

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

SECOND SECTION

CASE OF ÇİFTÇİ v. TÜRKİYE

(Application no. 27553/19)

JUDGMENT

STRASBOURG

24 September 2024

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



In the case of Çiftçi v. Türkiye,

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

Jovan Ilievski*, President*,
Diana Sârcu,
Gediminas Sagatys*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 27553/19) 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 6 May 2019 by a Turkish national, Mr Gürkan Çiftçi ("the applicant"), who was born in 1981, lives in İzmir and was represented by Mr İ.C. Akmarul, a lawyer practising in İzmir;

the decision to give notice of the complaints concerning Article 8 of the Convention to the Turkish Government ("the Government"), represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to dismiss the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 3 September 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the monitoring and recording of the applicant's meetings with his lawyer in prison and the monitoring of the documents exchanged between him and his lawyer, according to a legislative decree which had been adopted under the state of emergency declared in the aftermath of the attempted *coup d'état* on 15 July 2016. The application raises an issue under Article 8 of the Convention.

2. On 22 September 2016 the applicant was detained on charges of membership of the organisation described by the Turkish authorities as FETÖ/PDY ("*Fetullahist Terror Organisation/Parallel State Structure*") and placed in detention in the Menemen T-Type Closed Prison where he was pending trial at the time of the events.

I. DECISIONS OF THE DOMESTIC AUTHORITIES ORDERING THE MONITORING AND RECORDING OF THE APPLICANT'S MEETINGS WITH HIS LAWYER

3. On 23 July 2016 the İzmir Chief Public Prosecutor's Office stated that given the structure of the FETÖ/PDY, its communication methods and the fact that some members of that organisation had still not been captured, meetings with lawyers could endanger the security of the nation and penal institutions and were likely to be used for transmitting secret, open or encrypted messages among the members of the organisation, as well as orders from the organisation to its members in detention. The İzmir Chief Public Prosecutor's Office therefore considered that it was necessary to take certain measures under section 6 (1) (d) of Emergency Legislative Decree no. 667 (see *Canavcı and Others v. Türkiye*, nos. 24074/19 and 2 others, § 42, 14 November 2023, for relevant domestic law).

4. In this connection, the İzmir Chief Public Prosecutor's Office ordered all prison administrations in İzmir to have an officer to monitor meetings between those in detention for membership of the FETÖ/PDY and their lawyers during the state of emergency. On the same grounds, the İzmir Chief Public Prosecutor's Office also ordered the audio or video recording of such meetings by means of technical devices and the monitoring of documents exchanged between detainees and their lawyers.

5. On 7 October 2016 the İzmir Chief Public Prosecutor's Office renewed the above-mentioned restrictions by a decision with the same content.

6. On 30 May 2017 the Administration and Observation Board of the Menemen T-Type Closed Prison decided to monitor meetings between those in detention for membership of the FETÖ/PDY and their lawyers according to the decision of the İzmir Chief Public Prosecutor's Office.

7. As a result of the aforementioned measures, eighteen of the twenty meetings of the applicant with his lawyer were monitored and recorded by an officer during his time in prison until 15 March 2018.

II. PROCEEDINGS BROUGHT BY THE APPLICANT AGAINST THE MONITORING AND RECORDING OF THE MEETINGS WITH HIS LAWYER

8. The applicant applied to the Karşıyaka enforcement judge on an unspecified date against the measure of monitoring and recording meetings with his lawyer and requested it to be ceased.

9. On 7 August 2017 the Karşıyaka enforcement judge dismissed the objection on the grounds that the Administration and Observation Board's decision was in accordance with the law and regulations and was made pursuant to the decision of the İzmir Chief Public Prosecutor's Office dated 7 October 2016 (see paragraph 5 above).

10. On 16 August 2017 the applicant appealed against the decision of the Karşıyaka enforcement judge. The Karşıyaka 2nd Assize Court dismissed the appeal on 18 September 2017 considering that the decision was in accordance with the law and procedure.

11. Following the rejection of his appeal, on 24 November 2017 the applicant lodged an individual application with the Constitutional Court and complained of the measure of monitoring and recording meetings with his lawyer in prison, referring to the principle of confidentiality when meeting with one's lawyer in a democratic society. Invoking Article 8 of the Convention, the applicant alleged that the impugned measure breached his right to respect for his private life.

12. On 12 November 2018 the Constitutional Court examined the applicant's complaints under the right to a fair trial and declared them inadmissible for non-exhaustion of domestic remedies since the criminal proceedings against him were still ongoing at the stage of appeal. On 23 November 2018 the decision of the Constitutional Court was notified to the applicant.

