

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

SECOND SECTION

CASE OF GÜNGÖRAY v. TÜRKİYE

(Application no. 33975/21)

JUDGMENT

STRASBOURG

26 August 2025

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



In the case of Güngöray v. Türkiye,

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

Jovan Ilievski*, President*,
Péter Paczolay,
Juha Lavapuro*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 33975/21) 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 18 June 2021 by a Turkish national, Mr Yusuf Güngöray ("the applicant"), who was born in 1978, lives in Istanbul and was represented by Mr K. Öztürk, a non-lawyer representative;

the decision to give notice of the complaint concerning Article 3 of the Convention to the Turkish Government ("the Government"), represented by their Agent at the time, Mr Hacı Ali Açıkgül, former 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 reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 1 July 2025,

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

SUBJECT MATTER OF THE CASE

1. The applicant suffers from certain chronic diseases including asthma and diabetes. The application concerns his conditions of detention in Silivri L-Type Prison where he was subjected to passive smoking.

2. On 9 May 2017 the applicant was placed in pre-trial detention on suspicion of establishing and leading a terrorist organisation ("Fetullahist Terror Organisation/Parallel State Structure", hereinafter "FETÖ/PDY"). On 12 May 2017 he was transferred to Silivri L-Type Prison where he was held in various cells. According to the applicant, following his last transfer to a new cell in November 2019, his chronic asthma deteriorated, mainly due to the number of smokers. He argued that while there had been a few smokers in the previous cells in which he had been held, in view of their number and the attention paid by them to his chronic disease, he had not encountered the same problems in those cells.

3. On 11 May 2020 the applicant requested, *inter alia*, the suspension of his sentence on health grounds and if that would not be possible, his transfer to other cells with a lower number of prisoners or to an individual cell, noting that the heavy smoking and use of bleach in the cell aggravated his asthma

and that he was in a particularly vulnerable category in the face of the COVID-19 pandemic.

4. On 5 June 2020 the Silivri Prison administration rejected his request, stating that he could not be transferred to the less crowded cells indicated by him as those cells were not suitable for his status as a prisoner. Moreover, the individual cells were being used for isolation purposes due to COVID-19.

5. Following an objection lodged by him against that decision, the Silivri enforcement judge requested information from the prison administration on whether the applicant could be transferred to one of the non-smoking cells. On 15 June 2020 the prison administration informed the enforcement judge that there was only one non-smoking cell in the prison available to prisoners convicted of FETÖ/PDY-related offences, which at the time accommodated twenty-eight prisoners. The administration further noted that substantial measures were being implemented in order to prevent the spread of the COVID-19 virus and that transfers between cells were reduced to a minimum to curb the circulation of prisoners within the institution. Lastly, the administration stated that the applicant's request would be reassessed when the risks related to COVID-19 decreased.

6. On 17 June 2020 the Silivri enforcement judge rejected the applicant's objection on the basis of the information provided by the prison administration. In doing so, the enforcement judge reiterated the administration's statement to the effect that the applicant's request would be reassessed when the situation changed. On 30 June 2020 the Silivri Assize Court rejected an objection lodged by the applicant against that decision.

7. On the same day, upon a request by the prison administration, the applicant was examined by a medical board of nine doctors at the Silivri Prison Hospital. The medical report issued by the board noted that the applicant suffered from allergic asthma and that it was recommended to hold him in a non-smoking cell as his complaints increased in a smoking environment.

8. On 3 March 2021 the Constitutional Court rejected an individual application lodged by the applicant, in which he had complained about the conditions of his detention in view of his health condition, for being manifestly ill-founded.

9. On 6 April 2021, on a request by the prison administration, the medical board at the Prison Hospital issued a fresh medical report, reiterating its previous recommendation that the applicant should be detained in a non-smoking cell.

