



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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18139/07  
by Abdurrahim ATILLA and 57 other applications  
against Turkey

The European Court of Human Rights (Second Section), sitting on 11 May 2010 as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having regard to the above applications lodged on 16 April 2007,

Having deliberated, decides as follows:

THE FACTS

**A. The circumstances of the case**

The applicants are Turkish nationals and at the time of their applications they were all but six<sup>1</sup> in pre-trial detention in Diyarbakır F-type Prison. The names and dates of birth of the applicants appear in the appendix. They

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<sup>1</sup>. With the exception of six applicants in cases nos. 18231/07, 18244/07, 18246/07, 18298/07, 18315/07, 18521/07.

were all represented before the Court by Mr M. Şahin and Mr O. Çelik, lawyers practising in Diyarbakır.

On 7 September 2006 the applicants announced a collective two-day hunger strike in protest against the conditions of detention of Abdullah Öcalan, leader of the PKK (the Workers' Party of Kurdistan), an illegal, armed organisation. On 11 September 2006 the Diyarbakır F-type Prison Disciplinary Board imposed a disciplinary sanction on the applicants, consisting of a one-month ban on sports activities and conversation in groups (*spor ve sohbet etkinlikleri*), for launching a hunger strike and forming a group with a view to breaching the regulations. The applicants lodged appeals, which were rejected by the Diyarbakır Enforcement Court and the Diyarbakır Assize Court on 25 September and 9 October 2006 respectively. The final decision was deposited with the registry of the court on 10 November 2006.

## **B. Relevant domestic law**

Law no. 5275 on the Enforcement of Sentences and Preventive Measures provides as follows:

### **Article 40**

“1. The penalty of a deprivation of certain activities deprives convicts of the right to participate in the prison workshops and sports activities from one to three months.

2. The acts requiring the penalty of a deprivation of certain activities are as follows:

...

(g) launching a hunger strike ...”

## **COMPLAINTS**

The applicants complained under Articles 9 and 10 of the Convention that the disciplinary punishment which had been imposed on them because they launched a hunger strike had violated their freedom of thought and expression. They contended that the hunger strike had been a peaceful way of expressing their opinions.

## **THE LAW**

In view of the similarity of the applications, both as regards facts and law, the Court deems it appropriate to join and examine them together.

The applicants submitted that the disciplinary punishment imposed on them because they had launched a hunger strike in support of Abdullah Öcalan had infringed their freedom of thought and expression.

At the outset the Court considers that these complaints are to be examined solely under Article 10 of the Convention – freedom of expression.

The Court finds that the disciplinary punishments did indeed amount to an “interference” with the applicants’ freedom of expression. Such an interference will constitute a breach of Article 10 unless it is “prescribed by law”, pursues one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” in order to achieve the aim or aims in question.

The Court observes that the impugned measure was “prescribed by law”, as it was based on section 40 of Law No. 5275.

The Court reiterates that any restrictions on Convention rights must be justified, although such justification may well be found in considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 99-105, Series A no. 61, where broad restrictions on the right of prisoners to correspond fell foul of Article 8, but the stopping of specific letters containing threats or other objectionable references was justifiable in the interests of the prevention of disorder or crime; see also, *mutatis mutandis*, *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, 6 October 2005). In the circumstances of the present case, the Court finds that the interference pursued the legitimate aim under Article 10 § 2 of preventing disorder.

It remains to be determined whether the measure was “necessary in a democratic society”.

The Court observes that Law No. 5275 lists punishable acts, the penalties relating to them and the procedure to be followed. In section 40, “launching a hunger strike” had been defined as a punishable act. In the present case, the applicants were disciplined for having breached the prison order protected under the foregoing provision, rather than for having expressed their opinions.

The Court queries whether such a blanket restriction on hunger strikes is compatible with Article 10 of the Convention. Nevertheless, given the particular circumstances of the present case, it does not deem it necessary to determine that question.

The Court notes that moderate disciplinary punishments were imposed by the State in order to prevent or deter the applicants from launching their hunger strikes and to re-establish order in the prison should a campaign of that kind be initiated. On this point, regard must be had to the collective nature of the applicants’ protest, as well as the type of prisoners involved. Many of these prisoners were apparently supporters of the PKK, an illegal armed organisation. The Court considers that a protest of this nature and scale could reasonably have been seen by the prison authorities as a threat to

prison order. Moreover, it is of the view that the penalties imposed, involving a one-month ban on the applicants' sports activities and conversations in groups, cannot be regarded as disproportionate to the legitimate aim pursued, namely the prevention of disorder, within the meaning of Article 10 § 2 of the Convention.

