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

Press Release
issued by the Registrar of the Court

ECHR 016 (2022)
18.01.2022

Violation of the freedom of expression of two prisoners punished for singing anthems and reading out poems in prison

In today's **Chamber** judgment[1] in the case of Mehmet Çiftçi and Suat İncedere v. Turkey (applications nos. 21266/19 and 21774/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the sanction of one month's deprivation of means of communication imposed on the applicants by the prison management for singing anthems and reading out poems (in December 2016) in memory of the prisoners who had lost their lives during the "Return to life" operation conducted by the authorities in prisons in December 2000.

The Court found that the disciplinary sanction imposed on the applicants constituted interference with their right to freedom of expression. It held that, notwithstanding the mildness of the sanction imposed on the applicants, the Government had not demonstrated that the reasons cited by the national authorities as justification for the measure complained of were relevant and sufficient, or that the measure had been necessary in a democratic society.

Principal facts

The applicants, Mehmet Çiftçi and Suat İncedere, are Turkish nationals who were born in 1952 and 1971 respectively. At the material time they were detained in Edirne Prison.

In December 2016 the two applicants, together with 26 other prisoners, read out poems and sang anthems in memory of the prisoners who had died during the "Return to life" operation conducted by the authorities in prisons in December 2000.

In January 2017 the prison management decided to impose a sanction on them in the form of one month's deprivation of means of communication, taking the view that their actions during the event amounted to the disciplinary offence of "singing anthems or chanting slogans without justification" under Law no. 5725 on the execution of sentences and preventive measures.

In October 2017 the Edirne enforcement judge, ruling on an appeal by the applicants, lifted the sanction imposed by the prison management on the grounds that the offence in question was not made out.

In November 2017 the Edirne Assize Court set aside the enforcement judge's decision, finding that the decision issued by the prison management had complied with the procedure and the law.

In November 2018 the Constitutional Court declared the individual applications lodged by the applicants inadmissible.

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.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicants complained about the sanction imposed on them by the authorities.

The applications were lodged with the European Court of Human Rights on 4 April 2019.

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

Carlo **Ranzoni** (Liechtenstein), *President*,
Aleš **Pejchal** (the Czech Republic),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Marko **Bošnjak** (Slovenia),
Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 10 (freedom of expression)

The Court held that the disciplinary sanction imposed on the applicants for reading out poems and singing anthems in memory of the prisoners who had died and been injured during an operation conducted in prisons amounted to interference with their right to freedom of expression. The interference had a legal basis in the form of Law no. 5275 and had pursued, in particular, the legitimate aim of preventing disorder.

Referring to the principles derived from its case-law on freedom of expression[2], the Court noted that in the present case it was impossible to determine on the basis of the decisions issued by the national authorities whether the sanction imposed on the applicants had been necessary to achieve the legitimate aims pursued by the authorities. The prison management, in imposing the sanction in question, had simply indicated that the applicants' actions amounted to the offence referred to in section 42(2)(e) of Law no. 5275. Likewise, the Assize Court, in its decision setting aside the decision of the enforcement judge lifting the sanction, had merely stated that the prison management's decision had complied with the procedure and the law. The Constitutional Court had subsequently stated in general terms either that there had been no interference in the present case with the rights and freedoms protected by the Constitution, or that the interference did not amount to a violation. Hence it was not clear from those decisions that the national authorities had carried out a proper balancing exercise, in accordance with the criteria laid down in the Court's case-law, between the applicants' right to freedom of expression and the legitimate aims pursued.

Consequently, the Court found that, notwithstanding the mildness of the sanction imposed on the applicants, the Government had not demonstrated that the reasons cited by the national authorities as justification for the measure complained of were relevant and sufficient, or that the measure had been necessary in a democratic society.

There had therefore been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of the non-pecuniary damage sustained by the applicants.

[2] *Bédat v. Switzerland* [GC], no. 56925/08, 29 March 2016, and *Kula v. Turkey*, no. 20233/06, 19 June 2018.

The judgment is available only in French.

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