

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

SECOND SECTION

CASE OF AKSOY v. TURKEY

(Application no. 37546/08)

JUDGMENT

STRASBOURG

30 January 2018

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



In the case of Aksoy v. Turkey,

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

Paul Lemmens, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 9 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 37546/08) 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 a Turkish national, Mr Abdulkahar Aksoy ("the applicant"), on 7 July 2008.

2. The applicant was represented by Mr F. Ö. Erol, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 8 July 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and at the time of lodging his application he was serving his prison sentence in the Bolu F-type prison.

5. On 3 December 2007 the applicant wrote a letter to the Ministry of Justice, in which he had praised the imprisoned leader of the PKK, Abdullah Öcalan by using the honorific "sayın", meaning esteemed.

6. Pursuant to the Regulations on the administration of penitentiary institutions and the execution of sentences, the applicant was found guilty of breaching prison order by the Bolu F- type Prison Disciplinary Board (referred hereafter as "the Board").

7. On 12 December 2007 the applicant was sentenced to 11 days' solitary confinement on the orders of the Board, on account of his statements in the above mentioned letter.

8. On 25 December 2007 the Bolu Enforcement Judge rejected the applicant's objection.

9. On 15 January 2008 the Bolu Assize Court upheld the judgment of 25 December 2007.

II. RELEVANT DOMESTIC LAW

10. A description of the relevant domestic law may be found in *Gülmez v. Turkey* (no. 16330/02, §§ 13-15, 20 May 2008), *Aydemir and others* v. *Turkey* ((dec.), nos. 9097/05, 9491/05, 9498/05, 9500/05, 9505/05 and 9509/05, 9 November 2010), *Yalçınkaya and Others v. Turkey* (nos. 25764/09 and 18 others, §§ 12-13, 1 October 2013), *Çetin v. Turkey* ((dec.), no. 47768/09, §§ 7-15, 14 June 2016) and *Güngör v. Turkey* ((dec.), no. 14486/09, §§ 12-16, 4 July 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

11. The applicant complained that the disciplinary punishment imposed on him for using the honorific "sayın" (esteemed) when referring to the imprisoned leader of the PKK in his letter, had constituted an unjustified interference with his right to freedom of expression under Article 10 of the Convention.

12. The Government contested that argument.

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

14. The applicant complained that the disciplinary sanction imposed on him, which was based on the Regulations on the administration of penitentiary institutions and the execution of sentences, had infringed his rights under the Convention.

15. The Court has already examined a similar complaint in the case of *Yalçınkaya and Others v. Turkey* (nos. 25764/09 and 18 others, §§ 26-38, 1 October 2013) and found a violation of Article 10 of the Convention. It has also examined the present case and finds no particular circumstances which would require it to depart from its findings in the above-mentioned judgment.

16. In view of the foregoing, the Court holds that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

17. Relying on Article 3 of the Convention, the applicant complained that the solitary confinement that had been imposed on him as a disciplinary sanction had constituted an inhuman treatment.

18. The Government contested that argument.

19. The Court recalls that in the case of *Güngör v. Turkey* ((dec.), no. 14486/09, §§ 12 -16, 4 July 2017), which raised similar issues to those in the present case, it concluded that the 12 days' solitary confinement that had been imposed on the applicant as a disciplinary sanction, had not met the minimum threshold of severity required to fall within the scope of Article 3 of the Convention.

20. In the present application, the impugned solitary confinement sanction was eleven days. Having examined the case, the Court sees no reason to depart from its conclusions in the case of *Güngör*, cited above.

21. Accordingly, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It should therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant further complained under Article 6 of the Convention that while assessing the disciplinary proceedings, the domestic courts had delivered their decisions on the basis of the case files without holding hearings. He maintained that he had been deprived of his right to defend himself in person or through the assistance of a lawyer.

23. The applicant, based on the same facts, also invoked Articles 7 and 13 of the Convention. The Court has examined these complaints solely under Article 6 of the Convention.

24. Referring to the amendment in domestic law, the Government asked the Court to reject this part of the application for non-exhaustion of domestic remedies.

25. The Court notes that section 6 of the Law on Enforcement Judges was amended by "Law no. 6008 of 25 July 2010" (see § 27), so as to allow prisoners charged with disciplinary offences to defend themselves in person or through legal assistance. It further observes that the new law also provides a remedy for all prisoners previously charged with disciplinary offences: they had six months from the date of enactment of that law to lodge a fresh objection with the enforcement judge concerning their previous sentence. Such an objection would be examined by the enforcement judge in the light of the new procedure.

26. The Court has already examined that remedy and found it effective in respect of applications concerning prison disciplinary sanctions. In particular, it considered that the new remedy was accessible and provided reasonable prospects of success. In assessing the effectiveness of the new remedy, the Court had regard to sample decisions submitted by the Government, which indicated that following the lodging of objections, enforcement judges had re-evaluated the evidence in the case file and annulled the disciplinary sanctions in dispute, clearing the respective prisoners of all consequences of the offence (see *Aydemir and others* nos. 9097/05, 9491/05, 9498/05, 9500/05, 9505/05 and 9509/05, 9 November 2010; *Aksoy v.Turkey* (dec.), no. 8498/05 and 158 others, 11 January 2011; *Arslan v. Turkey* (dec.), no. 9486/05, 25 January 2011; *Güler v. Turkey* (dec.), no. 14377/05, 25 January 2011; and *Çetin v. Turkey* (dec.), no. 47768/09, 14 June 2016).

27. Considering that there are no exceptional circumstances capable of exempting the applicant from the obligation to exhaust domestic remedies, the Court concludes that he should have availed himself of the new remedy offered by Law no. 6008 of 25 July 2010.

28. This part of the application must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

29. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

30. The Court accepts that the applicant suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 2,500 under this head (see *Yalçınkaya and Others*, cited above, § 53).

B. Costs and expenses

31. The applicant also claimed EUR 2,000 in respect of lawyer's fees and EUR 1,000 for other costs and expenses incurred before the Court, such as stationery, photocopying and translations. In that connection, he submitted a cost-sheet drafted by his representative, and two receipts concerning the lawyer's fee.

32. 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 are reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 750 covering costs under all heads.

C. Default interest

33. 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. *Declares* the complaint under Article 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 750 (seven hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Paul Lemmens
Deputy Registrar	President