

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

SECOND SECTION

DECISION

Application no. 22680/09
Mete TUNCER
against Turkey

The European Court of Human Rights (Second Section), sitting on 19 June 2012 as a Committee composed of:
Isabelle Berro-Lefèvre, *President,*
Guido Raimondi,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*
Having regard to the above application lodged on 23 March 2009,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mete Tuncer, is a Turkish national, who was born in 1969. He is currently serving his sentence in Kocaeli F-type prison.

The facts of the case, as submitted by the applicant, may be summarised as follows.

1 Allegation of the lack of hot water in the prison

The applicant claims that there was only hot water for limited period of time and it was not hot enough for personal cleansing.

On 26 December 2008 the applicant unsuccessfully lodged a petition with the Kocaeli Judge of Enforcement (*infaz hakimliği*) who rejected his claim on the grounds that the restriction on hot water had been a temporary measure necessary during the fitting of the new prison heating system to

change over to natural gas. On 2 February 2009 the Kocaeli Assize Court upheld the judgment with a final decision.

2 Allegation of inadequate food

The applicant complains that the food served in the prison was low in nutritional value, not cooked well and lacked in variety. In this way, he maintains that fish was served only once a month and the food rations at breakfast were too small.

On 31 December 2008 the applicant lodged a petition with the Kocaeli Judge of Enforcement, who rejected the applicant's claim asserting that the meals provided in the prison had been commensurable with the daily food allowance of 3 Turkish liras (TRY) per inmate. On 2 February 2009 the Kocaeli Assize Court upheld the judgment with a final decision.

3 Alleged Electricity Cuts

The applicant claims that there were occasional electricity cuts in the prison and during these periods only the common areas were illuminated by the prison's generator but not the inmates' wards.

On 31 December 2008 the applicant lodged a petition with the Kocaeli Judge of Enforcement complaining about the non-distribution of electricity to the wards during the cuts which had lasted for a period ranging from 15 minutes to 2 hours. The Kocaeli Judge of Enforcement rejected the applicant's complaint, holding that the prison authorities were not liable for the general electricity cuts occurred and that the prison generator had a limited capacity for the production of electricity of which, in priority, used for the illumination of common areas in the prison. On 2 February 2009 the Kocaeli Assize Court upheld the judgment with a final decision.

4 Allegation of inadequate heating

The applicant complains that the radiators in his ward were not sufficiently heated at the beginning of the winter.

On 25 October 2008 the applicant lodged a petition with the Kocaeli Judge of Enforcement who subsequently rejected his claim, observing that the installation work had been underway to convert the prison's heating system to natural gas and thus the heating had been used with its full capacity for two months until December. On 9 January 2009 the Kocaeli Assize Court upheld the judgment with a final decision.

5 Allegedly high pricing in cafeteria of the prison

On 8 September 2008 the applicant lodged a petition with the Kocaeli Judge of Enforcement claiming that the goods were charged higher in the prison's cafeteria than their market sale prices, for example, a half kilo of tea had been sold for TRY 5,10 in the prison's cafeteria while one kilogram of tea

cost for TRY 7,99 in a supermarket. The Kocaeli Judge of Enforcement dismissed the applicant's complaint, asserting that the prices in the prison's cafeteria were determined after having been consulted to three different companies in the sector and that the promotional prices of some goods in supermarkets could be misleading in that respect. On 28 October 2008 the Kocaeli Assize Court upheld the judgment with a final decision.

6 Alleged restrictions on the admission of winter gloves in the prison:

On 31 December 2008 the applicant lodged a petition with the Kocaeli Judge of Enforcement requesting that the prison authorities should provide winter gloves for his hands or allow the admission of those brought by his family in the prison. In this connection, the applicant maintained that the gloves brought by his family had been refused to be admitted in the prison for security reasons. The Kocaeli Judge of Enforcement rejected the applicant's claim, asserting that the supply of winter gloves had not been foreseen in the prison regulations. On 2 February 2009 the Kocaeli Assize Court quashed the judgment insofar it was related to the admission in the prison of the gloves brought by the applicant's family.

COMPLAINTS

Relying on Article 8 of the Convention the applicant complains that he could not enjoy his basic rights in the Kocaeli F-type prison because of the inadequate living conditions. He further complains under Article 13 of the Convention that the remedy provided under the domestic law to challenge those conditions was ineffective.

THE LAW

The Court notes at the outset that the complaints concerning the inadequate conditions of detention have been examined under Article 3 of the Convention in number of cases (see for example, *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII, *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI, and *Orchowski v. Poland*, no. 17885/04, 22 October 2009).

It further notes that to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. Particularly, in the context of the deprivation of liberty, the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Poltoratskiy v. Ukraine*, no. 38812/97, § 132, ECHR 2003-V; *Kudła v. Poland* [GC],

no. 30210/96, §§ 92-94, ECHR 2000-XI). Measures depriving a person of his liberty may often involve such an element. Nevertheless, the State must ensure that a person is detained in conditions which are compatible with the respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

The Court recalls that it has in the past examined complaints concerning the conditions of detention in F-type prisons in Turkey and declared them inadmissible (see *Gündoğan v. Turkey* (dec.), no. 29/02, 13 December 2005; *Yılmaz Karakaş v. Turkey* (dec.), no. 68909/01, 9 November 2004). Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found the material conditions of F-type prisons in Turkey satisfactory in its report of CPT/Inf (2006) 31. Having regard to the absence of any finding of general shortcomings in the material conditions of Kocaeli F-type prison, the applicant has to present *prima facie* evidence proving that the conditions of his detention in the prison concerned were poor or unsatisfactory.

Turning to the applicant's allegations, the Court observes that the discomfort which the applicant endured in prison as a result of inadequate heating or lack of hot water were limited to the period during which the prison heating system installation work was underway. The applicant did not submit any evidence implying that these conditions had had an adverse effect on his health.

As regards the complaint related to the food served in prison, the Court further observes that the applicant has not suffered any deprivation. His allegations under this head appear to be more in the form of personal preferences. Furthermore, in his complaint relating to the restriction on the provision or admission of warm clothing in the prison, the Court notes that the applicant's claim was already upheld by the Kocaeli Assize Court. In this regard, the applicant cannot be regarded as a victim of the alleged infringement.

Lastly, the applicant complains about the occasional electricity cuts in the prison and the prices in the prison's cafeteria. However, the Court does not find any element which would require it to depart from the domestic authorities' reasoning and to examine these allegations further.

Even taking into account the cumulative effects of those circumstances indicated above, the Court considers that they did not subject the applicant to distress or hardship which would exceed the unavoidable level of suffering inherent in detention. In this regard, the Court concludes that the applicant's conditions of detention did neither reach the severity threshold of a treatment proscribed by Article 3 nor did it constitute an unjustified interference with his private life under Article 8 of the Convention.

The Court, therefore, declares this part of the application inadmissible for being manifestly ill-founded and rejects it in accordance with Article 35 § 4 of the Convention.

As regards the complaint under Article 13 of the Convention, the Court observes that the applicant was able to bring proceedings before the Judge of Enforcement, challenging the conditions of his detention. Following the decisions having rejected his claims, the applicant lodged an appeal with the Kocaeli Assize Court which reviewed the Judge of Enforcement's decisions and eventually upheld or overturned them.

For this reason, the Court considers that the applicant had an effective remedy within the meaning of Article 13 of the Convention for his complaints related to the conditions of his detention.

It, therefore, finds this complaint inadmissible for being manifestly ill-founded pursuant to Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos	Isabelle Berro-Lefèvre
Deputy Registrar	President