



## Removal of a Turkish journalist to Turkey, without examining his asylum request and the risk of ill-treatment, breaches the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [D v. Bulgaria](#) (application no. 29447/17) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman and degrading treatment) and a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights.**

The case concerned the arrest at the border between Bulgaria and Romania of a Turkish journalist claiming to be fleeing from a risk of political persecution in his own country, and his immediate removal to Turkey. The events occurred three months after the 2016 attempted coup in Turkey.

Before the Court, the applicant complained that the Bulgarian authorities had refused to initiate asylum proceedings and had returned him to Turkey, thus exposing him to a real risk of ill-treatment.

The Court held in particular that despite the fact that the applicant had expressed fears that he might face ill-treatment in the event of being returned to Turkey, the Bulgarian authorities had not examined his application for international protection.

### Principal facts

The applicant, D, is a Turkish national who was born in 1985. He is a journalist and previously worked for the *Zaman* daily newspaper and the Cihan press agency, both belonging to the Feza Media Group, which was viewed as "Gülenist" and as critical of the existing political regime in Turkey.

On 6 March 2016 the group's entire board was replaced by a committee of three members appointed by an Istanbul court. According to the international press, from that date onwards *Zaman* adopted a pro-government editorial policy. D stated that after that date he had been dismissed and had his press card withdrawn.

Following the adoption of a legislative decree issued on 27 July 2016 in the context of the state of emergency introduced in Turkey after the attempted coup of 15 July 2016, *Zaman* was closed down. According to D's explanations, he left Turkey after those events, at a time when a range of measures were being taken against media outlets and journalists (dismissal, arrest, detention and confiscation of passports).

Between September and October 2016, D and eight other passengers (six Turkish and two Syrian nationals) crossed the border between Turkey and Bulgaria hidden in a heavy goods vehicle. During the night of 13 October 2016 the vehicle arrived at the border between Bulgaria and Romania.

On 14 October 2016, at 1.40 a.m., Romanian and Bulgarian customs officers carried out a joint customs inspection and found the nine stowaways in the trailer attached to the vehicle. According to D's account, they were detained at the Ruse border police station and questioned by police officers. The team of officers changed several times. On each occasion, the applicant and his fellow

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](http://www.coe.int/t/dghl/monitoring/execution).

passengers stated that they wished to seek asylum and to be granted the assistance of a lawyer and an interpreter. Their requests were to no avail. They were also allegedly compelled to sign forms without being given a translation of their contents.

The seven Turkish clandestine passengers were subsequently put in a car. Despite being under the impression that they were being taken to the migrant camp in Sofia, they arrived (at about 11.30 p.m.) at the Lyubimets reception centre for foreigners, near the Turkish border. They repeated their wish, again without success, to apply for international protection and to be granted the assistance of a lawyer and an interpreter.

On 15 October 2016, at about 5.30 a.m., D was allegedly handcuffed and taken with the other six Turkish passengers to the Kapitan Andreevo border post, where they were handed over to the Turkish authorities.

The Turkish authorities subsequently took the applicant into custody in Edirne Prison (Turkey). D was tried for membership of a terrorist organisation (“FETÖ/PDY”<sup>2</sup>), and in December 2017 he was convicted and sentenced to seven years and six months’ imprisonment for that offence. He appealed, and the proceedings are ongoing.

D is currently detained in Kandıra Prison (Kocaeli, Turkey).

## Complaints, procedure and composition of the Court

Relying in particular on Articles 3 (prohibition of inhuman and degrading treatment) and 13 (right to an effective remedy), D complained that the Bulgarian authorities had refused to initiate asylum proceedings in his case and had returned him to Turkey, thus exposing him to a real risk of ill-treatment.

The application was lodged with the European Court of Human Rights on 13 April 2017.

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

Tim Eicke (the United Kingdom), *President*,  
Yonko Grozev (Bulgaria),  
Armen Harutyunyan (Armenia),  
Gabriele Kucsko-Stadlmayer (Austria),  
Pere Pastor Vilanova (Andorra),  
Jolien Schukking (the Netherlands),  
Ana Maria Guerra Martins (Portugal),

and also Andrea Tamietti, *Section Registrar*.

