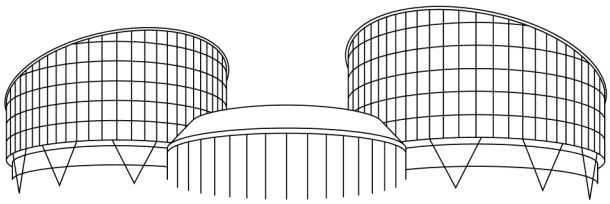

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

SECOND SECTION

CASE OF ÜRPER AND OTHERS v. TURKEY

(Applications nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07)

JUDGMENT

STRASBOURG

20 October 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ürper and Others v. Turkey,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in nine applications (nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07) 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-six Turkish nationals ("the applicants"), whose names appear in the appendix.

2. The applicants were represented by Mr Ö. Kılıç, a lawyer practising in Istanbul. One of the applicants, Mr Hüseyin Bektaş, was granted legal aid. The Turkish Government ("the Government") were represented by their Agent.

3. On 29 March, 2, 3 and 5 April, 9 August, 17 October, 5 and 19 November and 6 December 2007, 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. On 14 May, 14 September and 27 November 2007 and 10 January 2008, the President of the Second Section decided that the applications should be given priority under Rule 41 of the Rules of Court. She further decided that the respondent Government should be notified of the introduction of applications nos. 14526/07, 14747/07, 15022/07, 15737/07 and 36137/07, and be requested to submit information about, *inter alia*, the outcome of the case before the Constitutional Court concerning section 6(5) of Law no. 3713 (paragraph 13 below).

4. On 12 February 2008 the Court decided to give notice of the applications to the Government. It 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

1. 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 four daily newspapers published in Turkey: *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi*. The publication of all four newspapers was regularly suspended, pursuant to section 6(5) of Law no. 3713 (the Prevention of Terrorism Act), by various Chambers of the Istanbul Assize Court, between 16 November 2006 and 25 October 2007, for periods ranging from 15 days to a month in respect of various news reports and articles. The impugned publications were deemed to be propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL[1], as well as the approval of crimes committed by that organisation and its members.

6. In the first case against *Ülkede Özgür Gündem* on 16 November 2006, the trial judge considered that the content of certain reports and articles contained elements of propaganda, the approval of terrorist crimes and had identified officials who risked terrorist attack, contrary to section 6(5) of Law no. 3713. Their content thus exceeded the permissible limits of Article 10 of the Convention. Moreover, the offences had not been limited to a single issue of the newspaper, but had been continuous. Consequently, he was authorised by section 6(5) to suspend the publication and distribution of the periodical for a period of fifteen days to a month.

7. In the case against *Güncel* on 16 July 2007, the newspaper was suspended for 15 days, not by virtue of section 6(5) of Law no. 3713, but because its owners, journalists and content were the same as those of *Gündem*, whose publication and distribution had been suspended for 15 days by a court decision of 12 July 2007.

8. 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.

2. The prosecution of the applicants

9. The applicant Ali Gürbüz, the owner of *Ülkede Özgür Gündem*, was prosecuted under sections 6(1) and (2) and 7(2) of Law no. 3713, as well as Article 215 of the Criminal Code, for disseminating propaganda in favour of the aforementioned organisation, approving crimes committed by that

1. Kurdistan Workers' Party, an illegal organisation.

organisation and its members, and identifying officials with anti-terrorist duties as targets, in respect of various articles published in their newspaper (case no. 2007/367). Ali Gürbüz was convicted and fined 380,000 new Turkish liras (TRY) (approximately 217,000 euros (EUR)).

10. The applicant Özlem Aktan, the executive director of *Ülkede Özgür Gündem* and *Gündem*, was similarly prosecuted. Her first case concerning the former newspaper was disjoined from that of Ali Gürbüz. Her second case (no. 2007/197) involved another applicant, Lütfi Ürper, the owner of *Gündem* and *Güncel*. They were charged under sections 5, 6(2) and (4) and 7(2) of Law no. 3713, as well as Articles 215 and 218 of the Criminal Code.

