



Numerous sets of criminal proceedings against newspaper proprietor for publishing insignificant statements by illegal organisations: violation

In today's **Chamber** judgment¹ in the case of **Ali Gürbüz v. Turkey** (applications nos. 52497/08, 6741/12, 7110/12, 15056/12, 15057/12 and 15059/12) 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.

The case concerned seven sets of criminal proceedings brought against Mr Gürbüz for publishing, in his daily newspaper *Ülkede Özgür Gündem*, statements by the leaders of organisations characterised as terrorist under Turkish law. He was acquitted after proceedings which had lasted between five and over seven years, without having been remanded in custody.

The Court found that criminal proceedings had been systematically opened, regardless of the actual content of the articles. They had in fact contained insignificant messages such as Christmas wishes which did not call for any violence, armed resistance or uprising, and did not constitute hate speech, that being an essential factor to be considered.

The Court found, in particular, that those proceedings had consisted in themselves of actual and effective constraints, in spite of the ultimate acquittal. They had put pressure on Mr Gürbüz over a certain period, and the fear of being convicted had inevitably made him, as a media professional, apply some self-censorship.

The Court further found that the opening of these criminal proceedings could be seen as a reaction by the authorities intended to suppress, under the criminal law, the publication of statements by leaders of organisations characterised as terrorist under Turkish law, without having regard to their content, even though they could be regarded as contributing to a public debate on questions of general interest. The Court explained, in that connection, that enforcement measures automatically taken against media professionals, without considering their intentions or the public's right to be informed of other views on a conflict situation, could not be reconciled with the freedom to receive or impart information or ideas.

The Court lastly found that the maintaining, for a considerable length of time, numerous sets of criminal proceedings against Mr Gürbüz, did not meet a pressing social need, was not proportionate to the legitimate aims pursued (protection of national security and territorial integrity) and was not necessary in a democratic society.

Principal facts

The applicant, Ali Gürbüz, was born in 1971 and lives in Cologne (Germany). At the time he was the proprietor of the daily newspaper *Ülkede Özgür Gündem*.

Between 2004 and 2006 seven charges were brought against Mr Gürbüz for breaches of counter-terrorism Law no. 3713 for publishing 11 articles about the PKK (Kurdistan Workers' Party, an illegal

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

armed organisation) in his newspaper. Among other subjects, the articles concerned the Christmas wishes of the PKK/Kongra-Gel, the toll of recent armed conflicts and statements by prisoners alleging that the solution to the Kurdish problem required dialogue with Abdullah Öcalan.

In 2007 the Assize Court found Mr Gürbüz guilty on the charge of publishing statements by a terrorist organisation and sentenced him to pay fines in each of the sets of proceedings. Those judgments were subsequently quashed by the Court of Cassation because the Constitutional Court had decided, in the meantime, to delete the word “proprietors” from section 6(4) of Law no. 3713. Consequently Mr Gürbüz was acquitted, in 2011, in all of the proceedings against him.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Gürbüz complained about the criminal proceedings against him for the publication of the articles in question in his newspaper, taking the view that those proceedings had put pressure on him as a media professional on account of their duration and in spite of his acquittal at the end of each set of proceedings.

The applications were lodged with the European Court of Human Rights on 22 September 2008, 16 January 2012, 9 January 2012, 17 November 2011, 9 December 2011, 16 December 2011 and 29 December 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Işıl **Karakaş** (Turkey),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),
Darian **Pavli** (Albania),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

Whether there had been an interference

The Court observed that the criminal proceedings (based on seven different prosecutions) had systematically been opened against Mr Gürbüz, under Law no. 3713, for publishing statements by the representatives of an organisation characterised as terrorist under Turkish law. He had been acquitted in each set of proceedings, which had lasted between five and over seven years, without having been remanded in custody.

The Court noted that the publications had consisted of insignificant messages and it found that the automatic application of Law no. 3713 to any statement emanating from a terrorist organisation, regardless of the actual content, was capable of having a chilling effect on freedom of expression and public debate. In addition, even though the applicant had ultimately been acquitted, the proceedings had been prolonged for lengthy periods during which the fear of being convicted had inevitably put pressure on Mr Gürbüz, making him, as a media professional, apply some self-censorship. Moreover, having regard to the number of prosecutions and the length of the proceedings, they could be regarded as a form of harassment such as to intimidate the newspaper proprietor and discourage him from publishing articles on questions in the general interest. Lastly, those proceedings consisted in themselves of actual and effective constraints, in spite of his ultimate

acquittal which merely put an end to the existence of the risks, without detracting from the fact that those proceedings had put pressure on Mr Gürbüz over a certain period. Consequently, there had been an interference in Mr Gürbüz's right to freedom of expression.

Whether the interference was justified

The Court observed that the publications concerned topics such as the training provided by an organisation, Christmas wishes, the toll of recent armed conflicts, events organised in certain cities, the solution to the Kurdish problem, and praise by an organisation for success in a sports competition and an act of protest. The judicial authorities had brought proceedings solely on the ground that this content emanated from organisations characterised as terrorist under Turkish law, without carrying out an appropriate analysis of the substance of the disputed comments or the context in which they had been written. Nor had they alleged that these articles contained any calls to violence, armed resistance or uprising, or that they constituted hate speech, this being the essential factor to consider in the Court's view.

Thus the Court found that the opening of the criminal proceedings against Mr Gürbüz could be seen as a reaction by the authorities intended to suppress, under the criminal law, the publication of statements by leaders of organisations characterised as terrorist under Turkish law, without having regard to their content, even though they could be regarded as contributing to a public debate on questions of general interest relating to the conflict between the organisations in question and the police force. In addition, the repeated criminal prosecution of proprietors, publishers or editors of periodicals, merely on the ground that they had published statements covered by Law No. 3713, might have the effect of partly censoring the media professionals concerned and limit their ability to publicly convey an opinion – provided of course that they did not advocate directly or indirectly the commission of terrorist offences – which was part of a public debate. Lastly, the enforcement measures taken automatically against media professionals under Law no. 3713, without considering their intentions or the public's right to be informed of other views on a conflict situation, could not be reconciled with the freedom to receive or impart information or ideas. Consequently, the fact that the numerous sets of criminal proceedings against Mr Gürbüz had been prolonged for a considerable length of time, on the basis of serious criminal charges, did not meet a pressing social need, was not proportionate to the legitimate aims pursued (protection of national security and territorial integrity) and was not necessary in a democratic society. There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Gürbüz 3,500 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.