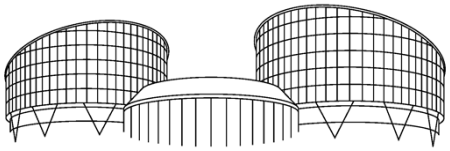

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF NUSRET KAYA AND OTHERS v. TURKEY

(Applications nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08)

JUDGMENT
[Extracts]

STRASBOURG

22 April 2014

FINAL

08/09/2014

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Nusret Kaya and Others v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President*,
Işıl Karakaş,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 25 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in five applications (nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Turkish nationals, Mr Nusret Kaya, Mr Ahmet Gerez, Mr Mehmet Şirin Bozçalı, Mr Mesut Yurtsever and Mr Mehmet Nuri Özen ("the applicants"), on 4 October 2006 (applications nos. 43750/06 and 43752/06), 24 June (application no. 32054/08), 24 July (application no. 37753/08) and 25 November 2008 (application no. 60915/08).

2. Mr Kaya was authorised to represent himself before the Court. Mr Bozçalı was represented before the Court by Mr M. Erbil, a lawyer practising in Istanbul. Mr Yurtsever and Mr Özen were represented by Mr M. Vargün, a lawyer practising in Ankara. Mr Gerez was represented by Mr O. Gündoğdu, a lawyer practising in Kars.

The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged in particular that there had been a breach of their right to respect for their correspondence in the form of telephone calls (Article 8 of the Convention) and that they had been denied a fair procedure (Article 6 of the Convention). They further complained of a violation of Articles 3, 13, 14, 17 and 18 of the Convention.

4. On 18 January 2010 notice of the applications was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1972, 1965, 1966, 1974 and 1976 respectively.

A. Nusret Kaya and Ahmet Gerez (applications nos. 43750/06 and 43752/06)

6. When their application was lodged the applicants were being held at the E-type prison of Muş.

7. During their previous detention in another prison – the H-type prison of Erzurum – they had applied to the sentence-execution judge of Erzurum seeking the lifting of the restrictions that the prison authorities imposed, according to them, by preventing them from using the Kurdish language in their telephone conversations.

8. On 29 May 2006, based on the case file, the sentence-execution judge of Erzurum dismissed their application. In his reasoning he began by stating that, while Article 22 of the Constitution and Article 8 of the European Convention on Human Rights protected the freedom of correspondence, those two Articles also provided for limitations of such freedom on grounds such as national security and public order. He further mentioned that Law no. 5275 on the enforcement of sentences and preventive measures ("Law no. 5275") provided that telephone conversations had to be conducted under the conditions and according to the principles laid down in the Rules on the enforcement of sentences and preventive measures ("the Rules"). He noted that the prison authorities had not yet received any reply to their request for it to be ascertained, under Rule 88/2 (p) of the Rules, whether or not the individuals with whom the applicants wished to speak understood Turkish. He pointed out in this connection that the question remained to be clarified and that the applicants' action thus concerned the general practice of the prison authorities which, in his view, was not in breach of the law. He concluded that the prison authorities had acted in conformity with Law no. 5275 and Rule 88/2 (p).

9. On 11 May 2006 the applicants requested that this decision be set aside.

10. On 12 July 2006, based on the case file, the Erzurum Assize Court dismissed the applicants' action to have the decision set aside, finding that the sentence-execution judge had not acted in breach of the procedure or of the law.

B. Mehmet Şirin Bozçalı and Mesut Yurtsever (applications nos. 32054/08 and 37753/08)

11. At the time when they lodged their applications, the applicants were being held at the F-type prison of Bolu.

12. While in that prison, they applied on 5 May 2008 to the sentence-execution judge of Bolu seeking the lifting of the restrictions that, according to them, the prison authorities imposed by preventing them from using the Kurdish language in their telephone conversations.

13. On 13 May 2008, based on the case file, the sentence-execution judge of Bolu dismissed the application, finding that the practice of the prison authorities was in conformity with both the procedure and the law. In his decision, he noted that the rules on telephone conversations between convicted and remand prisoners and their relatives had been revoked on 17 February 2007. He indicated that those rules did not contain any provision about the handling of a request concerning a telephone conversation in a language other than Turkish. He explained that Law no. 5275 had come into force and that Rule 88 laid down new principles that had to be taken into account. He set out all the conditions provided for in Rule 88 as regards the supervision of telephone conversations in prisons, particularly the principle that telephone conversations had to be conducted in Turkish, with the exception of those cases in which the convicted prisoner and/or the person telephoned or telephoning did not understand that language. He pointed out that, in such cases, the Rules required the inmate to indicate on the telephone-call form that the other person did not understand Turkish. He added that, when the prison authorities found it necessary, research would be carried out – at the inmate's expense – to verify the information given on the form, following which the inmate could be authorised to speak in Kurdish. He further stated that the inmate was required to begin a telephone conversation by stating his or her forename and surname, then to ask the other person to give his or her forename, surname and telephone number. In the judge's view, that obligation meant that, save in certain situations, telephone conversations had to be conducted in Turkish.