Lütfi Ürper was prosecuted on three other occasions on similar charges (case nos. 2007/419, 2007/343 and 2007/482). Another applicant, Hüseyin Bektaş, the owner and executive director of *Gerçek Demokrasi*, was prosecuted for the same offences under sections 6(2) and 7(2) of Law no. 3713 and Article 215 of the Criminal Code.

11. According to the information in the case file, all these prosecutions are still pending at first instance, except for that against Ali Gürbüz, which is apparently still pending before the Court of Cassation.

II. RELEVANT DOMESTIC LAW

12. Article 28 of the Constitution of Turkey reads as follows:

> "The press is free and shall not be censored. The establishment of a publishing company shall not be subject to prior permission or the deposit of a financial guarantee.
>
> The State shall take the necessary measures to ensure freedom of the press and freedom of information.
>
> As regards restrictions on freedom of the press, Articles 26 and 27 of the Constitution are applicable.
>
> Anyone who writes or prints any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which are aimed at inciting offences, riot or insurrection, or which refer to classified State secrets, and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law governing these offences. Distribution may be suspended as a preventive measure by the decision of a judge or, in the event that delay is deemed prejudicial, by the competent authority designated by law. The authority suspending distribution shall notify a competent judge of its decision within twenty-four hours. The order suspending distribution shall become null and void unless upheld by a competent judge within forty-eight hours.
>
> No ban shall be placed on the reporting of events except by a judge's decision designed to ensure the proper functioning of the judiciary, within the limits specified by law.

Periodical and non-periodical publications may be seized by the decision of a judge in the event of an ongoing investigation into or prosecution of offences prescribed by law and, in situations where a delay could endanger the indivisible integrity of the State with its territory and nation, national security, public order or public morals, and for the prevention of an offence, by order of the competent authority designated by law. The authority issuing the order to confiscate shall notify a competent judge of its decision within twenty-four hours. The order to confiscate shall become null and void unless upheld by the competent court within forty-eight hours.

The general common provisions shall apply to the seizure and confiscation of periodicals and non-periodicals for the purposes of criminal investigation and prosecution.

Publication of periodicals published in Turkey may be temporarily suspended by order of the courts in the event of a criminal conviction on account of their containing material which undermines the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which is clearly a continuation of a suspended periodical shall be prohibited and shall be seized following a decision by a competent judge."

13. The relevant provisions of the Prevention of Terrorism Act (Law no. 3713), amended by Law no. 5532, which entered into force on 18 July 2006, read as follows:

Section 6

"1. It shall be an offence, punishable by a term of imprisonment of one to three years, to announce, orally or in the form of a publication, that terrorist organisations will commit an offence against a specific person, whether or not that person's ... identity is divulged, provided that it is done in such a manner that he or she may be identified, or to reveal the identity of civil servants who have participated in anti-terrorist operations or to designate any person as a target.

2. It shall be an offence, punishable by a term of imprisonment of one to three years, to print or publish declarations or leaflets emanating from terrorist organisations.

...

4. If any of the offences defined in the paragraphs above are committed through the press or the media, the owners and editors-in-chief of the press and media organs concerned who did not participate in the commission of the offence shall also be liable to a judicial fine equivalent to between a thousand and ten thousand days' imprisonment. However, the maximum limit of this punishment shall be the equivalent of five thousand days for editors-in-chief.

5. Periodicals whose content openly encourages the commission of offences within the framework of the activities of a terrorist organisation, approves of the offences committed by a terrorist organisation or its members or constitutes propaganda in favour of the terrorist organisation may be suspended for a period of fifteen days to one month as a preventive measure by decision of a judge or, if a delay is detrimental, on an instruction from a public prosecutor. The public prosecutor shall notify the

judge of such instruction within twenty-four hours. If the judge does not approve the decision within forty-eight hours, the instruction to suspend publication shall become null and void."

