

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

SECOND SECTION

CASE OF HALLAÇOĞLU v. TÜRKİYE

(Application no. 24514/19)

JUDGMENT

STRASBOURG

3 September 2024

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



In the case of Hallaçoğlu 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. 24514/19) 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 8 January 2019 by a Turkish national, Mr Ruhi Hallaçoğlu ("the applicant"), who was born in 1975 and lives in Adana;

the decision to give notice of the complaint 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 9 July 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the monitoring by prison authorities of the documents exchanged between the applicant and his lawyer during their meetings in prison.

2. On 8 December 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. DECISION OF THE DOMESTIC AUTHORITY ORDERING THE MONITORING OF DOCUMENTS EXCHANGED IN MEETINGS BETWEEN DETAINEES AND THEIR LAWYERS

3. At the request of the Osmaniye chief public prosecutor's office, on 6 January 2017 the Osmaniye Second Magistrate's Court (*Osmaniye İkinci Sulh Ceza Hakimliği*) decided to carry out monitoring in the Osmaniye First and Second Closed Prisons of documents exchanged between the detainees and their lawyers (see *Mehmet Demir v. Türkiye* [Committee], no. 55569/19,

§§ 3-4, 24 October 2023 for details). The domestic court based its decision on section 59 (5) of Law no. 5275 on the enforcement of sentences and preventive measures (hereinafter "Law no. 5275"), as amended by Article 6 of Emergency Legislative Decree no. 676 adopted in the framework of the state of emergency declared in the aftermath of the attempted *coup d'état* on 15 July 2016 (see *Mehmet Demir,* cited above, §§ 11 and 12 for relevant domestic law).

II. PROCEEDINGS BROUGHT BY THE APPLICANT AGAINST THE MONITORING OF DOCUMENTS EXCHANGED WITH HIS LAWYER

4. On 27 April 2017 the applicant applied to the Osmaniye enforcement judge against the measure of monitoring the documents exchanged with his lawyer and requested it be ceased.

5. On 18 July 2017 the Osmaniye enforcement judge dismissed the objection on the grounds of lack of jurisdiction since the Osmaniye Magistrate's Court, which had given the order of monitoring, was competent in this regard.

6. On 28 July 2017 the applicant appealed against the decision of the Osmaniye enforcement judge. The Osmaniye 2nd Assize Court dismissed his appeal on 15 September 2017 considering that the decision was in accordance with the law and procedure.

7. Following the rejection of his appeal, on 2 October 2017 the applicant lodged an individual application with the Constitutional Court, complaining of the measure consisting of monitoring the exchange of documents in meetings with his lawyer.

8. On 18 December 2018 the Constitutional Court declared the applicant's complaints under the right to respect for his private and family life inadmissible for being manifestly ill-founded on the grounds that there was no interference with, or violation of fundamental rights and freedoms guaranteed by the Constitution. On 24 December 2018 the decision of the Constitutional Court was notified to the applicant.

9. The applicant asserted that the monitoring of the documents exchanged between him and his lawyer during their meetings in prison was in breach of his right to communicate privately with his lawyer and therefore had constituted a violation of Article 8 of the Convention.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S STRIKE-OUT REQUEST

10. The Government requested the Court to strike the application out of its list under Article 37 § 1 (a) of the Convention, arguing that the applicant had not had authorisation to represent himself in this application.

11. The Court notes that the President of the Section had granted the applicant authorisation to represent himself.

12. In the light of the foregoing, the Court rejects the Government's strike-out request.

II. ADMISSIBILITY

13. The Government argued that the applicant had failed to exhaust domestic remedies. In this regard, they first noted that the enforcement judge had rejected the applicant's objection to the impugned measure on the grounds of lack of jurisdiction. They also argued that the applicant had failed to submit his complaints concerning a breach of his right to respect for his private life before the Constitutional Court. The Government further argued that the applicant had not complained before the domestic authorities about the continued practice of monitoring of the documents exchanged between him and his lawyer after the state of emergency was lifted.

