



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

Information Note on the Court's case-law No. 157

November 2012

Bayar and Gürbüz v. Turkey - 37569/06

Judgment 27.11.2012 [Section II]

Article 6

Criminal proceedings

Article 6-1

Access to court

Appeal on points of law declared inadmissible on grounds that level of fine was below statutory minimum for appeal: *violation*

Facts – The applicants, who were the proprietor and editor-in-chief of a daily newspaper, were fined because their newspaper had published two articles that the domestic courts described as conveying statements by an illegal armed organisation. The Assize Court left open the possibility of an appeal on points of law. However, the applicants' appeal was declared inadmissible on the ground that the fine had not attained the minimum amount for such an appeal.

Law – Article 6 § 1: The inadmissibility of the applicants' appeal on points of law stemmed from Article 305 of the former Code of Criminal Procedure and pursued the legitimate aim of avoiding the overloading of the Court of Cassation's list by cases of lesser importance. However, the applicants' case had been examined at only one level of jurisdiction. Moreover, in the Turkish court system, apart from reviewing compliance with the law, the Court of Cassation also had the role of ensuring that the findings by the trial court were consistent with the facts of the case. In addition, the Turkish Constitutional Court had invalidated paragraph 2 of Article 305 of the Code of Criminal Procedure, finding in particular that, except in the case of petty offences, "in the event of imposition of a fine of less than a given amount, the fact of restricting the defendant's right to appeal on points of law, without taking account of the characteristics of the sentence or any harmful consequences that it may have, cannot be regarded as compatible with Articles 2 and 36 of the Constitution". The Court shared this view, especially as the offence in the present case certainly did not fall into the category of petty offences, since it concerned the printing or publication "of statements or leaflets of terrorist organisations", acts that were punishable by a prison sentence of between one and three years. The applicants had been fined in their capacities as proprietor and editor-in-chief of a newspaper. Moreover, the amount of the fine applicable to that type of offence varied depending on the newspaper's circulation. Lastly, the defendants, who had been unable to appeal on points of law, were at a disadvantage in relation to the public prosecutor, who was by contrast able to take the case to the higher court to challenge the characterisation of the facts. Thus, the restriction imposed on the applicants in the present case, on account of the amount of the fine imposed on them, could not be regarded as compatible with the principle of the equality of arms. The

applicants had thus suffered a disproportionate restriction to their right of access to a court, and that right had been impaired in its very essence.

Conclusion: violation (unanimously).

The Court also found a violation of Article 10 of the Convention.

Article 41: EUR 7,800 each in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, 6 July 2010, [Information Note no. 132](#))

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