injunction was issued. Considering the "perishable" nature of news and the specific political environment in which the impugned measure was applied, the inability of the applicants to contest the interim injunction for over thirty days placed them at a substantial disadvantage vis-à-vis their opponent and thus constituted a significant procedural shortcoming that undermined their freedom of expression disproportionately.

74. The Court, therefore, considers that although the decision to order the injunction without first hearing evidence from the applicants could be justifiable initially in the special circumstances of the case, given the importance of the interests at stake the applicants should have been afforded the opportunity to challenge the interim injunction much sooner afterwards.

(v) Conclusion

75. In the light of the procedural deficiencies noted above, and bearing in mind the severity of the punishment failure to comply with the interim injunction would have entailed (see Article 113/A of the Code of Civil Procedure noted in paragraph 33 above), it cannot be held that the interference in question was proportionate to the legitimate aims pursued and necessary in a democratic society.

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

III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

77. The applicants maintained under Article 6 of the Convention that they were denied a fair trial on the ground that the impugned injunction had been ordered in their absence, without any proper examination of the documentary evidence and without any reasoning, and that the ban had remained in force for an excessive period of time. They further claimed under Article 13 of the Convention that they did not have an effective domestic remedy to challenge the impugned injunction.

78. The Government did not submit any observations.

79. The Court does not consider the applicants' complaints under Articles 6 and 13 to be 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 and must, therefore, 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 (see paragraph 76 above), the Court considers that it has examined the main legal question raised in the present application. It therefore concludes that there is no need to make separate rulings in respect of these other complaints (see, *mutatis mutandis*, *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, § 49, 20 October 2009).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damages

80. The applicants claimed 13,444.75 euros (EUR) in respect of pecuniary damage. They maintained that EUR 6,444.75 of this claim was the amount they had already paid an advertisement agency to design the impugned advertisement campaign. Although the copyright of the advertisement was obtained for a total of sixteen uses, they were not able to publish it after the interim injunction decision, despite having paid for the whole package (they subtracted the unit value of the publications that went to print prior to the interim injunction from their total claim). They submitted the invoice issued by the advertisement agency in support of their request. The remaining EUR 7,000 corresponded to their loss of business and readership, calculated on the basis of awards made by the Court in other cases involving similar losses.

81. As for non-pecuniary damage, the applicants left it to the discretion of the Court to award an equitable sum in view of the breach of their Convention rights.

82. The Government did not comment on the applicants' just satisfaction claims.

83. The Court notes that the invoice submitted in support of the first part of the pecuniary damage claim indicates, under services provided, the production of an advertisement for television (or other audio-visual media) ("*reklam filmi*"). As such, there is no information before the Court as to the amount paid exclusively for the advertisement which ran in the newspaper *Cumhuriyet*. As only the latter was the subject of the violation found, the Court cannot accept this claim. It similarly rejects the remainder of the pecuniary damage request, as it does not discern any causal link between the violation found and the pecuniary damage alleged, considering in particular that a loss of business has not been documented.

84. The Court, however, considers that the applicants may be deemed to have suffered a certain amount of distress and frustration which cannot be sufficiently compensated by the finding of a violation alone. Taking into account the particular circumstances of the case and the type of violation found, the Court awards the applicants EUR 2,500 each for non-pecuniary damage.

B. Costs and expenses

85. The applicants claimed EUR 1,150 for expenses incurred during the domestic proceedings, including the travel expenses of their lawyers, who travelled from Istanbul to Ankara for the hearings, and the amount paid for an expert opinion submitted to the domestic court in support of their defence arguments. They also claimed EUR 5,106 for costs and expenses incurred before the Court, EUR 4,750 of which corresponded to lawyers' fees for representation before the Court, determined on the basis of the Istanbul Bar Association's scale of fees and a legal fee agreement concluded with their representatives (a copy of which is available in the case file). The remaining EUR 356 pertained to postal expenses.

86. The Government did not submit any observations.

87. 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award the sum of EUR 5,100, jointly, for the costs and expenses incurred before it.

C. Default interest

88. 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 strike out the application in so far as it concerns the complaints lodged by the applicant Mr İlhan Selçuk;

2. *Declares* the remainder of the application application admissible;

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

4. *Holds* that there is no need to examine the complaints under Articles 6 and 13 of the Convention separately;

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 2,500 (two thousand five hundred euros) to each applicant in respect of non-pecuniary damage (Mr Güray Tekin Öz, Yeni Gün Haber Ajansı Basın ve Yayıncılık A.Ş., Cumhuriyet Vakfı), plus any tax that may be chargeable;

(ii) EUR 5,100 (five thousand one hundred euros), plus any tax that may be chargeable to the applicants, jointly, in respect of costs and expenses;

(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 8 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President