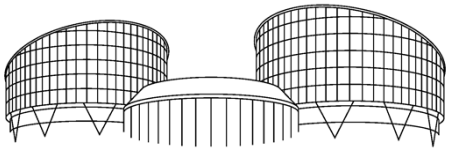

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF UYGUN v. TÜRKİYE

(Application no. 9389/19)

JUDGMENT

Art 8 • Correspondence • Art 15 • Derogation in time of emergency • Prison authorities' refusal to send the applicant's letter to his fiancée, a paragraph having been interpreted as evidence of his ongoing involvement with the terrorist organisation of which he was charged of being a member and his continued active role within it • Relevant but not sufficient reasons to justify withholding the complete letter • Failure to balance competing interests at stake and prevent a disproportionate interference with the applicant's right • Interference not "necessary in a democratic society" • Lack of adequate safeguards • Impugned measure not strictly required by special circumstances of the state of emergency

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 June 2025

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 Uygun v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Gediminas Sagatys,
Juha Lavapuro*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 9389/19) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 February 2019 by a Turkish national, Mr Emrah Uygun ("the applicant");

the decision to give notice of the complaints concerning Article 6 § 2 and Article 8 of the Convention to the Turkish Government ("the Government"), and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 13 May 2025,

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

INTRODUCTION

1. The case concerns a decision by the prison authorities to retain a letter written by the applicant to his fiancée. The prison authorities refused to send the letter, citing concerns that certain statements within it suggested the applicant's ongoing involvement with a terrorist organisation and his continued active role within it. The applicant complained of a violation of his rights under Article 6 § 2 and Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1994 and lives in Muğla. The applicant was represented by Mr K. Öztürk.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. Following the coup attempt of 15 July 2016, a state of emergency was declared on 21 July 2016 and was subsequently extended every three months until 18 July 2018 (see, for details, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, §§ 10-17, 26 September 2023).

6. On 2 August 2017 the applicant was detained on charges of membership of an organisation described by the Turkish authorities as the FETÖ/PDY ("Fetullahist Terrorist Organisation/Parallel State Structure"), which was considered by the national authorities to have instigated the coup attempt. The applicant was then detained in Muğla E-type Prison ("Muğla prison").

7. On 1 December 2017 the Muğla Third Assize Court ("the Muğla Assize Court") convicted the applicant of membership of the FETÖ/PDY and sentenced him to six years and three months' imprisonment. The court ordered the applicant's continued detention.

8. On 2 May 2018 the İzmir Regional Court of Appeal dismissed an appeal by the applicant against the judgment of the Muğla Assize Court, holding that the first-instance court had not erred in its assessment or findings.

9. On 15 November 2018 the Court of Cassation upheld the applicant's conviction. The judgment became final on that date.

II. REFUSAL BY THE PRISON AUTHORITIES TO SEND THE APPLICANT'S LETTER

10. On 4 June 2018, while he was detained pending appeal in Muğla prison, the applicant submitted a ten-page letter to the prison administration to be sent to his fiancée, Ş.Ş.

11. On 7 June 2018 the Disciplinary Board of the prison ("the Disciplinary Board" or "the Board") found that the letter contained objectionable (*sakıncalı*) content. The Board considered that certain passages fell under section 68(3) of Law no. 5275 on the enforcement of sentences and preventive measures ("Law no. 5275"). That provision grants prison authorities the power to monitor, censor, or retain prisoners' correspondence if that correspondence is considered to be a threat to prison order and security, to be directed at officials, to facilitate internal organisational communication, to contain false or misleading information, or if it includes threats or insults. In that context, the Disciplinary Board cited the following passages of the letter:

> "As you had told me he would on the telephone, the lawyer came to see me on Wednesday, and I met with him. We discussed various issues for nearly two hours, including the Court of Cassation process, the application to the Constitutional Court, your trial ... During our conversation, I learnt something which upset and distressed me. My father had told me that Önder had been dismissed from his post and I mentioned this to the lawyer in the hope that he might be able to help him. I found out [from my lawyer] that Önder had informed on one of his clients. Unfortunately, I

wasn't able to act in time, and I was very upset about it." ("*Sen telefonda çarşamba günü avukatın geleceğini söylemiştin. Avukat çarşamba günü geldi, görüştük. Yargıtay süreci Anayasa başvurusu senin mahkeme... Falan derken 2 saat kadar görüştük. Avukatla görüşürken çok üzüldüğüm bir olayı ögrendim. Babamlardan Önder'in ihraç olduğunu duydum, yardımcı olsun diye Önder'den bahsettim. Ögrendim ki Önder bizim avukatın bir müvekkilinin itirafçısı olmuş, maalesef yetişemedim, buna çok üzüldüm*.")

