

July 2010

Gözel and Özer v. Turkey - 43453/04 and 31098/05

Judgment 6.7.2010 [Section II]

Article 10

Article 10-1

Freedom to impart information

Virtually automatic conviction of media professionals for publishing written material of banned organisations: *violation*

Facts – The applicants, who were respectively the owner and editor, and publisher and editor, of two periodicals, were fined, with the first magazine being suspended for a week and the second closed for a fortnight, on the ground that they had published three articles that the domestic courts characterised as statements by a terrorist organisation.

Law – Article 10: The impugned convictions constituted interference with the applicants' right to impart information or ideas freely. The measures were prescribed by law. That interference further pursued the legitimate aims of maintaining public safety and the prevention of disorder and crime. However, the grounds given by the Turkish courts for the conviction of the applicants, who were media professionals, whilst pertinent, were not sufficient to justify the interference in question. This lack of reasoning simply stemmed from the very wording of section 6(2) of Law no. 3713, which provided for conviction of "anyone who print[ed] or publishe[d] statements or leaflets by terrorist organisations" and contained no obligation for the domestic courts to carry out a textual or contextual examination of the writings, applying the criteria established and implemented by the Court under Article 10 of the Convention. The Court had previously found a violation of that Article in numerous cases against Turkey in which media professionals had repeatedly been convicted for publishing statements by prohibited organisations. Such a practice could have the effect of partly censoring the work of media professionals and reducing their ability to put forward in public views – provided of course that they did not directly or indirectly advocate the commission of terrorist offences – which had their place in a public debate, especially where, as in the present case, the terms "statements" and "leaflets of terrorist organisations" had been interpreted very vaguely. In particular, such automatic repression, without taking into account the objectives of media professionals or the right of the public to be informed of another view of a conflictory situation, could not be reconciled with the freedom to receive or impart information or ideas. In the light of those considerations and an examination of the legislation in question, the Court found that the interference could not be regarded as necessary in a democratic society and had not been required for the fulfilment of the legitimate aims pursued.

Conclusion: violation (unanimously).

Article 46: The violation in the present case of Article 10 of the Convention stemmed from a problem relating to the wording and application of section 6(2) of Law no. 3713. In this connection, to bring the relevant domestic law into

compliance with Article 10 would constitute an appropriate form of redress by which to put an end to the violation in question.

Article 41: EUR 170 to the first applicant in respect of pecuniary damage; EUR 2,000 to the first applicant and EUR 3,000 to the second applicant in respect of non-pecuniary damage.

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