

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

SECOND SECTION

CASE OF ÖZDEMİR v. TÜRKİYE

(Application no. 38351/20)

JUDGMENT

STRASBOURG

10 June 2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Özdemir v. Türkiye,

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

Péter Paczolay*, President*,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 38351/20) 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 19 August 2020 by a Turkish national, Mr Kamil Özdemir ("the applicant"), who was born in 1977 and is detained in Çanakkale;

the decision to give notice of the complaint concerning Article 8 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 the remainder of the application inadmissible;

the Government's observations;

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

Having deliberated in private on 20 May 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the interception by the prison administration of a letter sent by his wife to the applicant while he was in detention.

2. At the time of the events giving rise to the present application, the applicant was detained in Çanakkale Prison on charges of membership of an armed terrorist organisation described by the Turkish authorities as the "*Fetullahist Terror Organisation/Parallel State Structure*" ("FETÖ/PDY").

3. On 14 December 2018 the Disciplinary Board of the Çanakkale prison administration examined a letter sent by the applicant's wife. The letter contained a petition addressed to the Çanakkale Assize Court and a printout of an eighteen-page annex to it, some parts of which were in English. The Board refused to deliver the letter to the applicant on the grounds that the printed annex did not qualify as an official document, that its origin could not be verified, and that they could not ascertain what the content written in English was.

4. On 11 January 2019 another letter sent by the applicant's wife arrived at the prison. The Disciplinary Board of the Çanakkale prison administration decided not to deliver the letter to the applicant, on the grounds that the letter contained a handwritten copy of the document that the applicant's wife had

previously sent annexed to the above-mentioned letter of 14 December 2018, which had been intercepted previously by the prison administration.

5. The applicant challenged the latter decision before the Çanakkale Enforcement Judge. The court dismissed his objection on 4 February 2019 on the grounds that the Disciplinary Board's decision was in accordance with the law and the prescribed procedure.

6. The applicant appealed against that decision. The Çanakkale First Assize Court dismissed his appeal on the grounds that the decision of the Enforcement Judge was in accordance with the law and the prescribed procedure.

7. The applicant lodged an individual application with the Constitutional Court, relying on the right to respect for his correspondence and the right to a fair trial, complaining in particular that the courts had not given reasons in its decision.

8. On 8 March 2020 the Constitutional Court declared the applicant's individual application inadmissible as being manifestly ill-founded. It held that there had been no interference with any of the rights or freedoms protected by the Constitution or, even if there had been any interference, it would not amount to a violation of these rights.

9. The applicant complained under Article 8 of the Convention that his right to respect for his correspondence had been violated by the interception of the letter sent to him by his wife.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

A. The Government's preliminary objections

10. The Government submitted that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They argued in that connection that he had neither experienced any financial disadvantage because of the disputed interception of the letter nor alleged any non-financial disadvantage. They further contended that the applicant had had access to various means of communication with the outside world during his time in prison and had undertaken correspondence numerous times before and after the date on which the letter in question had been withheld. There had been no blanket ban preventing the applicant from sharing and receiving information and the interception of one letter did not meet the threshold of significant disadvantage.

11. The Government further contended that the applicant had not exhausted domestic remedies for the interception of the letter of 14 December 2018 (see paragraph 3 above), claiming that the interception of that letter was the substance of the applicant's complaint.

12. The Government also alleged an abuse of the right to individual application before the Court, claiming that the letter of 11 January 2019 had had the same content as the previous letter of 14 December 2018 and that the applicant had abused the process by challenging the letter of 11 January 2019 instead of the letter of 14 December 2018, in respect of which the statutory time-limit for legal action had expired.

13. The Government further contested the applicant's victim status, alleging that the intention had been that the content of the letter would be used by the applicant in the proceedings brought against him but the applicant had failed to raise the issue during the criminal proceedings before the assize court.

14. The Government also argued that the application was manifestly ill-founded, as the applicant's arguments had been duly examined by the national judicial authorities.

B. The Court's assessment

15. Regarding the objection of the lack of a significant disadvantage, the Court observes that it has previously dismissed a similar objection in *Halit Kara v. Türkiye* (no. 60846/19, §§ 29-31, 12 December 2023) and finds no reason to reach a different conclusion in the present case, which concerns the interception of a letter sent by the applicant's wife, that is, a close family member.