12. In its decision not to send the letter, in addition to highlighting the excerpts deemed objectionable, the Disciplinary Board made further observations regarding the applicant's previous conduct. It noted that, during a partial search of his cell on 21 May 2018, several notes had been found in the applicant's notebook, containing personal information about his cellmates and their indictments. The notebook was subsequently seized. A disciplinary investigation was initiated, and the notebook was sent to the Muğla Chief Public Prosecutor's Office for review. The Board also referred to a report from the prison's telephone wiretapping unit, stating that on 5 June 2018 the applicant had made a call to his father's number and had spoken to a woman named Ş., with whom he was not authorised to have telephone contact.

13. In the light of those observations and given that the applicant was detained pending appeal for the offence of membership of the FETÖ/PDY, the Board concluded that the applicant's statements in the letter suggested an intention to prevent the person mentioned from informing on the FETÖ/PDY and that the applicant continued to have ties with that organisation and to play an active role within it. As a result, it decided not to send the letter. Instead, it ordered that the original letter be retained by the prison's reading committee for potential use in future legal proceedings and that the Board's decision be forwarded to the Muğla Chief Public Prosecutor's Office to initiate an investigation into the content of the letter.

14. On 22 June 2018 the applicant lodged an objection with the Muğla enforcement judge ("the enforcement judge") against the Disciplinary Board's decision. In his objection, the applicant argued that the Board's conclusion, suggesting his intent to prevent the person mentioned from acting as an informer, and its assertion that he continued to maintain ties with the organisation and to play an active role within it, had violated his right to be presumed innocent. He emphasised that his conviction for membership of the FETÖ/PDY was still pending on appeal before the Court of Cassation and that his guilt had therefore not been definitively established. Furthermore, he argued that the retention of the letter, which contained private communications between two individuals on the verge of marriage, had infringed his right to correspondence.

15. On 26 June 2018 the enforcement judge dismissed the applicant's objection. The judge referred to the Disciplinary Board's decision and found that it had been made in accordance with Law no. 5275 and that it complied with both the legal and procedural requirements.

16. On 5 July 2018 the applicant lodged an objection with the Muğla Assize Court, reiterating the arguments he had made to the enforcement judge. He also referred to a decision of the Muğla Public Prosecutor's Office, dated 28 June 2018, refusing to open a criminal investigation into the content of the letter in question. In the light of that decision, he requested that the Disciplinary Board's decision of 7 June 2018 be annulled.

17. On 16 July 2018 the Muğla Assize Court upheld the reasoning of the enforcement judge and dismissed the applicant's objection.

18. On 7 August 2018 the applicant lodged an individual application with the Constitutional Court, alleging, *inter alia*, a breach of his right to be presumed innocent on account of the wording of the Disciplinary Board's decision and a violation of his right to respect for his correspondence owing to the retention of his letter by the prison administration.

19. On 13 November 2018 the Constitutional Court declared the applicant's case inadmissible. While it did not specifically address his complaint regarding the presumption of innocence, it rejected all other complaints as either incompatible *ratione materiae* with the provisions in question or manifestly ill-founded. The Constitutional Court found that no interference with the right to correspondence had occurred, or if one had occurred, it deemed that it had not constituted a violation.

III. SUBSEQUENT DEVELOPMENTS

20. In an annex to their observations, the Government submitted a copy of the decision not to prosecute issued by the Muğla Chief Public Prosecutor's Office on 28 June 2018 in respect of the statements made in the letter in question, citing a lack of new evidence of the applicant's involvement in the offence of membership of the FETÖ/PDY (see paragraph 13 above).

21. In response to the Government's observations, the applicant submitted copies of the decisions issued in relation to the previous investigations referenced in the Disciplinary Board's decision. In that connection, he submitted a copy of a non-prosecution decision dated 5 June 2018 regarding the notebook which had been confiscated during the cell search on 21 May 2018. The applicant also provided a copy of a decision dated 22 June 2018 by the enforcement judge, lifting a disciplinary sanction of eleven days' solitary confinement imposed in that connection (see paragraph 12 above). The applicant further submitted a decision dated 6 July 2018 by the enforcement judge, which lifted another disciplinary sanction – a three-month ban on participating in certain activities – imposed for making a call to his fiancée through his father's telephone, although he was not permitted to do so under section 6(1)(e) of Emergency Legislative Decree no. 667 (see paragraph 12 above). According to that provision, during the state of emergency, detainees charged with terrorism-related offences or crimes against state security were only allowed to receive visits from their spouses,

close relatives, or legal guardians, and were permitted to make phone calls only to that restricted group. The applicant also submitted a decision dated 22 January 2018, in which the Muğla prison administration had refused, relying on that provision, a request made by him to be visited by his fiancée, Ş.Ş.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGISLATION

