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

Press Release
issued by the Registrar of the Court

ECHR 230 (2023)
18.07.2023[2]

Prison authorities in breach of Convention for withholding four issues of periodical sent to prisoners

In today's **Chamber** judgment[1] in the case of Osman and Altay v. Türkiye (application no. 23782/20) the European Court of Human Rights held, by a majority, that there had been:

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

The applications concerned the prison authorities' withholding of four issues of a bi-weekly periodical sent to the applicants by post while they were imprisoned at the Akhisar and Edrine maximum security facilities.

The Court pointed out that the case-law of the Constitutional Court (*Halil Bayık* and *Recep Bekik* judgments) required the prison authorities to issue decisions giving satisfactory reasons and meeting specific criteria when refusing to deliver publications sent to prisoners.

The Court found that neither the education committees' decisions nor those subsequently delivered by the domestic courts enabled it to establish that, in the present case, those bodies had appropriately weighed up, in compliance with the criteria established by the Constitutional Court and with those of the Court's own case-law in freedom of expression cases, the applicants' right to freedom of expression on the one hand and the need to maintain order and discipline in prisons on the other.

The Court found that the Government had failed to demonstrate that the reasons adduced by the national authorities to justify the impugned measures had been relevant and sufficient or that those measures had been necessary in a democratic society.

A legal summary of this case will be available in the Court's database HUDOC (link)

Principal facts

The applicants, Abdulmenaf Osman and Mehmet Altunç Altay, are nationals of Syria and Türkiye respectively, who were born in 1965 and 1956.

At the relevant time the applicants were serving reinforced life sentences in the Akhisar and Edirne maximum security prisons, having been convicted for activities with a view to bringing about the secession of land placed under the sovereign authority of the State or State administration and attempting to undermine the constitutional order by force.

Abdulmenaf Osman

On 17 May 2019 the Manisa Prison Education Committee intercepted four issues of the bi-weekly Yeni Demokrasi ("New Democracy") periodical sent by post to Mr Osman and decided not to deliver them to him. The Committee considered that certain pages of those issues, which contained information and photographs concerning hunger strikes that were currently underway in various prisons, could result in a spread of such incidents, and that another page of one of the issues

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.

contained statements in praise of a terrorist organisation. The Education Committee therefore found that all those publications posed a threat to security at the prison.

On 13 June 2019 the Akhisar enforcement judge dismissed the appeal lodged by Mr Osman against the Education Committee's decision on the grounds that it had been delivered in accordance with the relevant procedure.

On 27 June 2019 the Akhisar Assize Court dismissed Mr Osman's objection to the enforcement judge's decision, holding that it had complied with the requisite procedure and the law.

Mehmet Aytunç Altay

On 21 December 2018 the Edirne Prison Education Committee intercepted four issues of the same bi-weekly Yeni Demokrasi periodical, which had been sent to Mr Altay by post, and decided not to deliver them to him. It considered that those publications were apt to foment insubordination among the prisoners and to pose a threat to security at the prison.

On 18 January 2019 the Edirne enforcement judge dismissed the objection lodged by Mr Altay against the Education Committee's decision. On 14 February 2019 the Edirne Assize Court dismissed Mr Altay's appeal against the enforcement judge's decision on the grounds that it had complied with the requisite procedure and the law.

On 11 July and 19 March 2019 respectively the applicants each lodged individual applications with the Constitutional Court, arguing that the prison authorities had infringed their freedom of expression by withholding the various issues of the periodical in question. On 29 April and 3 March 2020 the Constitutional Court, sitting as a bench of two judges, declared those applications inadmissible as manifestly ill-founded, referring to its landmark *İbrahim Kaptan (2)* judgment (application no. 2017/30723, 12 September 2018).

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the Convention, the applicants complained that periodicals that had been sent to them by post had been withheld by the prison authorities.

The application was lodged with the European Court of Human Rights on 3 June 2020.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Diana **Sârcu** (the Republic of Moldova),
Davor **Derenčinović** (Croatia),

and also Dorothee **von Arnim**, *Deputy Section Registrar.*

Decision of the Court

Article 10

The Court reiterated that prisoners continued to enjoy the right to receive information and ideas in prison and that any restriction of that right must meet a "pressing social need".

In the present case, the Court observed that the Constitutional Court, pursuant to its *İbrahim Kaptan (2)* case-law, had held that the withholding of the publications that had been sent to the applicants

in breach of the relevant statutory procedures could be regarded as necessary in a democratic society.

The Court further noted that the Constitutional Court had essentially relied on the workload involved in monitoring the publications sent to prisoners to find that the refusal to deliver such publications to them met a pressing social need.

The Constitutional Court's reference to its *İbrahim Kaptan (2)* judgment had appeared to suggest that the publications sent to the applicants had been justifiably withheld, not on the basis of an assessment of their dangerous contents, but merely because they had been received by the postal services in breach of the relevant statutory procedures. The Court nevertheless considered that the arguments contained in the judgments delivered by the two-judge benches of the Constitutional Court had been rather succinct in that regard. Moreover, the prisons' education committees had referred to section 62 § 3 of Law no. 5275, which authorised the inspection of a publication's content and, according to their decisions, the publications in question had been withheld because they had been regarded as a threat to prison security.

The Court pointed out that the Constitutional Court's case-law, as established in the *Halil Bayık* and *Recep Bekik and Others* judgments, required the prison authorities to issue decisions giving satisfactory reasons and meeting the specific criteria set out in those judgments when refusing to deliver publications sent to prisoners. In particular, any decision not to deliver an outside publication to a prisoner had to be based on sufficiently detailed reasons and the inadmissible passages of the impugned publication had to be both expressly identified and subjected to an analysis demonstrating a concrete connection between the censored content and the aforementioned criteria. It therefore did not suffice in that regard to merely list the page references for the parts of the impugned publication that were deemed problematic.

In the present case, the Court noted that the education committees had refused to deliver four issues of a bi-weekly periodical which they considered might pose a threat to prison security by triggering the spread of hunger strikes undertaken by certain prisoners in other prisons, promoting illegal organisations and their activities and encouraging violent acts. The enforcement judges and the assize courts, when called upon to hear the appeals lodged by the applicants against those refusals, had dismissed them on the grounds that the impugned decisions had complied with the requisite procedure and the law.

The Court found that neither the education committees' decisions nor those subsequently delivered by the domestic courts enabled it to establish that, in the present case, those bodies had appropriately weighed in the balance, in compliance with the criteria established by the Constitutional Court in its *Halil Bayık* and *Recep Bekik and Others* judgments and with those of the Court's own case-law in freedom of expression cases, the applicants' right to freedom of expression and the other interests at stake, such as maintaining order and discipline in prisons.

The decisions delivered by the enforcement judges and the assize courts had failed to give sufficient reasons. The Constitutional Court had declined to examine the prison authorities' refusals and had decided to apply the findings of its *İbrahim Kaptan (2)* judgment to the applicants' individual applications.

The Court therefore found that the national authorities did not appear to have satisfied the requirement that the different interests at stake be weighed up or to have fulfilled their duty to prevent any abuse on the part of the administration. It found that the Government had failed to demonstrate that the reasons adduced by the national authorities to justify the impugned measures had been relevant and sufficient or that those measures had been necessary in a democratic society.

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

Article 41

The Court held that the respondent state was to pay to each applicant 1,000 euros (EUR) in respect of nonpecuniary damage.

Separate opinion

Judges Yüksel and Derenčinović expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Denis Lambert (tel.: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Inci Ertekin (tel.: + 33 3 90 21 55 30)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)