14. On 26 May 2008 Mr Yurtsever applied to have that decision set aside. He argued that his mother tongue was Kurdish and that it was therefore understandable for him to use that language to speak to his mother on the telephone. He also stated that this had been the case for the past five years. Lastly, he complained about the fact that the cost of verifying the information was charged to the requesting inmate.

15. On 27 May 2008 Mr Bozçalı also applied to have the sentence-execution judge's decision set aside, arguing that to communicate, correspond and live in accordance with one's cultural identity was a fundamental right.

16. On 12 June 2008, on the basis of the case file, the Bolu Assize Court dismissed the applicants' action. It found that the prison authorities and the sentence-execution judge had not acted in breach of the procedure or of the law.

C. Mehmet Nuri Özen (application no. 60915/08)

17. When he lodged his application, the applicant was being held at the F-type prison in Bolu.

18. While in that prison, on 30 May 2008, he complained to the sentence-execution judge of Bolu that he was obliged to use Turkish when speaking to his relatives on the telephone and that the prison authorities refused to allow him to use the Kurdish language in those conversations.

19. On 10 June 2008, on the basis of the case file, the sentence-execution judge of Bolu rejected the application, finding that the practice of the prison authorities was in conformity with both the procedure and the law. In his decision, he noted that the rules on telephone conversations between convicted and remand prisoners and their relatives had been revoked on 17 February 2007. He indicated that those rules did not contain any provision about the handling of a request concerning a telephone conversation in a language other than Turkish. He explained that Law no. 5275 had come into force and that Rule 88 laid down new principles that had to be taken into account. He set out all the conditions provided for in that Rule as regards the supervision of telephone conversations in prisons, particularly the principle that telephone conversations had to be conducted in Turkish, with the exception of those cases in which the convicted prisoner and/or the person telephoned or telephoning did not understand that language. He pointed out that, in such cases, the Rules required the inmate to indicate on the telephone-call form that the other person did not understand Turkish. He added that, when the prison authorities found it necessary, research would be carried out – at the inmate's expense – to verify the information given on the form, following which the inmate could be authorised to speak in Kurdish. He further stated that the inmate was required to begin a telephone conversation by stating his or her forename and surname, then to ask the other person to give his or her forename, surname and telephone number. In the judge's view, that obligation meant that, save in certain situations, telephone conversations had to be conducted in Turkish.

20. On 20 June 2008 the applicant applied to have that decision set aside.

21. On 4 July 2008 the Bolu Assize Court dismissed the applicant's action, finding that the prison authorities and the sentence-execution judge had not acted in breach of the procedure or of the law.

...

THE LAW

29. Given the similarity of the applications as to the facts and the complaints, the Court has decided to join them and to examine them jointly in a single judgment.

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicants complained of an interference with their right to respect for their correspondence and/or private and family life on account of the prison authorities' practice of restricting their telephone conversations in Kurdish.

They relied on Article 8 of the Convention, of which the relevant parts read as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety ..., for the prevention of disorder or crime ..."

31. The Government contested that argument.

...

B. Merits

1. Whether there has been an interference

35. The Court would first reiterate that any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on the private and family life of the person detained. However, it is an "essential part of a prisoner's right to respect for family life" that prison authorities should assist in maintaining effective contact with his or her close family members (see *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X, and *Aliev v. Ukraine*, no. 41220/98, § 187, 29 April 2003). At the same time, the Court recognises that some measure of control over prisoners' contact with the outside world is called for and is not of itself incompatible with the Convention (see *Aliev*, cited above, § 187).

36. It further reiterates that, in respect of telephone access, Article 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where the facilities for contact by way of correspondence are available and adequate (see *A.B. v. the Netherlands*, no. 37328/97, § 92, 29 January 2002, and *Ciszewski v. Poland* (dec.), no. 38668/97, 6 January 2004). In the present case, however, since domestic law allowed inmates to conduct telephone conversations with their relatives

from telephones under the supervision of the prison authorities, the Court takes the view that the restriction imposed on the applicants' telephone communications with members of their family, on the ground that they wished to conduct those conversations in Kurdish, may be regarded as an interference with the exercise of their right to respect for their family life and correspondence within the meaning of Article 8 § 1 of the Convention (see, for a similar approach, *Baybaşın v. the Netherlands* (dec.), no. 13600/02, 6 October 2005).