On 3 March 2006 the former President of Turkey lodged a case with the Constitutional Court (case no. 2006/121) challenging the validity of section 6(5) of Law no. 3713. It had been argued, inter alia, that this section had created an unconstitutional penalty. On 18 June 2009 the Constitutional Court dismissed the case (decision no. 2009/90).

Section 7(2)

"Any person who disseminates propaganda in favour of a terrorist organisation shall be liable to a term of imprisonment of one to five years. Where this offence is committed through the press or the media, the sentence shall be increased by half. Moreover, the owners and editors-in-chief of the press and media organs concerned who did not participate in the commission of the offence shall also be liable to a judicial fine equivalent to between one thousand and ten thousand days' imprisonment. However, the maximum limit of this punishment shall be the equivalent of five thousand days for editors-in-chief."

14. The relevant provisions of the Criminal Code (Law no. 5237) read as follows:

Article 39

"(1) A person who abets commission of an offence shall be liable to a term of imprisonment of fifteen to twenty years if the offence is punishable by an aggravated life sentence and ten to fifteen years where the offence is punishable by a life sentence. Punishment is reduced by half in all other circumstances. However, in the latter case the punishment cannot exceed eight years.

(2) A person is deemed to have abetted commission of an offence in the following circumstances:

(a) Encouragement to commit an offence..."

Article 215

"Any person who approves of an offence committed, or praises a person on account of an offence he or she has committed, shall be liable to a term of imprisonment of up to two years."

Article 218

"Where one of the offences proscribed by Articles 213-217 is committed through the press or the media, the sentence shall be increased by half."

THE LAW

I. JOINDER

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

II. ADMISSIBILITY

A. The alleged lack of victim status

16. The Government submitted that the editors-in-chief, news directors and journalists of *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi* did not have any victim status as they had not been directly affected by the decisions to suspend the publication of these newspapers. They maintained that only the owners and the executive directors of these newspapers, namely the applicants Ali Gürbüz, Özlem Aktan, Lütfi Ürper and Hüseyin Bektaş, could claim to be victims of the alleged violations of the Convention.

17. 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 court orders.

18. 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). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. It considers that the exercise of the freedom to receive and impart information of the editors-in-chief, news directors and journalists was directly affected by the decisions suspending the publication and distribution of the four newspapers. The Court accordingly rejects the Government's objection.

B. The alleged failure to exhaust domestic remedies

19. The Government next argued that the applicants should have awaited the outcome of the criminal proceedings brought against the owners and the executive directors of the newspapers before lodging their applications.

20. The applicants submitted that their Convention grievances did not concern the aforementioned criminal proceedings but the decisions of the

national courts suspending the publication of the newspapers. They further contended that they had exhausted all domestic remedies available to them in the context of the suspension orders.

21. The Court notes that the applicants' complaints under the Convention solely relate to the assize courts' decisions suspending the publication of *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi*, and that the applicants had exhausted domestic remedies by filing objections to the various decisions. It therefore finds that the applicants have exhausted the domestic remedies available to them within the meaning of Article 35 § 1 of the Convention. The Court accordingly rejects the Government's objection.

C. Compliance with other admissibility criteria

22. The Court observes 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.

III. MERITS

A. Alleged violations of Article 10 of the Convention

23. The applicants alleged under Article 10 of the Convention that the suspension of the publication and distribution of *Ülkede Özgür Gündem, Gündem, Güncel and Gerçek Demokrasi,* which was based on section 6(5) of Law no. 3713, constituted an unjustified interference with their freedom of expression.

Article 10 reads insofar as relevant as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, [and] for the protection of the reputation or rights of others, ..."

1. Whether there was interference

24. In the Court's view, the decisions suspending the publication and distribution of *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi* amounted to "interferences" with the exercise of the applicants'

freedom of expression. This, moreover, has not been disputed by the Government.

25. Such interferences will be in breach of Article 10 unless they fulfil the requirements of paragraph 2 of that Article. It therefore remains to be determined whether the interferences were "prescribed by law", pursued legitimate aims and were "necessary in a democratic society" in order to achieve them.

