

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

JUDGMENT IN THE CASE OF *ÖZGÜR GÜNDEM* v. TURKEY

In a judgment delivered at Strasbourg on 16 March 2000 in the case of *Özgür Gündem* v. Turkey, the European Court of Human Rights held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights and that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention. Under Article 41 (just satisfaction), it decided by six votes to one to award 9,000,000,000 Turkish lira for pecuniary damage, 5,000 pounds sterling to each individual applicant for non-pecuniary damage and 16,000 pounds sterling for legal costs and expenses.

1. Principal facts

The application was introduced by three Turkish nationals, Gurbetelli Ersöz, Fahri Ferda Çetin and Yaşar Kaya and by Ülkem Basın ve Yayıncılık Sanayi Ticaret Limited, a company based in Istanbul. The first two applicants were, respectively, the editor-in-chief and the assistant editor-in-chief of the newspaper *Özgür Gündem* and the third and fourth applicants owned *Özgür Gündem*.

Özgür Gündem was a daily newspaper published in İstanbul from 30 May 1992 with a national circulation of some thousand copies and a further international circulation. It was, according to the applicants, a Turkish language newspaper seeking to reflect Turkish Kurdish opinion. The applicants submitted that, until closure of the newspaper in April 1994, there was an unremitting campaign of grave violations of human rights designed to force it to cease publication. Similar attacks followed on its successor, *Özgür Ülke*. This campaign involved killings, disappearances, injuries and ill-treatment of journalists and distributors, threats and the use of violence, threatened and actual prosecutions, seizures and confiscation of editions of the newspaper and the imposition of heavy fines. The applicants submitted that these attacks were instigated, condoned and encouraged by State authorities, which failed to provide protection or take effective steps to investigate the incidents.

The Turkish Government submitted that *Özgür Gündem* acted as a propaganda tool for the Kurdistan Workers' Party (PKK). It maintained that certain editions of the newspaper were legitimately restricted in order to prevent direct incitement to violence. Regarding the criminal incidents against the workers of the newspaper, these were the consequence of terrorist acts by unknown perpetrators. All necessary and appropriate steps were taken by the authorities in respect of any reported unlawful acts.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 9 December 1993. Having declared the application admissible, the Commission adopted a report on 29 October 1998 in which it expressed the unanimous opinion that there had been a violation of Article 10 of the Convention and by 15 votes to 2 that there had been no violation of Article 14 of the Convention. It referred the case to the Court on 8 March 1999. The case was assigned to the Fourth Section. A Chamber of seven judges constituted from the Section held a hearing on 10 November 1999. Judgment was given by the Chamber, composed as follows:

Matti **Pellonpää** (Finnish), *President*,
Georg **Ress** (German),
Antonio **Pastor Ridruejo** (Spanish),
Lucius **Cafilich**¹ (Swiss),
Jerzy **Makarczyk** (Polish),
Volodymyr **Butkevych** (Ukrainian), *Judges*,
Feyyaz **Gölcüklü** (Turkish), *ad hoc judge*,

and also Vincent **Berger**, *Section Registrar*.

3. Summary of the judgment²

Complaints

The applicants complained under Article 10 of the European Convention on Human Rights that there has been a deliberate and unjustified interference with their freedom of expression due to measures and incidents relating to *Özgür Gündem* and to people connected with the newspaper. They further complained under Article 14 that they had been subject to discrimination in the enjoyment of their freedom of expression.

Decision of the Court

Concerning the applicant Gurbetelli Ersöz

The Court decided to strike the case out of the list in so far as it concerned Gurbetelli Ersöz who had died in 1997.

Article 10 of the Convention

In respect of the allegations of attacks on the newspaper and persons associated with it, the Court found that an obligation arose under Article 10 of the Convention to take positive measures of protection. The authorities were aware that the newspaper and persons working for it had been subject to a series of violent acts and that the applicants feared that they were being deliberately targeted. Virtually no response was made however to the petitions and requests for protection submitted by the newspaper and its staff. Having regard to the seriousness of the attacks and their widespread nature, it was not sufficient that individual

¹. Elected as the judge in respect of Liechtenstein.

² This summary by the registry does not bind the Court.

public prosecutors had commenced investigations into specific incidents. These did not provide adequate or effective responses to the allegations that the attacks were part of a concerted campaign supported, or tolerated by the authorities. In the circumstances, the Government had failed to comply with their positive obligation to protect the newspaper in the exercise of its freedom of expression.

In respect of the police operation at the *Özgür Gündem* premises in İstanbul on 10 December 1992, which disrupted newspaper production for two days, the Court found that this constituted a serious interference with the applicants' freedom of expression. While the operation was conducted according to a procedure "prescribed by law" for the purpose of preventing crime and disorder, it was not proportionate. No justification had been provided for seizure of the archives and library or for the blanket apprehension of every person found on the premises. It had therefore not been shown to be necessary in a democratic society for the implementation of any legitimate aim.

Concerning the legal measures taken by the judicial authorities in respect of issues of the newspaper, the Court examined a selection of articles and news reports which had been subject to prosecutions for the offence of insulting the State and the military authorities, the offence of provoking racial and regional hatred, prosecutions for reporting statements of the PKK, for identifying officials participating in the fight against terrorism and for statements constituting separatist propaganda. It found that a number of the articles were highly critical of the authorities and might be regarded as provocative where the term "Kurdistan" was used in a manner implying that it was, or should be, separate from the territory of Turkey. Nonetheless, the public enjoyed the right to be informed of different perspectives on the situation in south-east Turkey, however unpalatable they might be to the authorities. In three articles, the Court found the measures to be justified where they contained passages which advocated intensifying the armed struggle and glorified violence. In other cases, where the language was colourful and pejorative but stopped short of advocating or inciting the use of violence, the Court found the measures were disproportionate.

The Court concluded that the respondent State has failed to take adequate protective and investigative measures to protect *Özgür Gündem's* exercise of its freedom of expression and that it has imposed measures on the newspaper, through the search and arrest operation of 10 December 1993 and through numerous prosecutions and convictions in respect of issues of the newspaper, which were disproportionate and unjustified in the pursuit of any legitimate aim. As a result of these cumulative factors, the newspaper ceased publication. There had accordingly been a breach of Article 10 of the Convention.

Article 14 of the Convention

The Court recalled that in reaching the conclusion that the measures imposed in respect of 29 articles and news reports were not necessary in a democratic society it had been satisfied that they had pursued the legitimate aims of protecting national security and territorial integrity or the prevention of crime or disorder. It found no reason to believe that the restrictions on freedom of expression could be attributed to a difference of treatment based on the applicants' national origin or association with a national minority. It concluded that there was no breach of Article 14 of the Convention.

Article 41 of the Convention

The Court awarded 9,000,000,000 Turkish liras to the applicant company for pecuniary damage flowing from the seizures of documents and archives and from the unjustified restrictions disclosed by the prosecutions and convictions identified in the judgment. It awarded 5,000 pounds sterling each to the applicants Fahri Ferda Çetin and Yaşar Kaya for non-pecuniary damage, namely, the anxiety and stress suffered by them as a result of the breaches of Article 10 identified by the Court. It awarded the sum of 16,000 pounds sterling to the applicants in respect of their legal costs and expenses.

Judge Gölcüklü expressed a dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.