10. On 17 June 2021 the applicant was released on probation.

11. The applicant complained that his asthma had deteriorated following his transfer to a new cell in November 2019, mainly due to other inmates smoking heavily, and that the domestic authorities had rejected his requests to be transferred elsewhere without having any regard to his health condition. In that regard, he argued that the enforcement judge and the Assize Court had

rejected his objections solely on the basis of the information provided by the prison administration, which, according to him, had not reflected the truth as there had been other transfers between cells in the meantime. He relied on Articles 1, 2 and 3 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The Court considers at the outset that the applicant's complaint under Articles 1, 2 and 3 of the Convention concerning his conditions of detention, in view of his exposition to passive smoking despite his chronic diseases, falls to be examined under Article 3 of the Convention alone.

A. Admissibility

13. The Government argued that the application should be rejected for non-exhaustion of domestic remedies as the applicant, who had lodged the present application following his release from prison, had not lodged an action for a full remedy before the administrative courts which was an effective remedy in cases of service fault by the State authorities. In that respect, they referred to case-law examples where the administrative courts had awarded the claimants compensation on account of certain physical conditions and medical negligence in prisons.

14. Citing the Court's relevant case-law, the applicant argued that non-exhaustion of domestic remedies could not be held against applicants if the competent authority has nevertheless examined the substance of their claim. As the Constitutional Court had rejected his case as being manifestly ill-founded, he should be considered to have exhausted the domestic remedies. He stated that in any event, the full remedy action before the administrative courts could not be considered as effective, as the examination of those courts were based on the notion of service fault, which could not always be established in cases regarding conditions of detention.

15. The Court already concluded in *İlerde and Others v. Türkiye* (nos. 35614/19 and 10 others, § 164, 5 December 2023) that a compensation claim before the administrative courts could not be considered effective with regard to claims concerning conditions of detention involving overcrowding in Turkish prisons. In that regard, the Court found that the administrative courts appeared to make a distinction between fault-based liability and no-fault liability, whereas poor conditions of detention were not necessarily due to the failings of individual officials, but were often the product of more wide-ranging factors (ibid.). The Court considers that the same considerations apply with regard to the conditions of detention in the present case as well. Moreover, given that the domestic courts, including the Constitutional Court,

considered the applicant's complaint about the conditions of his detention in view of his health condition as being manifestly ill-founded, the Court considers that a compensation claim before the administrative courts was bound to fail (compare also *İlerde and Others*, cited above, § 165). It therefore rejects the Government's objection and finds that a full remedy action before the administrative courts cannot be considered effective in the circumstances of the present case.

16. 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

17. The applicant argued that the State authorities had failed to comply with their duty to secure his health and well-being by refusing to transfer him to another cell where he would not be exposed to cigarette smoke.

18. The Government noted that the applicant had been held in a standard cell which had been designed to accommodate forty-two prisoners and had its own outdoor yard and that the only non-smoking cell available to his category of prisoners also had the same physical conditions. According to the relevant legislation, smoking was actually prohibited in all indoor areas and prisoners could only smoke in a limited manner in certain designated places. Various measures had been taken in Silivri Prison within the context of the COVID-19 pandemic and the applicant had been provided with extensive medical care during the course of his detention. Moreover, he had been placed in a quarantine cell each time he had been taken to a hospital during the pandemic, and his request to change his cell had been rejected to protect both him and the other prisoners and prison personnel from the threat posed by COVID-19. Noting that the applicant's health had not deteriorated during his detention, the Government considered that there was no breach of Article 3.

19. The general principles concerning the conditions of detention of prisoners suffering from health issues and the effects of passive smoking were summarised in *Elefteriadis v. Romania* (no. 38427/05, §§ 47-48, 25 January 2011, with further references). In particular, the State must ensure that, given the practical demands of imprisonment, the health and well-being of detained persons are adequately secured. This may involve an obligation on the part of the State to take measures to protect a prisoner from the harmful effects of passive smoking when, in the light of medical examinations and the recommendations of the doctors, the prisoner's state of health so requires (ibid.).

