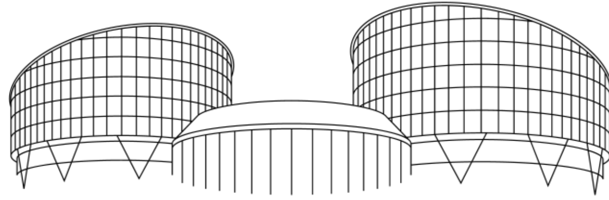

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TURGAY AND OTHERS v. TURKEY (no. 2)

(Applications nos. 13710/08, 16345/08 and 19652/08)

JUDGMENT

STRASBOURG

21 September 2010

FINAL

21/12/2010

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

In the case of Turgay and Others v. Turkey (no. 2)**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 31 August 2010,

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

PROCEDURE

1. The case originated in three applications (nos. 13710/08, 16345/08 and 19652/08) 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 twenty Turkish nationals ("the applicants"), whose names appear in the appendix.

2. The applicants were represented by Mr Ö. Kılıç, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 25 February, 21 March and 9 April 2008 the applicants' representative requested that the respondent Government be notified of the introduction of the applications in accordance with Rule 40 of the Rules of Court and that the cases be given priority under Rule 41.

4. On 2 June 2008 the President of the Second Section decided to give priority to the applications under Rule 41 of the Rules of Court and to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The prosecution of the newspapers

5. At the material time the applicants were the owners, executive directors, editors-in-chief, news directors and journalists of three weekly newspapers published in Turkey: *Haftaya Bakış*, *Yaşamda Demokrasi* and *Yedinci Gün*. The publication of all three newspapers was suspended pursuant to section 6(5) of Law no. 3713 (the Prevention of Terrorism Act) by various Chambers of the Istanbul Assize Court on 2 February, 17 February and 3 March 2008, respectively, for a period of one month on account of various news reports and articles. The impugned publications were mainly deemed to be propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL[1], and to constitute the approval of crimes committed by that organisation and its members.

6. Neither the applicants nor their representative participated in these *ex parte* procedures, and their written objections to the suspension orders were dismissed. Consequently, the orders were executed.

B. The prosecution of the applicants

7. The applicants Ali Turgay and Hüseyin Bektaş, the owners of *Haftaya Bakış*, *Yedinci Gün* and *Yaşamda Demokrasi*, respectively, were both prosecuted under sections 6(2) and 7(2) of Law no. 3713, as well as Articles 215 and 218 of the Criminal Code, for disseminating propaganda in favour of the aforementioned organisation and praising crimes committed by that organisation and its members, on account of various articles published in the said newspapers.

8. It appears that the criminal proceedings brought against the aforementioned applicants are still pending.

II. RELEVANT DOMESTIC LAW

9. A description of the relevant domestic law and practice may be found in *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, §§ 12-14, 20 October 2009).

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1. Kurdistan Workers' Party, an illegal organisation.

THE LAW

10. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

I. ADMISSIBILITY

11. The Government submitted that the applicants other than Ali Turgay and Hüseyin Bektaş, who are the owners and executive directors of the relevant newspapers and against whom criminal proceedings have been instituted, did not have victim status.

12. Referring to the Court's decision in the case of *Yıldız and Others v. Turkey* ((dec.), no. 60608/00, 26 April 2005)) and to the judgment in the case of *Halis Doğan and Others v. Turkey* (no. 50693/99, 10 January 2006), the applicants submitted that they had all been affected by the suspension of the publication of the newspapers.

13. The Court notes that it has already examined and rejected similar objections by the Government in previous cases (see *Tanrıkulu, Çetin, Kaya and Others v. Turkey* (dec.), nos. 40150/98, 40153/98 and 40160/98, 6 November 2001; *Yıldız and Others*, cited above; *Ürper and Others*, cited above, § 18). It finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. The Court accordingly rejects the Government's objection.

14. The Court notes that the applications are not 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. They must therefore be declared admissible.

II. MERITS

A. Alleged violations of Article 10 of the Convention

15. The applicants alleged under Article 10 of the Convention that the suspension of the publication and distribution of *Haftaya Bakış*, *Yaşamda Demokrasi* and *Yedinci Gün*, which had been based on section 6(5) of Law no. 3713, constituted an unjustified interference with their freedom of expression. They claimed in particular that the banning, for such lengthy periods, of the publication of the newspapers as a whole, whose future content was unknown at the time of the national court's decisions, had amounted to censorship.

16. The Government submitted that the national court's decisions had pursued several legitimate aims, including the protection of national

security, territorial integrity and public safety. Moreover, taking into account the content of the articles in question, the measures taken had been proportionate to the legitimate aims pursued and necessary in a democratic society.

17. The Court notes that it has recently examined a similar complaint and found a violation of Article 10 of the Convention in the case of *Ürper and Others* (cited above, §§ 24-45), where it noted in particular that the practice of banning the future publication of entire periodicals on the basis of section 6(5) of Law no. 3713 went beyond any notion of "necessary" restraint in a democratic society and, instead, amounted to censorship. The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence.