III. COMPLAINTS

13. Relying on Article 8 of the Convention, the applicant claimed that the monitoring and recording of the meetings with his lawyer were in breach of the Convention. He further complained under Article 6 § 3 b) and c) of the Convention that he was not allowed to exchange documents with his lawyer without these documents being controlled by the prison administration.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Admissibility

14. The Government argued that the applicant had failed to exhaust domestic remedies. In this connection, they first noted that the applicant had failed to raise and explain in substance how the measure in question had violated his right to respect for his private life in his individual application before the Constitutional Court. Subsequently, they argued that the Constitutional Court had declared the applicant's individual application inadmissible for non-exhaustion of domestic remedies, carrying out its examination from the standpoint of the right to a fair trial and noting that the criminal proceedings against him had still been ongoing at the time when he had lodged his individual application. The Government further claimed that the applicant's complaint should be examined under the right to a fair trial

and declared inadmissible for non-exhaustion of domestic remedies in line with the reasoning of the Constitutional Court.

15. The Court notes in this regard that the applicant referred to the principle of confidentiality when meeting with one's lawyer and expressly stated in his application form to the Constitutional Court that the monitoring and recording of meetings with his lawyer had violated his right to respect for his private life (see paragraph 11 above). Accordingly, the Court considers that the applicant did indeed raise his complaint of a violation of his right to respect for his private life before the Constitutional Court. Therefore, reiterating its findings in *Canavcı and Others v. Türkiye* (nos. 24074/19 and 2 others, §§ 70-73, 14 November 2023), the Court dismisses the Government's plea of non-exhaustion of domestic remedies.

16. The Government further argued that the applicant had not suffered any significant disadvantage in relation to the monitoring and recording of his meetings in prison with his lawyer.

17. As stated in the case of *Canavcı and Others* (cited above, § 79), confidentiality of the lawyer-client relationship being a fundamental rule which can only be derogated from in exceptional cases, the Court cannot agree that, in the circumstances, the prolonged period during which the applicant's meetings were subjected to restrictions could constitute an "insignificant" disadvantage. The Government's objection concerning the alleged lack of a significant disadvantage must therefore be dismissed.

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

B. Merits

19. The applicant argued that the impugned measure of monitoring and recording his meetings with his lawyer had constituted a breach of his right to respect for his private life. The Government stated that Article 6 (1) (d) of Decree no. 667 constitutes the legal basis of the alleged interference and this provision complied with the requirements of clarity, accessibility and foreseeability.

20. In the present case it is not disputed between the parties that the monitoring and recording of the applicant's meetings with his lawyer was imposed as a measure by the prison authorities. Accordingly, the Court considers that there has been an interference with the applicant's right to respect for his private life for the purposes of Article 8 § 1, which covers the confidentiality of oral communications with his lawyer (compare *Canavcı and Others*, cited above, § 92). It is therefore incumbent on the Court to establish whether the impugned interference was justified under Article 8 § 2 of the Convention as being "in accordance with the law", as pursuing a

legitimate aim or aims, and as being "necessary in a democratic society" in pursuit of that aim or those aims.

21. The Court notes that the Karşıyaka enforcement judge, dismissing the applicant's objection in the decision dated 7 August 2017 (see paragraph 9 above), considered that the monitoring and recording of the applicant's meetings with his lawyer were ordered by the decision of the İzmir Chief Public Prosecutor's Office dated 7 October 2016, which decision, in turn, ordering the impugned measure (see paragraphs 4 and 5 above) had relied on section 6(1) (d) of Decree no. 667. Therefore, the latter legislation constitutes the legal basis of the monitoring and recording measure.

22. The Court has already concluded that the interpretation and application by the domestic authorities of section 6(1) (d) of Decree no. 667 – given that the discretion enjoyed by the public prosecutors in imposing restrictions on detainees' communication with their lawyers was not subject to any conditions, that the scope of that discretion and the manner of its exercise were not defined and that no other specific guarantees were provided in that regard – was liable to be arbitrary and incompatible with the requirement of lawfulness under Article 8 § 2 (ibid., §§ 101-106).

23. As to Article 15 of the Convention referred to by the Government in the context of the derogation deposed by the Government in relation to the emergency state declared in the aftermath of the attempted *coup d'état* on 15 July 2016, the Court considers that the absence of any safeguards against arbitrariness and abuse in section 6 (1) (d) of Emergency Legislative Decree no. 667 cannot be regarded as having been justified by the respondent State's derogation of 21 July 2016 under Article 15 of the Convention (ibid., § 107; compare also *Pişkin v. Turkey*, no. 33399/18, § 152, 153 and 229, 15 December 2020).

24. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to depart from its approach in *Canavcı and Others* (cited above).

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

II. OTHER COMPLAINT

26. Relying on Article 6 § 3 b) and c), the applicant also alleges that he was not allowed to receive documents from his lawyer or hand over documents to his lawyer, without these documents being subject to control by the prison administration. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

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27. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage. He also claimed EUR 2,500 in respect of costs and expenses incurred before the Court, including lawyer's fees. He did not submit any supporting document in respect of his claims.

28. The Government contested those claims.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 9,750 in respect of non-pecuniary damage, plus any tax that may be chargeable.

30. The Court considers that there is no call to award the applicant any sum for costs and expenses since no supporting documents were submitted in this respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention due to the measure of monitoring and recording of the applicant's meetings with his lawyer;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint concerning the monitoring of the documents that the applicant exchanged with his lawyer;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 9,750 (nine thousand seven hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President