SECOND SECTION

**CASE OF ATILGAN AND OTHERS v. TURKEY**

*(Applications nos. 14495/11, 14531/11, 26274/11, 78923/11, 8408/12, 11848/12, 12078/12, 12103/12, 14745/12, 21910/12 and 41087/12)*

JUDGMENT

*This version was rectified on 28 April 2015*

*under Rule 81 of the Rules of Court.*

STRASBOURG

27 January 2015

*This judgment is final but it may be subject to editorial revision.*

In the case of Atılgan and Others v. Turkey,

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

Helen Keller, *President,* Egidijus Kūris, Jon Fridrik Kjølbro, *judges,*  
and Abel Campos, *Deputy* *Section* *Registrar,*

Having deliberated in private on 16 December 2014,

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

PROCEDURE

.  The case originated in eleven applications (nos. 14495/11, 14531/11, 26274/11, 78923/11, 8408/12, 11848/12, 12078/12, 12103/12, 14745/12, 21910/12, 41087/12) 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 two Turkish nationals (“the applicants”), whose names appear in the appendix.

2.  The applicants were represented by Mr Ö. Kılıç and Ms A. Taşdemir, lawyers practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

.  On 10 January 2013 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

.  The applicants, whose names appear in the appendix hereto, are Turkish nationals who live in Istanbul. They are the owners, executive directors, editors-in-chief, editors and members of the technical staff of nine publications which were issued on daily, weekly, biweekly or bimonthly basis: *Haftalık Yorum, Politik Yorum, Ülkede Yorum, Yeni Demokratik Toplum, Yeni Demokratik Yaşam, Yeni Demokratik Ulus, Azadiya Welat, Demokratik Ulus,* and *Özgür Mezopotamya*. They are represented before the Court by Mr Ö. Kılıç and Ms A. Taşdemir, lawyers practising in Istanbul.

.  On various dates between 23 June 2010 and 15 February 2012, the Istanbul Assize Courts decided to suspend the publication and distribution of the abovementioned nine newspapers for periods ranging from fifteen days to one month under section 6 (5) of the Prevention of Terrorism Act (Law no. 3713), on the ground that the newspapers had published propaganda in favour of various illegal organisations. All copies of the relevant issues were seized. The applicants raised objections to the suspension orders but these objections were dismissed shortly afterwards by the Istanbul, Assize Courts. Neither the applicants nor their representatives were permitted to participate in any of the proceedings held before the Assize Courts.

.  The details of the proceedings may be found in the appended table.

II.  RELEVANT DOMESTIC LAW

.  A description of the relevant domestic law and practice may be found in the case of *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).

8.  Within the context of the “Judicial Reform Strategy Action Plan”, on 5 July 2012 a new law amending various laws with a view to rendering judicial services more effective and to suspending cases and sentences given in cases concerning crimes committed through the press and media (Law no. 6352) entered into force. Section 105 (2) of Law no. 6352 abolished section 6 (5) of the Prevention of Terrorism Act (Law no. 3713).

THE LAW

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

I.  THE GOVERNMENT’S PRELIMINARY OBJECTION

.  The Government submitted that the applicants’ observations and claims for just satisfaction had not been submitted in one of the official languages of the Court. They therefore argued that these submissions should not be taken into account for failing to meet the requirements of Article 34 § 1 of the Rules of Court.

.  The Court notes that by a letter sent by the Registry of the Court on 17 July 2013 the applicants had been granted the use of Turkish language.

.  The Court further reiterates that it has already examined and dismissed similar objections by the respondent Government (see, *mutatis mutandis*, *Öner Aktaş* *v. Turkey* (no. 59860/10, § 29, 29 October 2013, and *Yüksel v. Turkey* (dec.), no. 49756/09, § 42, 1 October 2013). In the present case, the Court finds no reason to depart from that conclusion. The Government’s arguments on this point should therefore be rejected.

II.  ADMISSIBILITY

13.  The Government submitted that the applicants Nurcan Ercan, Kudret Gülün, Yılmaz Yıldız, Nezife Gündüz, Ferhat Gürgen and Leyla Aydoğan, six employees working as technical personnel at the publications in question, did not have victim status. They submitted in this connection that the aforementioned did not carry out journalistic activities.