A. Law no. 5275 on the enforcement of sentences and preventive measures

22. Section 68 of Law no. 5275 on the enforcement of sentences and preventive measures ("Law no. 5275"), as in force at the material time, provided as follows:

> "1. With the exception of the restrictions set forth in this section, convicted prisoners shall have the right, at their own expense, to send and receive letters, faxes and telegrams.
>
> 2. The letters, faxes and telegrams sent or received by convicted prisoners shall be monitored by the reading committee in those prisons which have such a body or, in those which do not, by the highest authority in the prison.
>
> 3. [If] letters, faxes and telegrams [to convicted prisoners] pose a threat to order and security in the prison, single out serving officials as targets, permit communication between members of terrorist or ... criminal organisations, contain false or misleading information likely to cause panic in individuals or institutions or contain threats or insults they shall not be forwarded to [the addressee]. Nor shall [such letters, faxes and telegrams] written by convicted prisoners be dispatched.
>
> ..."

23. Under section 116(1) of Law no. 5275 the provisions of section 68 of the same Law may be applied to remand prisoners in so far as these provisions are compatible with the detention status of the prisoners concerned.

B. Regulation of 20 March 2006 on the management of prisons and the execution of sentences and preventive measures, published in the Official Gazette of 6 April 2006 (as in force at the material time)

24. Section 91 of the Regulation, as in force at the material time, provided as follows:

> "1. Convicted prisoners shall have the right to send and receive letters, faxes and telegrams at their own expense.
>
> 2. The letters, faxes and telegrams sent or received by convicted prisoners shall be monitored by the reading committee in those prisons which have such a body or, in those which do not, by the highest authority in the prison.

3. [If] letters, faxes and telegrams [to convicted prisoners] are a threat to order and security in the prison, single out serving officials as targets, permit communication for organisational purposes between members of terrorist or ... criminal organisations, contain false or misleading information likely to cause panic in individuals or institutions or contain threats or insults, they shall not be forwarded to [the addressee]. Nor shall [such letters, faxes and telegrams] written by convicted prisoners be dispatched.

..."

25. Section 123 of the Regulation read as follows:

"1. Those incoming or outgoing letters which are considered objectionable ... by the reading committee shall be transmitted to the Disciplinary Board within twenty-four hours. If the Disciplinary Board finds a letter to be objectionable in full or in part, the letter shall be kept until the time-limit for lodging a complaint or an objection has expired, without the original being redacted or destroyed. If a letter is found to be objectionable in part, the original shall be kept by the [prison] authorities and a photocopy of it – with the objectionable passages struck out in such a way as to be illegible – shall be delivered to the person concerned along with the Disciplinary Board's decision. If the whole letter is found to be objectionable, only the decision of the Disciplinary Board shall be delivered ... The Disciplinary Board's decision shall be enforced if no objection is lodged with the enforcement judge within the [prescribed] time-limit ... If the matter is sent before the enforcement judge, ... his [or her] decision shall apply in the event that an appeal is not lodged against [that] decision[.] If an appeal is lodged against [the decision of the enforcement judge], the decision of the court [examining the appeal] shall apply.

2. The notice given to the convicted prisoner must inform him [or her] that, if no objection is lodged with the enforcement judge within fifteen days of the serving of the Disciplinary Board's decision, or if no appeal against the decision of the enforcement judge is lodged with the Assize Court within one week of its being served, the decision of the Disciplinary Board shall become final and that the letter concerned shall be forwarded after the objectionable passages have been struck out in such a way as to be illegible, or that a letter which is considered objectionable in full will not be delivered.

3. Those letters considered objectionable in full or in part shall be kept by the [prison] authorities to be used if an appeal is lodged at the national or international level."

26. Under section 186 of the Regulation, the provisions of sections 91 and 123 (see paragraphs 24 and 25 above) could be applied to remand prisoners in so far as those provisions were compatible with the detention status of the persons concerned.

II. RELEVANT CASE-LAW OF THE CONSTITUTIONAL COURT

27. The case-law of the Constitutional Court relevant to the present case were described in *Halit Kara v. Türkiye*, no. 60846/19, § 20, 12 December 2023.

THE LAW

I. PRELIMINARY REMARKS CONCERNING THE DEROGATION BY TÜRKİYE

28. The Government pointed out that the application should be examined with due regard to the Notice of Derogation transmitted to the Secretary General of the Council of Europe on 21 July 2016 under Article 15 of the Convention (see, for the text of the Notice of Derogation and further details, *Pişkin v. Turkey*, no. 33399/18, §§ 55-56, 15 December 2020). Article 15 reads as follows:

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
>
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
>
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

29. At this stage, the Court would reiterate that in *Mehmet Hasan Altan v. Turkey* (no. 13237/17, § 93, 20 March 2018), it noted that the attempted military coup had revealed the existence of a "public emergency threatening the life of the nation" within the meaning of the Convention (see *Pişkin*, cited above, § 59). As to whether the measure taken in the present case was strictly required by the exigencies of the situation and consistent with the other obligations under international law, the Court considers it necessary to examine the applicant's complaint on the merits and will do so below (ibid.).