2. Whether the interferences were prescribed by law

26. The Government submitted that the decisions banning the publication of the newspapers had been prescribed by section 6(5) of Law no. 3713.

27. The applicants contended that section 6(5) of the Prevention of Terrorism Act was not law as it was in violation of the Constitution and the Convention. In this connection, they noted that the former President of Turkey had brought a case before the Constitutional Court seeking the annulment of the said section 6(5), since he rightly considered that this provision had created a penalty which did not exist in the Constitution of Turkey (paragraph 13 above). They also submitted that the decision of 16 July 2007 suspending the publication and distribution of *Güncel* had not been based on any domestic legal provision.

28. The Court reiterates that the expression "prescribed by law", within the meaning of Article 10 § 2, requires firstly that the impugned measure should have some basis in domestic law. However, it also refers to the quality of law, which requires that legal norms should be accessible to the person concerned, their consequences foreseeable and their compatibility with the rule of law ensured (see, among others, *Association Ekin v. France*, no. 39288/98, § 44, ECHR 2001-VIII).

29. In the present case it is not disputed that most of the national courts' decisions were based on section 6(5) of Law no. 3713. There remains the question of the latter's accessibility and foreseeability, as well as its compatibility with the rule of law. Moreover, one such decision on 16 July 2007 suspending the publication and distribution of *Güncel* (paragraph 7 above) was not based on this provision, but on a cross reference to the fact that the owner, journalists and content of *Güncel* were the same as those of *Gündem,* whose publications had previously been suspended. However, the relevant provision of Law no. 3713 does not envisage the suspension of a periodical on that basis. Therefore, the Court has serious doubts as to whether the decision of 16 July 2007 was soundly grounded in domestic law. Nevertheless, having regard to its findings below on the necessity question (see paragraph 45), the Court considers that it is not required to reach a final conclusion on this "lawfulness" issue.

3. Whether the interferences pursued a legitimate aim

30. The Government submitted that the decisions banning the publication of the newspapers had pursued several legitimate aims, namely the protection of national security, territorial integrity and public safety, as well as the prevention of disorder and the protection of the reputation and rights of others.

31. The applicants maintained that measures could only have been taken to restrict freedom of expression for the prevention of disorder and crime.

32. The Court is of the opinion that in the present case the national authorities may be considered to have pursued the legitimate aim of preventing disorder and crime. The Court nevertheless considers that this issue is inextricably linked to the necessity in a democratic society of suspending the future publication of the newspapers, and therefore should be examined within that context.

4. Whether the interferences were necessary in a democratic society

a. The parties' submissions

33. The Government maintained that the national judges had found that the articles in question had contained elements of propaganda in favour of a terrorist organisation and the approval of crimes committed by that organisation. Moreover, they had disclosed the identity of officials with anti-terrorist duties, thus making them targets for terrorist attack. The Government contended that the decisions banning the publication of the newspapers had constituted preventive measures applied for limited periods of time and had met a pressing social need. Therefore, the interferences with the applicants' rights had been proportionate to the legitimate aims pursued and the reasons adduced by the authorities were relevant and sufficient.

34. The applicants maintained that, had the national courts intended to take proportionate measures, they could have confiscated the issues whose publication had allegedly broken the law. They claimed that the ban on the publication of the newspapers as a whole, whose future content was unknown at the time of the national courts' decisions, for such lengthy periods, had constituted censorship.

b. The Court's assessment

(i) General Principles

35. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for individual self-fulfilment (see *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103). Although freedom of expression may be subject to exceptions, these must be narrowly interpreted

and the necessity for any restriction must be convincingly established (see Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). Nevertheless, it is in the first place for the national authorities to assess whether there is a "pressing social need" for the restriction and, in making their assessment, they enjoy a certain margin of appreciation. In cases, such as the present one, concerning the written media, the national margin of appreciation is circumscribed by the interests of a democratic society in ensuring and maintaining a free press (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I; *Alınak v. Turkey*, no. 40287/98, § 36, 29 March 2005).