.  The Court notes that there is no evidence in the file, and the Government failed to demonstrate, that the aforementioned applicants did not carry out journalistic activities. Furthermore, the Court recalls that it has previously considered some of the applicants in question, namely Nurcan Ercan, Kudret Gülün and Ferhat Gürgen to have victim status in a similar case concerning the suspension of publication of some weekly newspapers and awarded them non-pecuniary damages in respect of a violation of their rights under Article 10 (see *Turgay and Others v. Turkey (no. 5)*, nos. 32869/08, 35022/08 and 39904/08, 21 September 2010). In the light of the foregoing, the Court finds that the applicants took active part in the preparation and publication of the newspapers in question. It accordingly rejects the Government’s objection.

.  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.

III.  MERITS

A.  Alleged violation of Article 10 of the Convention

.  The applicants alleged under Article 10 of the Convention that the suspension of the publication and distribution of *Haftalık Yorum, Politik Yorum, Ülkede Yorum, Yeni Demokratik Toplum, Yeni Demokratik Yaşam, Yeni Demokratik Ulus, Azadiya Welat, Demokratik Ulus,* and *Özgür Mezopotamya*, 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 courts’ decisions, had amounted to censorship.

.  The Court notes that the Government did not submit any observations on the merits of the case.

.  The Court notes that it has already examined a similar complaint and found a violation of Article 10 of the Convention in the case of *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, §§ 24-45, 20 October 2009, 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.

.  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

.  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 *Haftalık Yorum, Politik Yorum, Ülkede Yorum, Yeni Demokratik Toplum, Yeni Demokratik Yaşam, Yeni Demokratik Ulus, Azadiya Welat, Demokratik Ulus,* and *Özgür Mezopotamya* had constituted an unjustified interference with their right to property.

.  The Government did not comment on these allegations.

22.  Having regard to the circumstances of the cases and to its finding of a violation of Article 10 of the Convention (see paragraph 19 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; *Ürper and Others*, cited above, § 49; *Turgay and Others v. Turkey*, § 27, 15 June 2010; and *Ölmez and Turgay v. Turkey*, § 20, 5 October 2010)

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A.  Damage

1.  Pecuniary damage

.  The applicants Mehmet Atılgan, Özlem Özdemir, Saadet Irmak, Arafat Dayan and Menderes Öner[[1]](#footnote-1), who were the owners and executive directors of the relevant publications at the time, claimed 3,000 euros (EUR) each in respect of pecuniary damage for the commercial loss which the newspapers had suffered as a result of the suspension decisions. They did not submit any documentary evidence in support of their claims.

.  The Government contested these claims, arguing that the purported pecuniary damage had not been duly documented. The Government further argued that the sum requested by the applicants was excessive.

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

2.  Non-pecuniary damage

.  The applicants claimed EUR 2,000 each in respect of non‑pecuniary damage.

.  The Government considered this sum to be excessive.

.  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

29.  The applicants also claimed EUR 3,000 jointly for the costs and expenses incurred before the Court and as fees of legal representation. They did not support any documents in support of their claim.

.  The Government contested this claim.

.  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 rejects the claim for costs and expenses in the absence of documents supporting the applicants’ claim.

C.  Default interest

.  The Court considers it appropriate that the default interest rate 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.*Holds* that there has been a violation of Article 10 of the Convention;

3.  *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;

4.  *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 the currency of the respondent State 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:

-  Mehmet Atılgan;

-  Özlem Özdemir;

-  Saadet Irmak;

-  Arafat Dayan;

-  Menderes Öner[[2]](#footnote-2);

-  Güler Özdemir;

-  Nurcan Ercan;

-  Kudret Gülün;

-  Yılmaz Yıldız;

-  Nezife Gündüz;

-  Sevinç Şimşek Karaman;

-  Rüya Işık;

-  Pervin Kaya;

-  Barış Döner;

-  Ferhat Gürgen;

-  Lokman Balık;

-  Leyla Aydoğan;

-  Tayip Temel;

-  Nadir Arzu;

-  Özgür Güllü;

-  Sinan Balık;

-  Burcu Özkaya.