20. In determining whether, in the present case, the applicant's health was adequately secured in detention, the Court notes that it is not contested by the parties that the applicant, who suffers from allergic asthma, was detained in a cell together with smoking prisoners between November 2019 and

June 2021, that is, for a period of one year and seven months. Although the Government stated that smoking was actually prohibited in closed areas in the prison (compare also *Florea v. Romania*, no. 37186/03, § 62, 14 September 2010), they did not challenge the fact that the applicant was detained in a cell with smokers, a fact which could also be inferred from the prison administration's and the enforcement judge's decisions regarding the applicant's possible transfer to a non-smoking cell. Nor was the applicant's health situation in dispute between the parties throughout the period in question.

21. The Court observes that the applicant's complaint before the domestic authorities regarding the deterioration of his health condition following his transfer to the cell at issue in November 2019 and his request to be transferred to other cells did not yield any results (contrast *Stoine Hristov v. Bulgaria (no. 2)*, no. 36244/02, §§ 43-45, 16 October 2008). In rejecting his request, the enforcement judge relied on the information provided by the prison administration and found that the applicant's status as a prisoner did not allow for his transfer to the less crowded cells requested by him. Nor could he be transferred to individual or non-smoking cells in view of the measures taken within the context of the COVID-19 pandemic. In that regard, the Court takes account of the specific circumstances resulting from the pandemic when the applicant lodged his request in May 2020 and considers that the authorities could not be criticised for having acted in line with the precautionary measures in force at the time. That being so, it notes that neither the domestic authorities nor the Government clarified the reasons preventing them from transferring the applicant to the non-smoking cell – or to a less crowded cell as requested by him – in compliance with those measures, namely, by placing him in a quarantine cell, as was done following each of his transfers to the hospital (see paragraph 18 above).

22. The Court also observes that according to the information provided by the prison administration upon the Silivri enforcement judge's request, the only non-smoking cell in the prison available to prisoners convicted of FETÖ/PDY-related offences accommodated twenty-eight prisoners at the time (see paragraph 5 above). The Government stated that that non-smoking cell was designed to accommodate forty-two people (see paragraph 18 above). Accordingly, the non-smoking cell in question was not overcrowded.

23. It is true that the medical reports recommending the applicant's detention in a non-smoking cell were obtained just after the decision of the Assize Court of 30 June 2020 regarding his request for a cell change. However, the Court notes that the applicant's health situation does not appear to have been unknown or disputed by the prison authorities before that date. Moreover, it cannot but note that, although those medical reports had been obtained upon the prison authorities' request (see paragraphs 7 and 9 above), they were not taken into account by those authorities during the remainder of the applicant's detention, which had continued for another year following the

first medical report (compare *Florea*, cited above, § 61). In that regard, the Court underlines the prison administration's statement – which was also reiterated by the enforcement judge – that the applicant's situation would be reassessed when the COVID-19-related risks decreased (see paragraphs 5 and 6 above) and finds that such a reassessment was not carried out despite the change in the circumstances and the medical reports drawn up in respect of the applicant.

24. Accordingly, taking account of the applicant's specific health condition, the conclusions of the medical reports as to the necessity of his detention in a non-smoking cell, and the prison authorities' commitment to reassessing his transfer once the situation changed, the Court is not convinced that the logistical difficulties adduced by the authorities rendered his transfer to another cell impossible and that they had taken all required steps to that effect, in particular during the period following the initial stages of the pandemic. Therefore, they cannot be considered to have complied with their duty to ensure the applicant's health and well-being (compare *Elefteriadis*, cited above, § 50).

25. In view of the foregoing, the Court finds that the applicant's continued detention in a cell with smokers amounted to degrading treatment contrary to Article 3 of the Convention. There has therefore been a violation of that provision.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,886 in respect of costs and expenses incurred before the Court.

27. The Government contested those claims, finding them unsubstantiated and excessive.

28. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand 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 26 August 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President