36. The press plays an essential role in a democratic society. The Court has stated on several occasions that, although the press must not overstep the bounds required, for example, to provide protection against threats of violence, disorder or crime, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, including divisive ones (see, for example, *Şener v. Turkey*, no. 26680/95, § 41, 18 July 2000; *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 59, ECHR 1999-IV). Not only does the press have the task of imparting such information and ideas, but the public also has a right to receive them (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III).

(ii) Application of the above principles to the present case

37. The Court observes, at the outset, that the publication and distribution of four newspapers, *Ülkede Özgür Gündem, Gündem, Güncel and Gerçek Demokrasi*, were suspended for periods ranging from fifteen days to a month by different chambers of the Istanbul Assize Court. The suspension orders were made as the first-instance courts considered that certain articles and news reports which had been published in different issues of these newspapers contained elements of propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL, as well as the approval of crimes committed by that organisation and its members, whilst at the same time disclosing the identity of officials with anti-terrorist duties, thus making them targets for terrorist attack. The applicants lodged unsuccessful objections to these suspension orders each time.

38. The Court considers that it is not necessary to examine the content of the impugned articles and news reports as the applicants' complaints in the present case do not concern the confiscation of particular issues, but the decisions banning the publication of the newspapers as a whole for periods of fifteen days to a month on the ground that the offences mentioned in section 6(5) of Law no. 3713 had been committed by way of publication of articles and news reports.

39. The Court reiterates in this connection that Article 10 of the Convention does not, in terms, prohibit the imposition of prior restraints on

publication. However, the dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see *Observer and Guardian*, cited above, § 60). As freedom of the press was at stake, the national authorities had only a limited margin of appreciation to decide whether there was a "pressing social need" to take the measures in question (*Editions Plon v. France*, no. 58148/00, § 44, ECHR 2004-IV).

40. The Court acknowledges that the judicial character of the system governing the suspension of the publication of the newspapers was a valuable safeguard of freedom of the press. However, the decisions given by the national courts in this area must also conform to the principles of Article 10 of the Convention (see *Gawęda v. Poland*, no. 26229/95, § 47, ECHR 2002-II).

41. In this connection, the Court observes that the Istanbul Assize Court's decisions entailed bans on future publication of entire periodicals. The Court observes that it has already had occasion to consider applications which concerned prior restraints on the media (see for example *Observer and Guardian*, cited above; *Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, Series A no. 217) and held that they were not *per se* incompatible with the Convention.

42. The present applications are however distinguishable from these earlier cases because the restraints now under scrutiny were not imposed on particular types of news reports or articles, but on the future publication of entire newspapers, whose content was unknown at the time of the national court's decisions.

43. In the Court's view, both the content of section 6(5) of Law no. 3713 and the judges' decisions in the instant case stem from the hypothesis that the applicants, whose "guilt" was established without trial in proceedings from which they were excluded, would re-commit the same kind of offences in the future. The Court finds, therefore, the preventive effect of the suspension orders entailed implicit sanctions on the applicants to dissuade them from publishing similar articles or news reports in the future, and hinder their professional activities (see, *mutatis mutandis*, *Demirel and Ateş v. Turkey (no. 3)*, no. 11976/03, § 28, 9 December 2008). However, the Court considers that less draconian measures could have been envisaged, such as the confiscation of particular issues of the newspapers or restrictions on the publication of specific articles.

44. The Court concludes that by suspending the publication and distribution of *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi*, albeit for short periods, the domestic courts largely overstepped the narrow margin of appreciation afforded to them and unjustifiably restricted the essential role of the press as a public watchdog in

a democratic society (see, *mutatis mutandis*, *Cumpănă and Mazăre v. Romania*, no. 33348/96, § 119, 10 June 2003; *Obukhova v. Russia*, no. 34736/03, § 28, 8 January 2009). 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.

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

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

46. The applicants complained under Article 6 §§ 1 and 3 of the Convention that they were not able 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.

47. Lastly, the applicants complained under Article 1 of Protocol No. 1 that the decisions to suspend the publication of *Ülkede Özgür Gündem*, *Gündem*, *Güncel* and *Gerçek Demokrasi* had constituted an unjustified interference with their right to property.