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

30. The applicant argued that the statements of the Disciplinary Board had breached his right to be presumed innocent until proven guilty, as guaranteed in Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

31. The Government contested the applicability of Article 6 of the Convention to the proceedings related to the retention of the letter and denied any violation of that provision. They submitted that Article 6 was not applicable in its civil limb, as the retention of the letter did not concern a "civil right" within the meaning of the Convention. They further contended

that the criminal limb of Article 6 was also not engaged, emphasising that the applicant had neither been charged by the Disciplinary Board nor had his criminal conviction been subject to review by it. They pointed out that the proceedings had been strictly limited to determining whether the letter had fallen under section 68(3) of Law no. 5275, without addressing any criminal responsibility.

32. The Government pointed out that the applicant had already been convicted by the first-instance court for membership of the FETÖ/PDY, a conviction upheld by the Regional Court, with only an appeal on points of law still pending. That accusation, involving incidents related to the FETÖ/PDY – considered the instigator of the coup attempt – had resulted in the applicant's detention pending appeal and his placement in a high-security unit, which, according to the Government, had been a significant factor taken into account by the Disciplinary Board when making its decision. The Government further argued that the statements made by the applicant in his letter had been evaluated in that context, along with the previous disciplinary proceedings against him, and that all those factors had been considered together.

33. The Government further argued that the applicant's case could be distinguished from that of *Konstas v. Greece* (no. 53466/07, 24 May 2011), as the statements made in the Disciplinary Board's decision had been entirely unrelated to the criminal proceedings and were not capable of influencing public perception regarding the applicant's guilt. Likewise, the applicant's case differed from *Kemal Coşkun v. Turkey* (no. 45028/07, 28 March 2017), as there had been no parallel disciplinary proceedings connected to the criminal case, and the proceedings regarding the letter had been conducted independently of the criminal process.

34. Taking those factors into account, the Government maintained that Article 6 § 2 of the Convention was not applicable to the case and argued that the complaint under Article 6 § 2 of the Convention should be declared inadmissible *ratione materiae* with the provisions of the Convention. In any event, they argued that the Disciplinary Board's decision did not contain any statements incriminating the applicant or any specific language that would offend the presumption of innocence, and therefore would have had no influence on the proceedings that had been pending before the Constitutional Court.

35. The Court considers that, in the present case, it is not necessary to examine the applicability of Article 6 § 2 of the Convention. Even assuming that this provision applies, the complaint is, in any event, inadmissible for the reasons set out below.

36. The general principles concerning the right to be presumed innocent enshrined in Article 6 § 2 of the Convention have recently been summarised in *Nealon and Hallam v. the United Kingdom* [GC], (nos. 32483/19 and 35049/19, §§ 101-09, 11 June 2024), and *C.O. v. Germany*

(no. 16678/22, §§ 57-58, 17 September 2024). Article 6 § 2 prohibits, *inter alia*, statements made by public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (ibid., § 57, with further references). A fundamental distinction must be made in this regard between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (ibid., § 58). The Court reiterates that whether a statement by a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see, among other authorities, *Paulikas v. Lithuania*, no. 57435/09, § 49, 24 January 2017). When regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive. The Court's case-law provides some examples of instances where no violation of Article 6 § 2 has been found even though the language used by domestic authorities and courts has been criticised (see *C.O. v. Germany*, cited above, § 58, with further references).

37. In the present case, the Court observes that the Disciplinary Board was tasked with determining whether there were grounds justifying the retention of the applicant's letter. In its reasoning, the Board referred to the reasons for the applicant's imprisonment, noting that he had been detained pending appeal (*hükümözlü*), and referred to prior disciplinary proceedings involving the applicant without expressing any particular view on them. The Board's decision ultimately focused on excerpts from the applicant's letter, which, in its view, suggested that the applicant intended to prevent an individual from acting as an informer and that he maintained ongoing ties with and an active role in the organisation (see paragraphs 11-13 above).

38. The applicant argued that the language used by the Disciplinary Board indicated that the authorities considered him to be guilty. The Court acknowledges that the Board's reference to the applicant's ongoing links with the organisation, are not entirely beyond criticism. In this connection, the Court has emphasised that the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see, *Bavčar v. Slovenia*, no. 17053/20, § 108, 7 September 2023, and *Ismoilov and Others v. Russia*, no. 2947/06, § 161, 24 April 2008, with further references). However, the Court stresses that such language must be interpreted in its full context. The Board's decision, which was confined to determining whether the content of the letter had justified its retention under section 68(3) of Law no. 5275, did not suggest that it sought to prejudge the applicant's criminal responsibility. When considered in context, the statements appear to focus on the security concerns raised by the letter and are aimed at explaining the basis upon which the statements in

question were deemed to be objectionable, rather than constituting a declaration of criminal guilt.