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5.  *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 27 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Helen Keller

Deputy Registrar President

| **No.** | **Application**  **no.** | **Lodged on** | **Applicant**  **name**  **date of birth**  **place of residence** | **Represented by** | **Name of the newspaper and the duration of the suspension of its publication and distribution** | **Date of suspension of publication and distribution** | **Date of dismissal of applicants’ objections to the suspensions** |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | 14495/11 | 27/10/2010 | Mehmet Atılgan  (the owner)  02/05/1986  Istanbul  Güler Özdemir  12/10/1981  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Kudret Gülün  23/041982  Istanbul  Yılmaz Yıldız  16/09/1979  Istanbul  Nezife Gündüz  24/04/1962  Istanbul  Sevinç Şimşek  Karaman  07/01/1980  Istanbul  Rüya Isık  05/02/1966  Istanbul  Pervin Kaya  22/01/1988  Istanbul  Barış Döner  01/12/1987  Istanbul | Özcan Kılıç | *Haftalık Yorum*  (weekly newspaper)  **Duration of suspension**: one month | 24/08/2010  (Istanbul 11th Assize Court- case no. 2010/673) | 28/08/2010  (Istanbul 11th Assize Court- case no. 2010/702) |
|  | 14531/11 | 12/10/2010 | Mehmet Atılgan  (The owner)  02/05/1986  Istanbul  Güler Özdemir  12/10/1981  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Kudret Gülün  23/04/1982  Istanbul  Yılmaz Yıldız  16/09/1979  Istanbul  Nezife Gündüz  24/04/1962  Istanbul  Sevinç Şimşek  Karaman  07/01/1980  Istanbul  Rüya Isık  05/02/1966  Istanbul  Pervin Kaya  22/01/1988  Istanbul  Barış Döner  01/12/1987  Istanbul | Özcan Kılıç | *Politik Yorum*  (weekly newspaper)  **Duration of suspension**: one month | 17/08/2010  (Istanbul 14th Assize Court- case no. 2010/820) | 24/08/2010  (Istanbul 13th Assize Court- case no. 2009/425) |
|  | 26274/11 | 20/12/2010 | Saadet Irmak  01/07/1976  Istanbul | Özcan Kılıç | *Ülkede Yorum*  (weekly newspaper)  **Duration of suspension**: one month | 15/11/2010  (Istanbul 12th Assize Court- case no. 2010/1085 | 25/11/2010  (Istanbul 12th Assize Court- case no. 2010/1102) |
|  | 78923/11 | 14/11/2011 | Özlem Özdemir  01/01/1978  Istanbul l  Pervin Kaya  22/01/1988  Istanbul  Kudret Gülün  23/04/1982  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Ferhat Gürgen  28/09/1983  Istanbul  Lokman Balık  01/01/1981  Istanbul  Leyla Aydoğan  04/07/1978  Istanbul | Özcan Kılıç | *Yeni Demokratik Toplum*  (weekly newspaper)  The issue of 10-16 October  **Duration of suspension**: one month | 11/10/2011  (Istanbul 10th Assize Court-case no. 2011/676) | 24/10/2011  (Istanbul 10th Assize Court-case no. 2011/727) |
|  | 8408/12 | 28/12/2011 | Özlem Özdemir  01/01/1978  Istanbul  Pervin Kaya  22/01/1988  Istanbul  Kudret Gülün  23/04/1982  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Ferhat Gürgen  28/09/1983  Istanbul  Lokman Balık  01/01/1981  Istanbul  Leyla Aydoğan  04/07/1978  Istanbul | Özcan Kılıç | *Yeni Demokratik Yaşam*  (weekly newspapers)  The issue of 24-30 October  *Yeni Demokratik Toplum*  The issue of 14-20 November  **Duration of suspension**: fifteen days | 26/10/2011  (Istanbul 17th Assize Court-case no. 2011/55)  15/11/2011  (Istanbul 13th Assize Court-case no. 2011/3422) | 21/11/2011  (Istanbul 17th Assize Court-case no. 2011/77)  25/11/2011  (Istanbul 13th Assize Court-case no. 2011/755) |