48. The Government contested these allegations.

49. However, having regard to the circumstances of the case and to its finding of a violation of Article 10 of the Convention above (paragraph 45), the Court considers that it has examined the main legal question raised in the present application. 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*, cited above, § 37).

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

50. Article 46 of the Convention reads as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

51. The Court's considerations and conclusion as regards the complaint concerning the applicants' freedom of expression indicate that the violation of the applicants' right under Article 10 of the Convention originated in a problem arising out of the Turkish legislation, namely section 6 (5) of Law no. 3713. By virtue of this provision, the national courts have ordered the suspension of the publication and distribution of several periodicals since it came into force on 18 July 2006. Several other applications concerning the same issue are currently pending before the Court. Without prejudging the merits of those cases, the above facts indicate that the problem at issue is of a systemic nature.

52. It has been the Court's practice, when discovering systemic problems, to identify their source in order to assist the Contracting States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments (see *Gülmez v. Turkey*, no. 16330/02, § 62, 20 May 2008). Having regard to the systemic problem disclosed in the present case, the Court is of the opinion that general measures at the national level would be desirable to ensure the effective protection of the right to freedom of expression in accordance with the guarantees of Article 10 of the Convention. In this respect, the respondent Government should revise section 6(5) of Law no. 3713 to take account of the principles enunciated in the present judgment (paragraphs 35-45 above) with a view to putting an end to the practice of suspending the future publication and distribution of entire periodicals.

B. Article 41 of the Convention

53. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

a. Pecuniary damage

54. The applicants claimed 1,400,000 Turkish liras (TRY) (approximately 898,000 euros (EUR)) in pecuniary damages 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 97,000 for the damage which they had suffered individually.

55. In support of their claims, the applicants submitted copies of seven invoices. Three invoices, dated 12 and 19 November 2006 and 5 March 2007, demonstrate the amounts paid to *Ülkede Özgür Gündem and Gündem* by distributing companies. Four other invoices, dated 11 November 2006 and 7 March 2007, show the amounts paid by the aforementioned newspapers to printing companies. The applicants also submitted documents showing the amount of the employees' salaries of *Ülkede Özgür Gündem* and *Gündem*

56. The Government contended that there was no causal link between the alleged violations of the Convention and the purported pecuniary damage.

57. The Court considers that, while it may be accepted that copies of the invoices submitted by the applicants and the documents demonstrating the salaries of the employees show certain incomes and expenses of *Ülkede Özgür Gündem and Gündem,* nevertheless these documents do not sufficiently establish the exact amount of the loss of the newspapers: As commercial entities, the newspapers in the present cases should have had other income and expenses which have not been documented by the applicants. The Court is therefore unable to determine the exact amount of pecuniary damage suffered on the basis of the documents submitted by the applicants.

58. However, the Court accepts that some pecuniary loss must have resulted from the violation found in relation to the suspension of the publication of the newspapers for periods ranging from 15 days to a month (see, *mutatis mutandis*, *Özgür Gündem v. Turkey*, no. 23144/93, § 80, ECHR 2000-III). In the absence of any explanation from the applicants, the Court concludes that those applicants who are the executive directors, editors-in-chief, news directors and journalists were paid their salaries during the suspension periods. The Court therefore rejects the claims made individually by them. The pecuniary loss in issue was only suffered by the owners of the newspapers, namely Lütfi Ürper, Ali Gürbüz and Hüseyin Bektaş. Taking into account the particular circumstances of the case and making its own estimate based on the information contained in the case file, the Court awards Lütfi Ürper, Ali Gürbüz and Hüseyin Bektaş,

respectively, EUR 40,000, EUR 5,000 and EUR 10,000 for pecuniary damage.

b. Non-pecuniary damage

59. The applicants claimed EUR 162,000 in total in respect of non-pecuniary damages.

60. The Government asked the Court to dismiss this claim, as the finding of a violation would in itself constitute sufficient compensation.

61. 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.