In the light of the foregoing considerations and the specific circumstances of the case, the Court concludes that the interference with the applicants' freedom of expression does not disclose any appearance of a violation of Article 10 of the Convention. The applications must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to join the applications;

*Declares* the applications inadmissible.

Sally Dollé  
Registrar

Françoise Tulkens  
President

## APPENDIX

	Case Name	Application Number	Name of applicant	Date of Birth
1	ATILLA	18139/07	Abdurrahim Atilla	1980
2	SAVUR	18180/07	Abdullah Savur	1980
3	ALİ	18229/07	Bahtiyar Ali	1984
4	AKINCI	18230/07	Sadun Akıncı	1972
5	YALÇIN	18231/07	Adnan Yalçın	1962
6	IŞIK	18232/07	Alican Işık	1977
7	ÖZDEMİR	18235/07	Nevzat Özdemir	1974
8	ATLI	18236/07	Hacı Atlı	1974
9	KAPLAN	18238/07	İdban Kaplan	1970
10	BALIKÇI	18239/07	Galip Balıkçı	1978
11	AYTİMUR	18240/07	Adem Aytimur	1972
12	BARAN	18244/07	Ömer Baran	1977
13	ALP	18245/07	Ali Alp	1976
14	TAŞ	18246/07	Tarık Taş	1963
15	ADANIR	18247/07	Davut Adanır	1952
16	ENCÜ	18248/07	Ecevit Encü	1986
17	GELNİ	18249/07	Metin Gelnı	1966
18	AY	18250/07	Münir Ay	1980
19	BEYAZ	18252/07	Necmettin Beyaz	1973
20	ATEŞ	18255/07	Burhanettin Ateş	1981
21	KILIÇ	18257/07	Zeki Kılıç	1984
22	AY	18260/07	Ayetullah Ay	1980
23	ÜLGER	18261/07	Mehmet Ülger	1969
24	ŞAHİN	18262/07	Baycan Şahin	1974
25	KARA	18263/07	Orhan Kara	1973
26	ÖZGÜN (2)	18284/07	Servet Özgün (No.2)	1980
27	ERDEM	18289/07	Adnan Erdem	1960
28	ÖZER	18290/07	Felat Özer	1980
29	ABİR	18291/07	Fatih Abir	1973
30	KARAASLANLI	18292/07	A. Latif Karaaslanlı	1978
31	KOÇ	18295/07	Mehmet Koç	1979
32	ERDOĞAN	18297/07	Mehmet Erdoğan	1971
33	TURAN	18298/07	İzzet Turan	1975
34	DİBEKLİ	18299/07	İbrahim Dibekli	1972
35	OĞUL	18300/07	Sedat Oğul	1985
36	ÇELİK	18302/07	Ömer Çelik	1984
37	YILMAZ	18304/07	Murat Yılmaz	1979
38	KÖYLÜOĞLU	18305/07	Muhsin Köylüoğlu	1982

39	GÜLTEKİN	18307/07	Mehmet Şirin Gültekin	1966
40	EMİRE	18309/07	Mehmet Sıddık Emire	1973
41	ELİK	18310/07	Rufai Elik	1985
42	AKGÖK	18311/07	Sedat Akgök	1974
43	CENGİZ	18313/07	Abdül Hakim Cengiz	1986
44	SAVAR	18314/07	Hacı Abbas Savar	1974
45	TÜRKAN	18315/07	Yılmaz Türkan	1977
46	GEZİCİ	18318/07	Mahmut Gezici	1981
47	KALIR	18521/07	Şeyhmus Kalır	1956
48	URTEKİN	18523/07	Burhan Urtekin	1984
49	İNANÇ	18525/07	Şeref İnanç	1963
50	USUN	18527/07	Serhat Usun	1987
51	ÇELİK	18480/07	Aydın Çelik	1970
52	YAKIŞAN	18710/07	Erdoğan Yakışan	1970
53	SAKÇI	20368/07	Orhan Sakçı	1970
54	DAŞ	20933/07	Hüseyin Daş	1966
55	BAŞARAN	21172/07	Mehmet Başaran	1985
56	EBEM	21173/07	Hasan Hüseyin Ebem	1961
57	YAŞAR	21174/07	Eyüp Yaşar	1973
58	ÖZCAN	21176/07	Bülent Özcan	1968