

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

SECOND SECTION

CASE OF ÇABUK v. TURKEY

(Application no. 7886/08)

JUDGMENT

STRASBOURG

16 January 2018

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



In the case of Çabuk v. Turkey,

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

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

Having deliberated in private on 19 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 7886/08) 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 Yusuf Çabuk ("the applicant"), on 7 February 2008.

2. The Turkish Government ("the Government") were represented by their Agent.

3. On 28 November 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 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); *Çetin v. Turkey* ((dec.), no. 47768/09, §§ 7-15, 14 June 2016); *Güngör v. Turkey* ((dec.), no. 14486/09, §§ 12–16, 4 July 2017); and *Yalçınkaya and Others v. Turkey* (nos. 25764/09 and 18 others, §§ 12-13, 1 October 2013).

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. 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.

24. The Court notes that section 6 of the Law on Enforcement Judges was amended by Law no. 6008, 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.

25. 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).

26. 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.

27. 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. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicant further complained of the fact that the Board's decisions had violated his right under Article 8 of the Convention.

29. The Government argued that the application should be rejected for non-exhaustion of domestic remedies as the applicant should apply to the Compensation Commission set up by Law no. 6384.

30. The Court 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 extended by two decrees adopted on 16 March 2014 and 9 March 2016 respectively. The Court notes in this connection that the Compensation Commission has now the competence to examine complaints concerning an alleged breach of an applicant's right to private and family life on account of the respective disciplinary sanctions imposed on detainees and convicted persons by the prison authorities.

31. The Court also notes that in the case of *Çetin*, cited above, it examined a similar complaint and declared the application inadmissible for non-exhaustion of domestic remedies.

32. In the light of the above considerations, the Court concluded that the applicant should seek redress for his complaint by applying to the Compensation Commission.

33. It follows that this part of the application should be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. The applicant did not submit a claim for just satisfaction within the time-limit set by the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

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;

Done in English, and notified in writing on 16 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President