

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

SECOND SECTION

CASE OF ÖZTÜRK v. TÜRKİYE

(Application no. 50205/20)

JUDGMENT

STRASBOURG

17 March 2026

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



In the case of Öztürk v. Türkiye,

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

Oddný Mjöll Arnardóttir*, President*,
Gediminas Sagatys,
Juha Lavapuro*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 50205/20) 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 16 October 2020 by a Turkish national, Mr Bahtiyar Öztürk ("the applicant"), who was born in 1983, is detained in İzmir and was represented by Mr K. Öztürk, a non-lawyer representative;

the decision to give notice of the complaint concerning Article 10 of the Convention to the Turkish Government ("the Government"), represented by their Agent, Mr Abdullah Aydın, 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 parties' observations;

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

Having deliberated in private on 17 February 2026,

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

SUBJECT MATTER OF THE CASE

1. At the material time, the applicant was held in the Menemen Closed Penal Institution ("the prison") on account of his conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

2. On 12 March 2019 the applicant had a telephone conversation with his wife, who was detained at the İzmir Closed Penal Institution for Women at the material time. During the call, the applicant's wife stated: "I hope none of them die without experiencing what they made us go through". The applicant replied: "I hope they cannot even die, pack of dogs".

3. On 11 April 2019 a disciplinary investigation was instituted in respect of the applicant on account of his above-mentioned statement.

4. On 19 April 2019 the Disciplinary Board of the prison administration imposed on the applicant a sanction of five days' solitary confinement for the offence of "insulting or threatening prison officers", in accordance with

section 44 (2) (j) of Law no. 5275 on the enforcement of sentences and preventive measures ("Law no. 5275"). The Disciplinary Board indicated that the applicant had deliberately acted in breach of the law and prison regulations for the maintenance of order, security, and discipline, that his behaviour had set a bad example for other detainees, and that he had endangered the security and proper functioning of the institution.

5. On 29 April 2019 the applicant challenged the Disciplinary Board's decision before the Karşıyaka enforcement judge.

6. On 17 May 2019 the Karşıyaka enforcement judge dismissed the objection on the grounds that, under section 26 of Law no. 5275, convicted persons and detainees had the obligation to act in compliance with the regime governing the execution of sentences, and that the applicant had deliberately committed the relevant disciplinary offence provided for in section 44(2)(j) of Law no. 5275. The applicant appealed against that decision to the Karşıyaka 1st Assize Court.

7. On 30 May 2019 the Karşıyaka 1st Assize Court dismissed the applicant's appeal, holding that he had insulted the honour and dignity of prison officers and that the decision of the Karşıyaka enforcement judge had therefore been in accordance with the law.

8. The applicant lodged an individual application with the Turkish Constitutional Court, claiming, among other things, a violation of his right to respect for his correspondence owing to the sanction of solitary confinement imposed on him for the statement he had made in a telephone conversation with his wife.

9. On 29 July 2020 the Constitutional Court rejected the application as being manifestly ill-founded, stating that either there had been no interference with the applicant's fundamental rights and freedoms enshrined in the Constitution or any interference had not entailed a violation of his rights.

10. Relying on Articles 8 and 10 of the Convention, the applicant complained before the Court about the disciplinary sanction imposed on him.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

11. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), finds that the complaint at issue falls to be examined solely under Article 10 of the Convention.

A. Admissibility

12. The Government raised two objections. They stated first that the expressions used by the applicant had amounted to terrorist propaganda and

ran counter to Article 17 of the Convention. They contended that the applicant's complaint was therefore incompatible *ratione materiae* with the provisions of the Convention.

13. The Government also submitted that the application was manifestly ill-founded, since the national judicial authorities had duly examined the applicant's complaints in compliance with procedural rules and there was no reason to call into question their findings.

14. The applicant contested the Government's arguments.

15. With regard to the objection concerning the Court's *ratione materiae* jurisdiction, the Court considers that the impugned statement by the applicant did not aim at inciting violence and hatred or reveal an intent to destroy the rights and freedoms protected by the Convention, despite its controversial nature (see also *Durukan and Birol v. Türkiye*, nos. 14879/20 and 13440/21, §§ 46-47, 3 October 2023, with further references). It therefore dismisses that objection.

16. When it comes to the objection that the applicant's complaint was manifestly ill-founded, the Court considers that the arguments put forward by the Government in that connection raise issues that require an examination of the complaint on the merits (ibid., § 45; see also *Mehmet Çiftçi and Suat İncedere v. Turkey*, nos. 21266/19 and 21774/19, § 15, 18 January 2022).

17. The Court notes that the application 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

1. The parties' submissions

18. The applicant submitted that he had been subject to a disciplinary sanction of solitary confinement for five days for defaming prison officers during a telephone call with his wife, arguing that that sanction had constituted an unjustified interference with his right to freedom of expression under Article 10 of the Convention. He further argued that the interference in question had not been in accordance with the law and had been arbitrary.

