

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

SECOND SECTION

DECISION

Application no. 38674/07
Mehmet BOZKURT
against Turkey

The European Court of Human Rights (Second Section), sitting on 10 March 2015 as a Chamber composed of:

András Sajó, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 28 August 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mehmet Bozkurt, is a Turkish national, who was born in 1975 and is currently serving a prison sentence.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 25 January 2007 as the applicant, whilst in prison, was talking to his brother over the phone in Kurdish, the prison guards intervened, ending the conversation without any warning.

4. On 27 January 2007 the applicant filed a criminal complaint with the Erzurum Public Prosecutor and accused the prison authorities of abuse of their office.

5. Following an investigation, the Erzurum Public Prosecutor held that the applicant's brother's name was not included in the list of names of his relatives who did not speak Turkish. It was also noted that the applicant had only indicated the names of his mother and sister in that list. The prosecutor further recalled that pursuant to Rule 88 § 2 (p) of the Regulation on prison management and execution of sentences, in principle all telephone conversations had to be conducted in Turkish unless the convicted prisoner did not speak Turkish. Should the person with whom the prisoner wished to speak not understand Turkish, an inquiry would be carried out to verify that information. Accordingly, on 14 February 2007 the Erzurum Public Prosecutor decided that the prison authorities had acted in line with domestic legislation.

6. The applicant filed an objection with the Oltu Assize Court, seeking to have that decision quashed.

7. On 15 May 2007 the Oltu Assize Court upheld the decision of the Erzurum Public Prosecutor.

B. Relevant domestic law and practice

1. The Law on the execution of sentences and security measures

8. A full description of the domestic law and practice at the relevant time may be found in *Nusret Kaya and Others v. Turkey* (nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08, §§ 22-25, ECHR 2014 (extracts)).

2. Regarding the competency of the Compensation Commission established by Law no. 6384

9. A full description of the relevant domestic law may be found in *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, §§ 9-17, 27 May 2014.

COMPLAINTS

10. The applicant complained of an interference with his right to respect for his correspondence and / or private life on account of the fact that the prison authorities had restricted his telephone conversations in Kurdish. In this connection, he relied on Article 10 of the Convention.

11. Under Article 14 of the Convention, the applicant further maintained that he had been subjected to discrimination on account of his Kurdish origin.

THE LAW

12. Relying on Article 10 of the Convention, the applicant stated that his telephone conversation had been stopped by the prison authorities because he had spoken in Kurdish. He also stated under Article 14 of the Convention that he had been subjected to discrimination on account of his ethnic origin.

13. At the outset, the Court notes that the applicant's Article 10 complaint should be examined under Article 8.

14. The Court observes that it has already examined a similar application in the case of *Nusret Kaya and Others v. Turkey*, (nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08, §§ 60-62, ECHR 2014 (extracts)) and held that the practice of imposing on the applicants, who wished to use Kurdish in their telephone conversations with members of their families, a preliminary procedure for the purpose of ascertaining whether their relatives were genuinely unable to express themselves in Turkish, was not based on relevant and sufficient grounds in view of the ensuing restriction on the applicants' contact with their families. The Court thus found that the interference with the applicants' right to conduct their telephone conversations with their relatives in Kurdish could not be regarded as necessary and found a violation of Article 8 of the Convention.

15. The Court further reiterates that the purpose of the exhaustion rule, contained in Article 35 § 1 of the Convention, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Accordingly, this rule requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Vučković and Others v. Serbia* [GC], no. 17153/11, §§ 69-77, 25 March 2014; *Yıldız and Yanak v. Turkey* (dec.), no. 44013/07, §§ 25-27, 27 May 2014; *Aydemir and Others* (dec.), nos. 9097/05, 9491/05, 9498/05, 9500/05, 9505/05, and 9509/05, 9 November 2010).

16. The Court also observes that following the pilot judgment procedure applied in the case of *Ümmühan Kaplan v. Turkey*, (no. 24240/07, 20 March 2012), on 9 January 2013 the Turkish National Assembly enacted Law no. 6384 on the resolution, by means of compensation, of applications lodged with the Court concerning length of judicial proceedings and non-enforcement or delayed enforcement of judicial decisions. The competence of the Compensation Commission was subsequently enlarged by a decree adopted on 16 March 2014. The Court notes in this connection that the Compensation Commission has the competence to examine

complaints relating to the restriction of the right of detainees to communicate in a language other than Turkish (see *Yıldız and Yanak*, cited above, § 16).

17. The Compensation Commission is therefore empowered to award compensation to all individuals in line with the Court's practice (see *Turgut and others* (dec.), no. 4860/09, 26 March 2013; and *Demiroğlu v. Turkey* (dec.), no. 56125/10, 4 June 2013). The compensation awarded by the Compensation Commission will be paid by the Ministry of Justice within three months after the decision becomes final and will be exempt from any tax or charges. An appeal can be lodged against the Compensation Commission's decision with the Regional Administrative Court, which should decide on the case within three months.

18. The Court further notes that the applicant may bring an individual application to the Constitutional Court against the decision of the Regional Administrative Court (see *Ahmet Erol v. Turkey* (dec.), no. 73290/13, 6 May 2014).

19. All of the above considerations lead the Court to conclude that the applicant should seek redress for his convention complaints by using this new remedy under Law no. 6384.

20. Besides, the Court draws attention to the fact that should the compensation granted at the domestic level be insufficient in comparison with the amounts awarded by the Court in similar cases, it would be open to the applicant to claim that he was still a "victim" within the meaning of Article 34 of the Convention and to introduce a fresh application before the Court.

21. It follows that the application should as a whole be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 2 April 2015.

Stanley Naismith
Registrar

András Sajó
President