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

B. Alleged violations of Articles 6, 7 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention

19. The applicants complained under Article 6 §§ 1 and 3 of the Convention that they had been unable to participate in the proceedings before the Istanbul Assize Court and that the latter had decided to suspend publication and distribution of the aforementioned newspapers without obtaining their submissions in defence. They further contended under Article 13 of the Convention that they had not had a domestic remedy by which to challenge the lawfulness of the national court decisions, as their objections to the suspension orders had been dismissed without trial. The applicants also complained under Article 6 § 2 that these orders had violated their right to be presumed innocent, since the national courts had held that criminal offences had been committed through the publication of news reports and articles in the aforementioned newspapers, for which they had been responsible. The applicants further submitted under Article 7 of the Convention that the decisions to suspend the publication and distribution of the newspapers amounted to a "penalty" without a legal basis. Lastly, they complained under Article 1 of Protocol No. 1 that the decisions to suspend the publication of *Haftaya Bakış*, *Yaşamda Demokrasi* and *Yedinci Gün* had constituted an unjustified interference with their right to property.

20. The Government contested these allegations.

21. Having regard to the circumstances of the cases and to its finding of a violation of Article 10 of the Convention (see paragraph 18 above), the Court considers that it has examined the main legal question raised in the present applications. It concludes therefore that there is no need to make separate rulings in respect of these other complaints (see, *mutatis mutandis*, *Demirel and Others v. Turkey*, no. 75512/01, § 27, 24 July 2007,

Demirel and Ateş v. Turkey (no. 3), no. 11976/03, § 38, 9 December 2008, and *Ürper and Others*, cited above, § 49).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

1. Pecuniary damage

22. The applicants claimed 360,000 Turkish liras (TRY) (approximately 177,000 euros (EUR)) in pecuniary damage for the commercial loss which the newspapers had suffered as a result of the suspension decisions. Under the same head, the applicants further claimed EUR 38,000 for the damage which they had suffered individually. However, they did not produce any documentary evidence in support of their claims for pecuniary loss.

23. The Government contested these claims, arguing that the purported pecuniary damage had not been duly documented.

24. The Court notes the applicants' failure to submit any documents to substantiate this claim. Accordingly, it must be rejected.

2. Non-pecuniary damage

25. The applicants claimed EUR 53,000 in total in respect of non-pecuniary damage.

26. The Government considered this sum to be excessive and submitted that awarding such an amount would lead to unjust enrichment.

27. The Court considers that all 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 1,800 each for non-pecuniary damage.

B. Costs and expenses

28. The applicants also claimed EUR 8,640 for the costs and expenses incurred before the domestic courts and before the Court. In this connection they submitted documentation indicating the time spent by their legal representative on the applications, as well as tables of costs and expenditure.

29. The Government contested this claim.

30. 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 criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 1,000 for their costs before the Court.

C. Default interest

31. The Court considers it appropriate that the default interest 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 join the applications;

2. *Declares* the applications admissible;

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

4. *Holds* that there is no need to examine separately the complaints under Articles 6, 7 and 13 of the Convention and Article 1 of Protocol No. 1;

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 1,800 (one thousand eight hundred euros), in respect of non-pecuniary damage, plus any tax that may be chargeable, to each of the following applicants:
   - Ali Turgay;
   - Hüseyin Aykol;
   - Turabi Kişin;
   - Salih Sezgi;
   - Fuat Bulut;
   - Memet Ali Çelebi;
   - Zeriman Dağdelen;
   - Ramazan Pekgöz;
   - Cengiz Kapmaz;
   - Nurettin Fırat;
   - Bayram Balcı;
   - Hüseyin Bektaş;
   - Şinasi Tur;

- Kudret Gülün;
- Nurcan Ercan;
- Nevin Nazman;
- Fatma Ayaz;
- Güler Özdemir;
- Ferhat Gürgen;
- Bilir Kaya.

(ii) EUR 1,000 (one thousand euros) to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable to them;

(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 21 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Françoise Tulkens
Deputy Registrar	President

Appendix

File No	Case Name	Date of lodging	Introduced by
13710/08	TURGAY and Others v. Turkey	25.02.2008	Ali Turgay, Hüseyin Aykol, Turabi Kişin, Salih Sezgi, Fuat Bulut, Memet Ali Çelebi, Zeriman Dağdelen, Ramazan Pekgöz, Cengiz Kapmaz, Nurettin Fırat and Bayram Balcı
16345/08	BEKTAŞ v. Turkey	21.03.2008	Hüseyin Bektaş
19652/08	TURGAY and Others v. Turkey	9.04.2008	Ali Turgay, Salih Sezgi, Turabi Kişin, Fuat Bulut, Hüseyin Aykol, Memet Ali Çelebi, Zeriman Dağdelen, Ramazan Pekgöz, Cengiz Kapmaz, Bayram Balcı, Nurettin Fırat, Şinasi Tur, Kudret Gülün, Nurcan Ercan, Nevin Nazman, Fatma Ayaz, Güler Özdemir, Ferhat Gürgen and Bilir Kaya