19. The Government contended that there had been no interference with the applicant's freedom of expression, emphasising that the disciplinary sanction in dispute had aimed at maintaining order and discipline in prison and reintegrating the applicant into society. They added that the disciplinary measure had had a legal basis in section 44 (2) (j) of Law no. 5275. They also argued that it had pursued the legitimate aim of establishing discipline and eliminating indiscipline and the possibility of harm. They further submitted that it had been proportionate and necessary in a democratic society for the prevention of crime and terrorism, having regard to the nature of the offence forming the basis for the applicant's imprisonment.

2. The Court's assessment

20. The Court considers that the disciplinary sanction imposed on the applicant for the statement he made during a telephone conversation with his wife constituted an interference with his right to freedom of expression (see, *mutatis mutandis*, *Mehmet Çiftçi and Suat İncedere*, cited above, § 19). It further accepts that the interference was prescribed by law, namely section 44 (2) (j) of Law no. 5275, and pursued a legitimate aim for the purposes of Article 10 § 2, namely the prevention of disorder or crime.

21. As to the necessity of the interference, the Court considers that, in order to assess whether the necessity of the impugned sanction was established convincingly in the present case, it should focus mainly on the reasons given by the national courts in examining the applicant's application for judicial review of the sanction (see *Kula v. Turkey*, no. 20233/06, § 49, 19 June 2018).

22. The Court observes that the Disciplinary Board indicated that the applicant had deliberately acted in breach of the law and prison regulations for the maintenance of order, security, and discipline, that his behaviour had set a bad example for other detainees, and that he had endangered the security and proper functioning of the institution. The Karşıyaka enforcement judge stated that convicted persons and detainees were obliged under section 26 of Law no. 5275 to act in compliance with the regime governing the execution of sentences, and that the applicant had deliberately committed the disciplinary offence of "insulting or threatening prison officers" under section 44 (2) (j) of Law no. 5275. The Karşıyaka 1st Assize Court, in examining the applicant's appeal, simply held that he had insulted the honour and dignity of prison officers, an act which was contrary to the law (see paragraphs 4, 6 and 7 above). The Court also notes that the Constitutional Court concurred, in general terms, that either there had been no interference with the applicant's fundamental rights and freedoms enshrined in the Constitution or any interference had not entailed a violation of his rights (see paragraph 9 above).

23. The Court notes that it examined similar issues in a case where the applicants had received a disciplinary sanction in prison and the domestic courts had not provided relevant and sufficient reasons in their decisions to justify the impugned interference with the applicants' right to freedom of expression (see *Mehmet Çiftçi and Suat İncedere*, cited above, § 21). The Court found in that case that the national authorities had not adequately balanced, in accordance with the criteria established by its case-law, the applicants' right to freedom of expression against the legitimate aims pursued, and it concluded that there had been a violation of Article 10 (ibid., §§ 21-23).

24. In the present case, the Court has not found any fact or argument capable of persuading it to reach a different conclusion. Indeed, having examined the domestic courts' decisions in the present case, the Court notes

that it is not possible to determine on the basis of them whether the sanction imposed on the applicant was necessary in order to achieve the legitimate aim pursued by the authorities. In particular, the domestic authorities did not explain why a statement made in prison by the applicant during a private telephone conversation with his wife had amounted to the offence of "insulting or threatening prison officers", had set a bad example for other prisoners or had entailed any risks to the security or proper functioning of the prison. Even though the decision of the enforcement judge referred to the obligation of prisoners to act in compliance with the regime governing the execution of sentences, it did not consider the applicant's personal situation and the circumstances in which the statement in dispute had been made when assessing the potential impact and risks of the sanction imposed on his freedom of expression. It failed to balance the applicant's right to freedom of expression against the legitimate aim of the prevention of disorder or crime pursued. Nor did the subsequent decisions of the Assize Court and the Constitutional Court contain sufficient reasons to remedy those shortcomings. The Court has previously stated that such an approach is inconsistent with Article 10 of the Convention (compare *Mehmet Çiftçi and Suat İncedere*, cited above, § 21).

25. In the light of the foregoing, the Court concludes that the Government have not demonstrated that the reasons relied on by the national authorities to justify the impugned measure were relevant and sufficient and that the measure itself was necessary in a democratic society.

26. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,040 in respect of the costs and expenses incurred before the Court. He submitted a contract prepared by his representative and a detailed explanation of the lawyer's fees, indicating a total of EUR 1,682. The applicant did not submit any document in support of the further costs claimed by him.

28. The Government contested the amounts.

29. Having regard to the documents in its possession and to its case-law, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable (compare *Yıldırım Demir v. Turkey* [Committee], no. 16363/19, § 17, 16 November 2021).

30. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 500, 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 10 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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred 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.

Done in English, and notified in writing on 17 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Oddný Mjöll Arnardóttir President