39. The Court notes that the Disciplinary Board did not attempt to assess or qualify the applicant's acts, which were the subject of the criminal trial pending before the Court of Cassation at the time of the events in question. Indeed, there is no reference to any act by the applicant that was the subject of those pending proceedings, nor did the Board carry out any examination or assessment of the evidence in the criminal case. The Court observes that neither the Disciplinary Board nor the courts involved in the proceedings concerning the retention of the letter addressed the substance of any allegations against the applicant, nor did they attempt to establish whether he had committed any of the acts for which he was accused in the criminal proceedings (compare and contrast *Kemal Coşkun*, cited above, § 53). Rather, the retention of the letter was based on specific statements found to be objectionable under section 68(3) of Law no. 5275.

40. The limited scope of the Board's decision, which was confined to administrative considerations, did not extend to an assessment of the merits of the criminal allegations. Moreover, the decision did not contain a direct statement regarding the applicant's criminal responsibility. The authorities used the term "suggested", which introduced a degree of moderation into their statements, and the reference to the applicant's detention pending appeal emphasised the absence of a final criminal judgment (see, *mutatis mutandis*, *Karaman v. Germany*, no. 17103/10, § 69, 27 February 2014, and *Bauras v. Lithuania*, no. 56795/13, §54, 31 October 2017).

41. Accordingly, while certain aspects of the language used could have been more carefully framed, they do not, when viewed in context, amount to a premature declaration of guilt. The terminology employed, including the use of the word "suggested," reflects a degree of caution, and the absence of any explicit attribution of criminal responsibility further underscores that the authorities did not overstep the boundaries of presumption of innocence.

42. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

43. The applicant complained that the refusal by the prison authorities to send the letter in question to his fiancée, with whom he was not permitted to speak on the telephone or to receive visits from during the state of emergency, constituted a breach of his right to respect for his private life and correspondence. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

in the interests of national security, public safety ... the prevention of disorder or crime ... or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

44. The Government submitted that the applicant had not suffered any "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention. They contended that he had neither incurred any financial loss resulting from the refusal in question, nor had he raised any claims of non-financial harm. Furthermore, the Government argued that the applicant had failed to clearly explain the importance to him of the letter in question or to specify any particular disadvantage he had suffered from the authorities' refusal to send it to the intended recipient. They also emphasised that, despite his inability to send the letter, the applicant had had access to various means of communication with the outside world during his imprisonment. According to the Government, there had been no blanket restriction on his ability to exchange information, and the failure to send a single letter did not amount to a significant hardship. The applicant had engaged in correspondence with Ş.Ş. on numerous occasions both prior to and following the date on which the letter in question had been retained. Prior to the incident, the applicant had not been subjected to any restrictions on meeting his family, relatives, his fiancée Ş.Ş., or his lawyer, and that he had been permitted to communicate with those individuals through various means, including letters, fax, telegram and telephone. Referring to a table documenting the number of visits the applicant had received during his detention, including visits from his fiancée, and to tables containing information on phone calls made, faxes sent and received, and noting the absence of any allegations suggesting structural problems, the Government submitted that respect for human rights did not necessitate an examination of the merits of the application.

45. In the alternative, the Government argued that the application should be found inadmissible for being manifestly ill-founded. In that connection, they argued that the domestic courts had reviewed the applicant's complaint in accordance with the case-law of the Constitutional Court and the Court, and that, in line with the principle of subsidiarity, there was no reason to deviate from the domestic courts' conclusions.

46. The applicant did not provide specific comments regarding the admissibility of the application, instead he reiterated the arguments presented in the application form.

