European Court of Human Rights: Case of Ürper a.o. v. Turkey

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The Court's judgment in the case of Ürper a.o. v. Turkey firmly condemns the bans on the future publication of four newspapers. 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 suspended, pursuant to section 6(5) of the Prevention of Terrorism Act (Law no. 3713) 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 response to various news reports and articles. The impugned publications were deemed to publish propaganda in favour of a terrorist organisation, the PKK/KONGRA-GEL, as well as to express approval of crimes committed by that organisation and its members.

The applicants alleged, under Article 10 of the Convention, that the suspension of the publication and distribution of their newspapers constituted an unjustified interference with their freedom of expression. The European Court reiterates that Article 10 of the Convention does not, in its 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. This is especially true as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period of time, may well deprive it of all its value and interest. As freedom of the press was at stake in the present case, 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. The Court was of the opinion that, as opposed to earlier cases that have been brought before it, the restraints 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. 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 found, therefore, that 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 to hinder their professional activities. The Court considered that less draconian measures could have been envisaged, such as the confiscation of

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particular issues of the newspapers or restrictions on the publication of specific articles. The Court concluded that by suspending the publication and distribution of the four newspapers involved, 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. 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 a "necessary" restraint in a democratic society and, instead, amounted to censorship. There has accordingly been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Second Section), case of Ürper a.o. v. Turkey, Application nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07 of 20 October 2009

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