|  | 11848/12 | 11/01/2012 | Özlem Özdemir  01/01/1978  Istanbul  Pervin Kaya  22/01/1988  Istanbul  Kudret Gülün  23/04/1982  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Ferhat Gürgen  28/09/1983  Istanbul  Lokman Balık  01/01/1981  Istanbul  Leyla Aydoğan  04/07/1978  Istanbul | Özcan Kılıç | *Yeni Demokratik Ulus*  (weekly newspaper)  **Duration of suspension**: one month  *Yeni Demokratik Yaşam*  (weekly newspaper)  **Duration of suspension**: one month | 23/11/2011  (Istanbul 11th Assize Court- case no. 2011/1182)  06/12/2011  (Istanbul 10th Assize Court- case no. 2011/804) | 07/12/2011  (Istanbul 11th Assize Court- case no. 2011/1243)  19/12/2011  (Istanbul 10th Assize Court- case no. 2011/871) |
|  | 12078/12 | 02/02/2012 | Menderes Öner  01//01/1975  Diyarbakır  Tayyip Temel  01/06/1982  Diyarbakır  Nadir Arzu  22/05/1981  Diyarbakır | Özcan Kılıç, Azize Deniz Taşdemir | *Azadiya Welat*  (daily newspaper)  **Duration of suspension**: fifteen days | 12/06/2011  (Istanbul 12th Assize Court- case no. 2011/709) | 17/10/2011  (Istanbul 12th Assize Court- case no. 2011/1173) |
|  | 12103/12 | 30/01/2012 | Özlem Özdemir  01/01/1978  Istanbul  Pervin Kaya  22/ 01/1988  Istanbul  Nurcan Ercan  15/ 10/1974  Istanbul  Ferhat Gürgen  28/ 09/1983  Istanbul  Lokman Balık  01/ 01/1981  Istanbul  Leyla Aydoğan  04/ 07/1978  Istanbul | Özcan Kılıç, Azize Deniz Taşdemir | *Yeni Demokratik Ulus*  (weekly newspaper)  **Duration of suspension**: one month | 28/12/2011  (Istanbul 13th Assize Court- case no. 2011/821) | 17/01/2012  (Istanbul 13th Assize Court- case no. 2012/43) |
|  | 14745/12 | 23/01/12 | Özlem Özdemir  01/01/1978  Istanbul  Pervin Kaya  22/ 01/1988  Istanbul  Nurcan Ercan  15/ 10/1974  Istanbul  Ferhat Gürgen  28/ 09/1983  Istanbul  Lokman Balık  01/ 01/1981  Istanbul  Leyla Aydoğan  04/ 07/1978  Istanbul | Özcan Kılıç, Azize Deniz Taşdemir | *Yeni Demokratik Yaşam*  (weekly newspaper)  **Duration of suspension**: one month | 18/01/2012  (Istanbul 14th Assize Court- case no. 2012/35) | 09/02/2012  (Istanbul 14th Assize Court- case no. 2012/145) |
|  | 21910/12 | 25/03/2012 | Arafat Dayan  01/01/1982  Istanbul  Özgür Güllü  01/12/1977  Istanbul  Sinan Balık  01/01/1982  Istanbul  Ferhat Gürgen  28/09/1983  Istanbul  Leyla Aydoğan  04/07/1978  Istanbul  Burcu Özkaya  15/08/1988  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Pervin Kaya  22/01/1988  Istanbul | Özcan Kılıç, Azize Deniz Taşdemir | *Demokratik Ulus*  (weekly newspaper)  **Duration of suspension**: one month | 15/02/2012  (Istanbul 10th Assize Court- case no. 2012/139) | 28/02/2012  (Istanbul 14th Assize Court- case no. 2012/180) |
|  | 41087/12 | 02/05/2012 | Arafat Dayan  01/01/1982  Istanbul  Özgür Güllü  01/12/1977  Istanbul  Sinan Balık  01/01/1982  Istanbul  Ferhat Gürgen  28/09/1983  Istanbul  Leyla Aydoğan  04/07/1978  Istanbul  Burcu Özkaya  15/08/1988  Istanbul  Nurcan Ercan  15/10/1974  Istanbul  Pervin Kaya  22/01/1988  Istanbul | Özcan Kılıç | *Özgür Mezopotamya*  (weekly newspapers)  **Duration of suspension**: one month | 15/07/2011  (Istanbul 10th Assize Court- case no. 2012/208) | 30/03/2012  (Istanbul 14th Assize Court- case no. 2012/253) |

1. .  Rectified on 28 April 2015. The name of Menderes Öner read Menderes Özen in the former version of the judgment. [↑](#footnote-ref-1)
2. .  Rectified on 28 April 2015. The name of Menderes Öner read Menderes Özen in the former version of the judgment. [↑](#footnote-ref-2)