2. The Court's assessment

47. The Court refers to the general principles with regard to the "significant disadvantage" admissibility criterion (see, for example, *Subaşı and Others v. Türkiye*, nos. 3468/20 and 18 others, § 62, 6 December 2022). The Court observes that the subjective importance of the matter to the applicant is evident, as he clearly sought to maintain contact with his fiancée, as demonstrated by the numerous letters exchanged between them, to which the Government has referred (see paragraph 44 above). The Court notes the applicant's argument that he had not been permitted to call his fiancée or to receive visits from her during the state of emergency, which had been in effect at the time of the events in question and coincided with a year of his detention. In support of this argument, the applicant submitted a decision of the prison administration of 22 January 2018, showing that he had not been allowed visits from his fiancée under section 6(1)(e) of Emergency Legislative Decree no. 667. Although the Government contended that, prior to the incident, the applicant had not been subject to any restrictions on meeting or communicating with his fiancée, Ş.Ş., including by telephone, the Court notes that the information and decision submitted by the applicant are consistent with the Government's own records concerning the visits the applicant received and the phone calls he made. Accordingly, the Court notes that the Government's records do not show any visits from Ş.Ş. during the state of emergency, although numerous visits took place after it had ended. Moreover, the phone records for that period show only calls made to the applicant's father. It is apparent from the Disciplinary Board's decision that the applicant's telephone communication with Ş.Ş. had also been subjected to disciplinary sanctions imposed by the prison authorities (see paragraphs 12 and 21 above). In view of this, it appears that at the time of events in question written correspondence was the only means available to the applicant to communicate with his fiancée during the relevant period. The Court also acknowledges the importance to the applicant of maintaining contact with his fiancée, with whom, according to his statement, he was close to marriage - a relationship that falls within the scope of private life under Article 8 of the Convention (see *Hofmann v. Germany* (dec.), no. 1289/09, 23 February 2010, and *Wakefield v. the United Kingdom*, no. 15817/89, Commission decision of 1 October 1990). Furthermore, the Court reiterates that Article 8 of the Convention requires the State to assist prisoners as far as possible to create and sustain ties with people outside prison in order to promote prisoners' social rehabilitation (see *Danilevich v. Russia*, no. 31469/08, § 47, 19 October 2021, and *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, § 88, 7 March 2017, with further references). Accordingly, the present case raises an issue concerning the applicant's right to respect for his private correspondence with his fiancée and the need for effective judicial oversight in this matter.

48. In the light of the above, the Court concludes that it cannot be said that the authorities' refusal to send the letter in question did not cause a significant disadvantage to the applicant. Therefore, the Government's objection on this point must be dismissed.

49. As to the Government's second objection, the Court considers that the arguments put forward in that regard raise issues requiring an examination of the merits of the complaint under Article 8 of the Convention (see *Mehmet Çiftci v. Turkey*, no. 53208/19, § 26, 16 November 2021, with further references).

50. Lastly, the Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

51. The applicant submitted that approximately one year of his detention had overlapped with the state of emergency, during which time his ability to receive visits and to make phone calls had been severely restricted under Emergency Legislative Decree no. 667. As a result, he had been unable to meet with his fiancée, with whom he had been in the process of planning to marry, for nearly a year. The applicant argued that, given those restrictions, he and his fiancée had frequently exchanged letters, as that was their only means of communication. The applicant further contended that the letter in question did not contain any insults, threats, incitement, or any other criminal or dangerous content. In support of this argument, he referred to the decision of the public prosecutor not to pursue an investigation into the matter. He argued that the authorities' refusal to send the letter, which contained personal and intimate exchanges, such as routine communications, and expressions of affection and emotional support amounted to a violation of his rights under the Convention. Additionally, the applicant maintained that certain issues raised in the reasoning of the decision, such as the references to his notebook or his phone conversation with his fiancée, had already been examined and discontinued by the judicial authorities in the context of both disciplinary and criminal proceedings. Therefore, he argued that the authorities had no legitimate grounds for restricting his correspondence.

52. The Government argued that there had been no interference with the applicant's right to respect for his correspondence. They contended that the letter in question contained "messages that were not suitable to send". The Government also reiterated the arguments they had previously made regarding the alleged absence of any significant disadvantage (see paragraphs 44 above).

53. The Government maintained that the authorities' refusal to send the letter had had a legal basis, namely section 68(3) of Law no. 5275 and section 91(3) of the relevant Regulation, which was in force at the material time. They also submitted that the measure in question had pursued the aims of maintaining discipline in the prison, preventing disorder or crime and ensuring the rehabilitation of the prisoner.

54. As regards to the necessity of the contested measure, the Government contended that the letter in question had been retained on account of its content, which had been considered to reflect the applicant's intention to obstruct members of the FETÖ/PDY terrorist organisation from informing and to divulge his ongoing association with the organisation, for which he had been convicted. They argued that the prison regime, the type of facility, and the grounds for the applicant's detention and conviction were pertinent considerations. The Government referred to the nature of the offences for which the applicant had been imprisoned, concluding that sending the letter would have been inconsistent with the policies designed to protect the applicant from further involvement with the terrorist organisation and to aid his rehabilitation. The Government further asserted that various pressing social needs were being addressed by the retention of the letter, including the prevention of communication between FETÖ/PDY members, the weakening of the commitment to that organisation by its members, the maintenance of order and discipline within the prison, and the promotion of effective rehabilitation. They highlighted the risk of irreversible harm had the letter been sent, as it could potentially have facilitated organisational communication by naming a third party. The Government emphasised that the applicant's complaints had been thoroughly reviewed by the national authorities in accordance with the Court's case-law, and that a fair balance had been struck between the applicant's right to respect for correspondence and the need to maintain prison order, discipline, and to protect society from terrorist activities. They argued that the reasons given to justify the refusal to send the letter were both relevant and sufficient. The review had had to take into account the threat posed by the FETÖ/PDY and the imperative to dismantle its structure and prevent criminal activities. Additionally, the Government maintained that the measure in question had been relatively lenient, as the applicant had not faced any disciplinary sanctions or investigations beyond being questioned by the public prosecutor, who had ultimately decided not to pursue an investigation. The letter in question had been retained by the prison administration, rather than being destroyed, pending the exhaustion of all judicial remedies.

