



The systematic monitoring of a prisoner's correspondence with her lawyer, without adequate safeguards against abuse, was disproportionate

In today's **Chamber** judgment¹ in the case of **Eylem Kaya v. Turkey** (application no. 26623/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned, in particular, the prison authorities' systematic monitoring of a prisoner's correspondence with her lawyer.

The Court found, among other points, that the systematic physical checking by the prison authorities of Ms Kaya's correspondence with her lawyer, in the absence of appropriate guarantees against abuse in the domestic legislation, had not been proportionate to the legitimate aim (preventing disorder or crime) pursued by the interference with the applicant's right to respect for her correspondence.

Principal facts

The applicant, Eylem Kaya, is a Turkish national who was born in 1975. When the application was lodged she was imprisoned in Çankırı (Turkey).

In December 2005 Ms Kaya, a civil servant in the customs department, was arrested as part of an investigation into corruption. The next day she was questioned then placed in pre-trial detention. The State prosecutor brought criminal proceedings against her on charges of corruption and membership of a criminal organisation. In May 2006 the assize court convicted Ms Kaya of the charges against her and sentenced her to six years and 15 days' imprisonment. The Court of Cassation upheld the judgment in December 2006. In June 2007 Ms Kaya handed over to the prison authorities a letter, intended for her lawyer, which concerned the power of attorney that was to be sent to the Court in the context of the present application. The applicant submitted a copy of that letter, which had been stamped with the word "seen" by the prison administration's panel for reading prisoners' correspondence.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Kaya alleged that her correspondence with her lawyer concerning her application to the Court had been monitored by the prison authorities and that this practice had entailed a breach of her right to respect for her correspondence.

Under Article 6 § 1 (right to a fair trial), she also submitted that there had been a breach of the principle of equality of arms on the ground that, at her trial, the prosecutor had been standing on a

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

raised platform, while she and her lawyer were placed, as was the rule, at a lower level in the courtroom.

The application was lodged with the European Court of Human Rights on 25 June 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Julia Laffranque (Estonia), *President*,
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court noted that a stamp from the prison administration's panel for reading prisoners' correspondence was visible on a letter dated 11 June 2007. It concluded that the monitoring carried out by the prison authorities amounted to an interference with Ms Kaya's right to respect for her correspondence within the meaning of Article 8 § 2 of the Convention. The interference was provided for by Rule 91 of the Regulations on prison management and the execution of sentences ("the Prison Regulations"), which, as an exception to the principle that a prisoner's correspondence with his or her lawyer could not be monitored, allowed the prison authorities to carry out a physical check of the letters, faxes and telegrams sent to a prisoner's lawyer, with a view to his or her defence, by a prisoner who had been sentenced for membership of a criminal organisation.

The Court noted that the review of the correspondence sent to their lawyers by prisoners sentenced for certain given offences was intended to avert the commission of offences, to maintain the security of the prison establishment and to prevent communication between members of terrorist or other criminal organisations. It therefore accepted that the contested interference pursued the legitimate aim of preventing disorder and crime.

With regard to the proportionality of the interference, the Court noted that the Turkish legislation, while prohibiting in principle the monitoring of prisoners' correspondence with their lawyers, provided for two exceptions to that rule, in particular for those who, like Ms Kaya, had been imprisoned for membership of a criminal organisation. These exceptions allowed for two forms of monitoring: a physical check, carried out systematically by the prison authorities (as was found in the context of the present case) and a review carried out by the sentence execution judge where the conditions laid down in the domestic law were satisfied. In this connection, the Court noted that the physical check of Ms Kaya's correspondence with her lawyer had been carried out by the prison authorities, and not by an independent judge who was under a duty to keep any information thus obtained confidential. Review by the sentence execution judge of prisoners' letters to their lawyers was provided for only where there existed evidence and documents showing that the correspondence served to commit criminal acts, to threaten prison security, or to provide a means for communication between members of terrorist or other criminal organisations, while the physical monitoring of those letters by the prison authorities was carried out as a matter of routine.

The Court considered that the physical monitoring of prisoners' correspondence with their lawyers, as provided for by domestic law and carried out by the prison authorities, was not accompanied by appropriate safeguards ensuring that the confidentiality of the correspondence's content could be

maintained, especially since the domestic practice with regard to letters sent by convicted prisoners to their lawyers consisted in the letters being handed over to the prison authorities in an open envelope. In the present case, the stamp with the word “seen”, placed by the prison administration’s panel for reading prisoners’ correspondence, had been put on the letter itself and not on the envelope; there had thus been nothing to prevent the authorities in question from reading the content of that letter.

In consequence, the Court considered that in the present case the contested measure had not been accompanied by adequate and sufficient safeguards. It therefore held that, in the absence of appropriate safeguards against abuse in the domestic legislation, the practice consisting in the systematic physical monitoring by the prison authorities of Ms Kaya’s correspondence with her lawyer **had not been proportionate to the legitimate aim pursued**. The Court therefore held that there had been a violation of Article 8 of the Convention.

Article 6 (right to a fair trial)

The Court pointed out that it had already held that the position of the State prosecutor, on a raised platform, did not suffice to raise doubts as to the equality of arms, in that, whilst this conferred a privileged “physical” position on the prosecutor in the courtroom, it did not place the accused in a disadvantageous position regarding the defence of his or her interests. In consequence, it declared the complaint in question **inadmissible as manifestly ill-founded**.

Just satisfaction (Article 41)

The Court held that Turkey was to pay Ms Kaya 300 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.