2. Costs and expenses

62. The applicants also claimed EUR 23,960 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In this connection they submitted time sheets indicating the time spent by their legal representative regarding the applications, as well as tables of costs and expenditures.

63. The Government contested this claim.

64. 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 were 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 5,000, for their costs before the Court, less the EUR 1,000 which Hüseyin Bektaş received in legal aid from the Council of Europe for his representation in application no. 54637/07.

3. Default interest

65. 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

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 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 40,000 (forty thousand euros) to Lütfi Ürper, EUR 5,000 (five thousand euros) to Ali Gürbüz and EUR 10,000 (ten thousand euros) to Hüseyin Bektaş in respect of pecuniary damage;

(ii) EUR 1,800 (one thousand eight hundred euros) to each applicant - Lütfi Ürper, Nurettin Fırat, Özlem Aktan, Yüksel Genç, Bayram Balcı, Abdulvahap Taş, Mehmet Ali Çelebi, Cengiz Kapmaz, Devrim Göktaş, Filiz Koçali, Fuat Bulut, Hüseyin Aykol, Salih Sezgi, Zeriman Dağdelen, Ramazan Pekgöz, Medine Kılıç, Mehmet Samur, Ali Gürbüz, Ali Erden, Ersin Öngel, Musa Demir, Esra Çiftçi, Turabi Kişin, Şinasi Tur, Zennur Kızılkaya, Hüseyin Bektaş - in respect of non-pecuniary damage, plus any tax that may be chargeable;

(iii) EUR 5,000 (five thousand euros), to the applicants, jointly, in respect of costs and expenses, less EUR 1,000 (one thousand euros), granted by way of legal aid, 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 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President

Appendix

File No	Case Name	Date of lodging	Introduced by
14526/07	ÜRPER and Others v. Turkey	2 April 2007	Lütfi Ürper, Nurettin Fırat, Özlem Aktan and Yüksel Genç
14747/07	BALCI and Others v. Turkey	3 April 2007	Bayram Balcı, Abdulvahap Taş, Mehmet Ali Çelebi, Cengiz Kapmaz, Devrim Göktaş and Filiz Koçali
15022/07	BALCI and Others v. Turkey	5 April 2007	Bayram Balcı, Abdulvahap Taş, Mehmet Ali Çelebi, Cengiz Kapmaz, Devrim Göktaş, Fuat Bulut, Hüseyin Aykol, Salih Sezgi, Zeriman Dağdelen, Ramazan Pekgöz, Medine Kılıç and Mehmet Samur
15737/07	GÜRBÜZ and Others v. Turkey	29 March 2007	Ali Gürbüz, Özlem Aktan, Nurettin Fırat and Hüseyin Aykol
36137/07	ÜRPER and Others v. Turkey	9 August 2007	Lütfi Ürper, Nurettin Fırat, Yüksel Genç, Bayram Balcı, Hüseyin Aykol, Fuat Bulut, Salih Sezgi, Zeriman Dağdelen, Mehmet Ali Çelebi, Ramazan Pekgöz, Medine Kılıç, Cengiz Kapmaz, Mehmet Samur, Ali Erden, Ersin Öngel and Musa Demir
47245/07	ÜRPER and others v. Turkey	17 October 2007	Lütfi Ürper, Nurettin Fırat, Yüksel Genç, Bayram Balcı, Hüseyin Aykol, Fuat Bulut, Salih Sezgi, Zeriman Dağdelen, Mehmet Ali Çelebi, Ramazan Pekgöz, Medine Kılıç, Mehmet Samur, Cengiz Kapmaz, Musa Demir, Ersin Öngel, Ali Erden, Esra Çiftçi, Turabi Kişin and Şinasi Tur
50371/07	ÜRPER and others v. Turkey	5 November 2007	Lütfi Ürper, Mehmet Samur and Zennur Kızılkaya
50372/07	ÜRPER and SAMUR v. Turkey	19 November 2007	Lütfi Ürper and Mehmet Samur
54637/07	BEKTAŞ v. Turkey	6 December 2007	Hüseyin Bektaş