55. In the light of these arguments, the Government submitted that the alleged interference was proportionate and necessary within the meaning of Article 8 § 2 of the Convention.

56. The Government further pointed out that the complaint should be examined with due regard to the notice of derogation transmitted to the

Secretary General of the Council of Europe on 21 July 2016 under Article 15 of the Convention (see, for the text of the notice of derogation and further details, *Pişkin*, cited above, §§ 55-56, 15 December 2020).

2. The Court's assessment

(a) General principles

57. The Court reiterates that an interference by a public authority with the right to respect for correspondence will contravene Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is "necessary in a democratic society" in order to achieve them (see *Enea v. Italy* [GC], no. 74912/01, § 140, ECHR 2009; *Kwiek v. Poland*, no. 51895/99, § 37, 30 May 2006; and *Nuh Uzun v. Turkey*, nos. 49341/18 and 13 others, § 83, 29 March 2022).

58. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" regard may be had to the State's margin of appreciation (see, among other authorities, *Yefimenko v. Russia*, no. 152/04, § 142, 12 February 2013). While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see *Yefimenko*, cited above, § 142, and *Nusret Kaya and Others v. Turkey*, nos. 43750/06 and 4 others, § 51, ECHR 2014 (extracts)).

59. Some measure of control over prisoners' correspondence is called for, and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 98, Series A no. 61, and *Klibisz v. Poland*, no. 2235/02, § 338, 4 October 2016). In assessing the permissible extent of such control in general, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world should, however, not be overlooked (see *Campbell v. the United Kingdom*, 25 March 1992, § 45, Series A no. 233, and *Yefimenko*, cited above, § 143).

(b) Application of those principles in the present case

60. The Court finds that the prison authorities' refusal to send the applicant's letter to his fiancée constituted an interference with his right to respect for his correspondence under Article 8 of the Convention (see, *Halit Kara v. Türkiye*, cited above, § 48; *Vlasov v. Russia*, no. 78146/01, § 130, 12 June 2008; and *Mehmet Nuri Özen and Others*, cited above, § 42).

61. It is not in dispute between the parties, and the Court accepts, that the interference in question had a legal basis, namely section 68(3) of Law no. 5275 and section 91(3) of the Regulation as in force at the material time.

62. The disputed measure may also be regarded as pursuing at least one of the legitimate aims set out in paragraph 2 of Article 8, namely the prevention of disorder or crime.

63. Turning to the question of the "necessity" of the interference, the Court will examine whether the reasons advanced in support of the measure in question were both relevant and sufficient. In this regard, the Court must also determine whether the principle of proportionality has been duly observed, weighing the measure's impact on the applicant's rights against the legitimate aim pursued by the State.

64. The Court reiterates that some measure of control over the correspondence of persons who have been deprived of their liberty is called for and is not of itself incompatible with the Convention (see *Silver and Others*, cited above, § 98, and *Campbell v. the United Kingdom*, cited above, § 45). In assessing the permissible extent of such control in general, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world should, however, not be overlooked (ibid.).

65. In the present case, the Court notes that, in the extracts quoted by the Disciplinary Board, the applicant referred to a person who was apparently known both to the applicant's family and to his fiancée. According to the Board's assessment, that person had provided information about the FETÖ/PDY, an organisation of which the applicant had been accused and of which he had been convicted at first instance, the appeal against which was still pending at the time of the events. The applicant further expressed his distress at having been unable to "act in time" in relation to this matter. The Disciplinary Board refused to send the letter, interpreting the applicant's statements as an intention to discourage the individual in question from informing on the FETÖ/PDY and as evidence that the applicant continued to maintain ties with the organisation and to play an active role within it.

66. The Court acknowledges that, given the serious and specific nature of the charges against the applicant – namely, membership of a terrorist organisation – it was reasonable for the authorities to be concerned about those statements and to impose restrictions aimed at preventing any disclosure of information regarding the identity of persons informing about that organisation. Such an eventuality could have jeopardised the proper conduct of ongoing investigations or judicial proceedings against members of the organisation and endangered the safety of the individual concerned.