14. The Court notes that the applicant's complaint concerns the measure of the monitoring of the documents exchanged between him and his lawyer during their meetings in prison during the state of emergency since the relevant decision relating to the litigious measure was adopted in the framework of the state of emergency (see paragraph 3 above). The Court further notes that the applicant presented in his individual application before the Constitutional Court a complaint concerning the measure of monitoring the exchange of documents in meetings with his lawyer (see paragraph 7 above). The Constitutional Court in fact examined the applicant's complaint under Article 8 of the Convention and found it inadmissible for being manifestly ill-founded, but not for non-exhaustion of domestic remedies (see paragraph 8 above). The Court reiterates in this regard that it would be unduly formalistic to require an applicant to avail himself of a remedy which even the highest court of the country had not obliged him to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 116-118, ECHR 2007-IV). Therefore, the Government's above-mentioned objections must be dismissed.

15. In addition, the Government argued that the applicant had failed to exhaust domestic remedies in respect of his rights of defence due to the fact that the criminal proceedings brought against the applicant were still pending.

16. The Government further disputed the victim status of the applicant under Article 8 of the Convention, arguing that he had not specifically explained how he had victim status because of the inspection of documents in his meetings with his lawyers.

17. As far as the latter two objections are concerned, the Court reiterates its findings in *Mehmet Demir* (cited above, §§ 14-16) in which it had rejected the same objections and therefore dismisses these two objections also in the present case.

18. Lastly, the Government emphasised that the derogation under Article 15 of the Convention had still been in force in Türkiye at the material time and that the application should therefore be dismissed as manifestly ill-founded.

19. The Court considers that the arguments put forward by the Government in this connection raise issues which require an examination of the merits of the complaint under Article 8 of the Convention, rather than an examination of its admissibility (see, *mutatis mutandis*, *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, § 45, 3 October 2023 and the references therein).

20. 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.

III. MERITS

21. The applicant argued that the impugned measure of monitoring the documents exchanged with his lawyer had constituted a breach of his right to respect for his private life under Article 8 of the Convention. The Government stated that there had not been any interference with the applicant's right to private life and even if the impugned measure had amounted to an interference, it would still have had a legal basis, that is to say, Article 59 (5) of Law no. 5275, and that this provision complied with the requirements of clarity, accessibility, and foreseeability.

22. The general principles concerning the right to confidential communication with a lawyer have been summarised in *Altay v. Turkey (no. 2)* (no. 11236/09, §§ 49-52, 9 April 2019). The Court has also set out the principles on the monitoring of correspondence between prisoners and their lawyers in *Eylem Kaya v. Turkey* (no. 26623/07, §§ 41-48, 13 December 2016).

23. In the present case, it is not disputed between the parties that the monitoring of the documents exchanged between the applicant and 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 correspondence with his lawyer. 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.

24. Turning to the circumstances of the case, the Osmaniye enforcement judge, dismissing the applicant's objection in its decision dated 18 July 2017 (see paragraph 5 above), considered that the monitoring of the documents exchanged between the applicant and his lawyer was ordered by the Second Magistrate's Court's decision dated 6 January 2017. The Court notes that the decision ordering the impugned measure (see paragraph 3 above) was adopted according to section 59 (5) of Law no. 5275. The Court therefore considers that section 59 (5) of Law no. 5275, as amended by Article 6 of Emergency Legislative Decree no. 676, constitutes the legal basis of the monitoring measure.

25. The Court has already concluded that the interpretation and application by the domestic courts of the impugned legislation was wide and vague and that such an extensive interpretation and application of the relevant domestic provision did not comply with the Convention requirements of foreseeability and thus lawfulness (compare also *Altay*, cited above, § 57, and *Mehmet Demir*, cited above, §§ 22-25).

26. 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 *Mehmet Demir* (cited above). Moreover, for the reasons set out in more detail in that judgment in support of that conclusion, it considers that the measure at issue cannot be regarded as having been strictly required by the particular circumstances of the state of emergency (ibid., § 26; compare also *Pişkin v. Turkey*, no. 33399/18, §§ 152, 153 and 229, 15 December 2020).

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 20,000 euros (EUR) for just satisfaction without specifying whether it was for pecuniary or non-pecuniary damage or for his costs and expenses. He did not submit any supporting document in respect of his claim.

29. The Government contested this claim arguing that the applicant failed to duly specify the type of his compensation claim, deeming it unsubstantiated and excessive, where the Court considers this claim as for non-pecuniary damages.

30. The Court rejects the applicant's claim regarding pecuniary damage since no supporting documents or specific claims were submitted. However, it awards the applicant 2,600 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable.

31. In the absence of any documentation in support of the claim regarding costs and expenses, the Court rejects this claim in its entirety.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of its list of cases under Article 37 § 1 of the Convention;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,600 (two thousand six hundred 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 3 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President