16. As for the objection regarding the non-exhaustion of domestic remedies, the Court observes that the applicant's complaint in the present case is clearly about the proceedings initiated in respect of the letter of 11 January 2019, in respect of which he duly exhausted the domestic remedies, and not about the letter of 14 December 2018, and therefore dismisses that objection.

17. As to the objection concerning the abuse of the right of application, the Court refers to the general principles it has previously set out on this matter (see *Zhdanov and Others v. Russia*, nos. 12200/08 and 2 others, §§ 79-81, 16 July 2019). In principle any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered as an abuse of the right of application (ibid., § 81). The Court finds that the legal remedies the applicant has sought before bringing his complaint before the Court cannot be considered to be manifestly contrary to the purpose of the right of individual application as provided for in the Convention, nor do they impede the proper functioning of the Court or the proper conduct of the proceedings before it. It therefore dismisses this objection as well.

18. When it comes to the objection that the applicant does not have victim status, the Court observes that the present application concerns an alleged

violation of the applicant's right to respect for his correspondence under Article 8 by the interception of a letter sent by his wife. He does not raise the impact of not being able to use the content of the letter in question on the criminal proceedings against him. Therefore, the Court dismisses also this objection.

19. 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.

II. MERITS

20. The applicant alleged that the refusal by the prison administration to give him his wife's letter of 11 January 2019 constituted a violation of his right to respect for his correspondence.

21. The Government contended that there had been no interference with the applicant's right to respect for his correspondence, asserting that the handwritten content of the letter lacked the characteristics of an official document, which had prevented verification of its source. They argued that the disputed measure had had a legal basis and pursued the legitimate aim of ensuring the security of the prison and the protection of the rights of convicts and detainees. They further argued that the dissemination of publications from outside organisations could cause adverse incidents and undermine order and discipline in the prison and the seizure of the letter in question had therefore been necessary in a democratic society. They also claimed that the national authorities had struck a fair balance between the applicant's rights and the aims pursued by providing relevant and sufficient reasons for intercepting the letter.

22. The Court considers that the interception of the letter sent to the applicant by his wife amounted to an interference with the applicant's right to respect for his correspondence (compare also *Halit Kara*, cited above, § 48). It further notes that it is not disputed by the parties that the interference was prescribed by law (see for the content of Section 68 of Law no. 5275 on the enforcement of sentences and preventive measures, which provides a legal basis for such measures , *Halit Kara*, cited above, § 14), and can be considered to pursue the legitimate aim of prevention of disorder or crime (compare also *Halit Kara*, cited above, § 50).

23. As to the necessity of the interference, the Court notes that the principles applicable in cases of interference with prisoners' correspondence have been summarised in *Halit Kara* (cited above, §§ 43-47). In particular, some measure of control over prisoners' correspondence is called for, and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment. In assessing the permissible extent of such control in general, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the

outside world should, however, not be overlooked. Furthermore, where measures interfering with prisoners' correspondence are taken, it is essential that reasons be given for the interference, such that the applicant and/or his or her advisers can satisfy themselves that the law has been correctly applied to him or her and that decisions taken in the case are not unreasonable or arbitrary (ibid., §§ 45-46).

24. In the case of *Halit Kara*, the circumstances of which bear similarities to those in the present case, the Court found that the domestic authorities had not properly balanced the competing interests at stake in order to prevent an arbitrary interference with the applicant's right to respect for his correspondence. Accordingly, it had not been demonstrated that the reasons adduced by the national authorities to justify the refusal to dispatch a letter were relevant and sufficient and that the disputed measure was thus necessary in a democratic society (*ibid*., §§ 51-59).

25. The present case raises the same issue. Indeed, having examined the domestic authorities' decisions in the present case (see paragraphs 4-8 above), the Court finds that it is not possible to discern from them whether the interception of the letter sent to the applicant was necessary in order to achieve the legitimate aim pursued by the authorities to prevent disorder or crime. In particular, the domestic authorities do not provide an explanation of how the interception of the letter could have been justified by its content in conformity with the principles to be taken into account concerning the interception of letters sent to prisoners (see in this regard *Halit Kara,* cited above, §§ 52-55).

26. The Court therefore finds that the domestic authorities did not give relevant and sufficient reasons for the refusal to deliver the letter in question to the applicant. It accordingly considers that the interference with the applicant's right to respect for his correspondence was not "necessary in a democratic society".

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant did not submit a claim for just satisfaction within the prescribed time-limit. 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 application admissible;

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

Done in English, and notified in writing on 10 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Péter Paczolay President