67. The Court observes that, in support of their refusal to send the letter, the authorities referred to previous incidents involving the applicant, such as the confiscation of the applicant's notebook containing information about his cellmates and an unauthorised telephone conversation with his fiancée. However, the disciplinary and judicial investigations related to these

incidents were ultimately discontinued. In this context, although the public prosecutor had declined to investigate the letter in question, finding no evidence to support the charge of membership of a terrorist organisation, and despite the applicant expressly raising this information in his objection before the Assize Court, that court merely endorsed the reasoning of the enforcement judge without conducting any further examination of the applicant's arguments in this regard (see paragraph 17 above).

68. Accordingly, it is not evident from the decisions of the trial courts that they adequately balanced the applicant's right to respect for his correspondence against the interest of prevention of disorder or crime. The prison authorities and the trial courts also failed to provide sufficient reasoning as to whether the letter could have been sent after redacting the specific objectionable content (see *Halit Kara*, cited above, § 55). In this regard, the Court notes that the letter consisted of ten pages, yet the Disciplinary Board only referred to a single paragraph as falling under section 68(3) of Law no. 5275. Furthermore, the applicant's argument that at the time of the events in question written correspondence was his only means of communication with his fiancée is of particular significance in this case.

69. The Court notes that the authorities did not assert that the applicant was corresponding with convicted persons or with dangerous individuals, but rather with a person with whom the applicant was reportedly about to marry and with whom he had previously exchanged several letters without hindrance. Therefore, apart from the paragraph cited by the authorities, no concern was expressed regarding the rest of the ten-page letter, which consisted of personal thoughts and feelings that the applicant shared with his fiancée. Accordingly, while the reasons provided by the authorities may be deemed relevant, they were not sufficient to justify the withholding of the complete letter.

70. In the light of the foregoing, the Court finds that the domestic authorities did not fulfil their task of balancing the competing interests at stake and preventing a disproportionate interference with the applicant's right to respect for his correspondence (see, *mutatis mutandis*, *Subaşı and Others v. Türkiye*, nos. 3468/20 and 18 others, §§ 91 and 93, 6 December 2022). As a result, the authorities have not shown that the measure in question was proportionate to the legitimate aims pursued. Accordingly, the interference in issue was not "necessary in a democratic society".

71. Finally, regarding the Government's request that the assessment be made in the light of Article 15 of the Convention, the Court reiterates that, under Article 15 of the Convention, any High Contracting Party may, in time of war or public emergency threatening the life of the nation, take measures derogating from its obligations under the Convention, with the exception of those listed in paragraph 2 of that Article, provided that such measures are strictly limited to what is required by the exigencies of the situation and that they are not inconsistent other obligations under international law (see

Lawless v. Ireland (no. 3), 1 July 1961, § 22, p. 55, Series A no. 3). In the present case, the Court considers that the attempted military coup constituted a "public emergency threatening the life of the nation" within the meaning of the Convention (see *Mehmet Hasan Altan*, cited above, § 93). As to whether the measure taken was strictly required by the exigencies of the situation and consistent with other international law obligations, the Court observes that the legal basis for the interference was ordinary law, and that the prison authorities' control over prisoners' correspondence had not been established in response to the emergency following the attempted military coup. Rather, this was a pre-existing practice applied before the Government's notification of derogation. In this context, the Court considers that the applicant was subjected to a disproportionate interference, contrary to Article 8 of the Convention and that none of the national authorities involved, including the judicial bodies reviewing the measure in question, provided any justification for the interference by specifically citing the state of emergency. This lack of any reference to the emergency context is particularly relevant, as only those measures with a sufficiently strong link to the objectives pursued by a derogation can fall within its scope (see *Domenjoud v. France*, nos. 34749/16 and 79607/17, § 154, 16 May 2024, with further references). In the present case, such a connection has not been shown. Accordingly, the Court concludes that the applicant was not afforded adequate safeguards to ensure that the interference was not disproportionate, and that the measure in question cannot be regarded as having been strictly required by the exceptional circumstances of the state of emergency (see *Halit Kara*, cited above, § 59).

72. There has accordingly been a violation of Article 8 of the Convention

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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."

74. The applicant claimed 250,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government contested the applicant's claim as being unsubstantiated and excessive.

76. The Court acknowledges that the applicant may have experienced a degree of annoyance and frustration due to the authorities' failure to send his letter; however, it does not consider this distress to be of sufficient gravity to warrant compensation for non-pecuniary damage (see *William Faulkner v. the United Kingdom*, no. 37471/97, § 18, 4 June 2002, with further

references). It further notes that the applicant did not submit any claim in respect of costs and expenses. Consequently, the Court does not make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President