## Decision of the Court

[Articles 3 \(prohibition of inhuman and degrading treatment\) and 13 \(right to an effective remedy\)](#)

***Whether D had made the Bulgarian authorities aware of his fears of being subjected to ill-treatment in breach of Article 3 if returned to Turkey:*** The Court reiterated that the wish to apply for asylum did not have to be expressed in any particular form. The decisive factor was the fear expressed at the prospect of returning to a country. In the present case, it found that although the explanations given by D to the Turkish authorities did not contain the word “asylum”, they stated that he was a Turkish journalist who had been dismissed from his job in the context of the state of

<sup>2</sup> FETÖ/PDY: “Gülenist Terror Organisation/Parallel State Structure”.

emergency introduced in Turkey following the coup attempt, and made it clear that he was afraid of being sought by the prosecuting authorities.

The Court also noted that the authorities responsible for D's detention and those who had ordered his removal to Turkey had learned that the Turkish consulate in Burgas had indicated that the applicant and his Turkish fellow passengers were thought to have been involved in the coup attempt. It added that press releases and opinions issued by international observers, including comments by the Council of Europe Commissioner for Human Rights, in the three months leading up to the events in the applicant's case had raised serious concerns about the implementation of the measures adopted in connection with the state of emergency, including those targeting journalists. Various reports had criticised the use of violence, reprisals and arbitrary imprisonment against journalists. However, during the detention and subsequent removal of the applicant and his fellow citizens, the authorities had not made any effort to examine the relevant aspects of the personal account given by D on 14 October 2016 in the light of the situation as outlined above.

Accordingly, the Court found that the applicant's explanations as recorded on 14 October 2016 were sufficient, for the purposes of Article 3, to conclude that he had expressed his fears in substance to the Bulgarian border police authorities before being returned to Turkey.

***Whether the authorities properly examined the fears expressed by the applicant that he would be subjected to treatment in breach of Article 3 if returned to Turkey:*** The Court observed that the Bulgarian authorities involved in the matter had not found that the explanations given by the applicant amounted to an application for protection. The Bulgarian Government explained that no proceedings had been instituted with the authorities responsible for international protection.

The Court reiterated that in view of the absolute nature of the right guaranteed under Article 3 of the Convention, and the position of vulnerability in which asylum seekers often found themselves, if a Contracting State was made aware of facts relating to a specific individual that could expose that individual to a risk of ill-treatment in breach of that Article upon returning to the country in question, the obligations incumbent on States under Article 3 implied that the authorities should assess such a risk of their own motion. This applied in particular to situations where the national authorities had been made aware of the fact that the asylum seeker might plausibly be a member of a group systematically exposed to a practice of ill-treatment and there were substantial grounds for believing in the existence of the practice in question and in the individual's membership of the group concerned. Given that, as shown above, the Bulgarian authorities had had sufficient information to indicate that the applicant could have had genuine concerns from the standpoint of Article 3, the Court was surprised at the blatant failure to examine his particular situation.

It also had to be acknowledged that, as far as procedural guarantees were concerned, the applicant had neither been provided with the assistance of an interpreter or translator, nor with information about his rights as an asylum seeker, including the relevant procedures. The Court was therefore unable to conclude that the Bulgarian authorities had fulfilled their requisite duty of cooperation in protection procedures.

Moreover, the applicant had not been granted access to a lawyer or a representative of specialist organisations that would have helped him assess whether his circumstances entitled him to international protection. In addition, the Bulgarian Ombudsman had not been consulted for the purpose of supervising the removal of the foreign nationals in question, contrary to the express legal requirement to that effect. The Court also observed other failings in the conduct of the domestic proceedings. Such failings, in the Court's view, reflected the extreme haste with which the applicant had been removed, in addition to the fact that his removal had been in breach of the rules of domestic law. As a result of such haste and the failure to comply with the relevant domestic procedures, which had nevertheless been designed to offer protection against the prospect of rapid removal without an examination of individual circumstances, the applicant had been deprived in practice of an assessment of the risk he allegedly faced in the event of his return.

The Court further observed, in relation to the possibility of challenging the removal order, that the order had been implemented immediately without the applicant being given the chance to understand its contents, and that as a result, he had been deprived of the opportunity available under domestic law to apply to the courts for a stay of execution of the order. Accordingly, the haste with which the removal order had been implemented – within 24 hours of the applicant's arrest at the border between Bulgaria and Romania – had had the consequence of rendering the available remedies ineffective in practice and therefore inaccessible. D had therefore been removed to Turkey, his country of origin from which he had fled, without a prior examination of the risks he faced from the standpoint of Article 3 of the Convention and hence of his application for international protection.

The Court thus concluded that, despite the fact that D had expressed fears that he might face ill-treatment in the event of being returned to Turkey, the Bulgarian authorities had not examined his application for international protection. There had therefore been a violation of Articles 3 and 13 of the Convention.

#### **Just satisfaction (Article 41)**

The Court held that Bulgaria was to pay D 15,000 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.