2. Whether the interference was justified

37. Such interference violates Article 8, unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2, and is "necessary in a democratic society" to achieve the aim or aims concerned.

(a) In accordance with the law

38. The Court reiterates its settled case-law, according to which the expression "in accordance with the law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). It further reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports of Judgments and Decisions* 1998-II, and *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A).

39. In the present case, the Court observes that the impugned interference was based, under domestic law, on Rule 88 of the Rules on the enforcement of sentences and preventive measures, as in force at the material time ... This Rule provided at the time that telephone conversations had in principle to be conducted in Turkish, unless otherwise authorised in the cases and under the conditions stipulated therein.

40. Moreover, the Court has no reason to doubt the accessibility of those Rules, which were published in the Official Gazette. It further takes the view that it does not need to rule on the foreseeability of the provisions in question in view of its findings as to the necessity of the interference (see paragraphs 49-62 below).

(b) Legitimate aim

41. In line with the Government's analysis as regards the judgments in *Kepenekliоğlu v. Turkey* (no. 73520/01, 23 January 2007) and *Silver and Others v. the United Kingdom* (25 March 1983, Series A no. 61), the Court acknowledges the legitimacy of the supervision of prisoners'

correspondence in certain circumstances, on the ground of maintaining law and order in prisons. The Government argued that, in the present case, the supervision of telephone conversations by the prison authorities was carried out for reasons of security and for the prevention of disorder or crime.

42. The Court reiterates that where, as in the present case, telephone facilities are provided by the prison authorities, these may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example, in the light of the need for the facilities to be shared with other prisoners and the requirements of the prevention of disorder and crime (see *A.B. v. the Netherlands*, cited above, § 93, and *Coşcodar v. Romania* (dec.), no. 36020/06, § 30, 9 March 2010). In the present case, the Court finds that the interference in question pursued a legitimate aim, namely the prevention of disorder or crime.

(c) Necessity of the interference

(i) The Government's submissions

43. The Government dismissed the applicants' allegations, taking the view that the impugned interference was necessary and proportionate. In this connection, they indicated that the applicants were members of the terrorist organisation PKK and that they had previously spoken Turkish with their relatives on the telephone, but later on had requested to conduct their conversations in Kurdish. The Government explained that the Kurdish language had different dialects and that, at the time of the applicants' requests, there were no Kurdish speaking personnel in the prison. The prison authorities had asked the applicants, in accordance with Rule 88/2 (p) of the Rules then in force, for the names and addresses of the individuals with whom they wished to speak in order to seek information on them. In the Government's submission, those prisoners who had good intentions would give such information and, once the investigation had been carried out, permission to use Kurdish was granted for those who did not speak Turkish. However, some prisoners with bad intentions had requested permission to use Kurdish without giving the requisite information. The Government argued that those prisoners had thus made it impossible to obtain any information about their relatives. Moreover, the relatives of some prisoners could not be traced at the addresses given. Accordingly, the prisoners in question had not fulfilled their obligations in order to conduct their telephone conversations in a language other than Turkish. Furthermore, the applicants had not been subjected to any discrimination, as the legislation applied to them was applicable to all prisoners .

44. Lastly, the Government informed the Court that Rule 88/2 (p) had been amended in order to prevent any delay in the handling of requests from prisoners for permission to speak in Kurdish to their relatives.

(ii) The applicants' submissions

45. Mr Kaya criticised the practice of the prison authorities, which he found arbitrary, hurtful and inhuman, both for him and for his relatives.

46. Mr Gerez rejected the Government's arguments. He alleged that he had been prevented from making telephone calls to his relatives in Kurdish – from May 2006, when the Rules came into force, until 2009 – whereas that possibility had been open to him in the past. He argued that his telephone conversations had been interrupted or impeded, without any good reason in his view. He further submitted that he had requested permission to speak to his relatives on the telephone in Kurdish but had been told that those relatives had not been traced at the address he had given to the prison authorities, with the result that it had not been possible to ascertain whether or not they spoke Turkish. That was the reason why, according to him, he had not been allowed to speak to them in Kurdish. Lastly, he complained that it was government policy to prohibit the use of any language other than Turkish.

47. Mr Bozçalı argued that it was not necessary, in a democratic society, to prevent him from expressing himself in his mother tongue. He added that the prison authorities must have had the resources to monitor and translate his conversations, but that they had refrained from doing so in order to prevent him from speaking Kurdish with his family and his visitors and thus from communicating with them.

48. Mr Yurtsever and Mr Özen submitted that their criminal convictions could not deprive them of the enjoyment of their rights and that they had a right to freedom of correspondence. They took the view that, consequently, any limitation of such a right had to be justified and that any interference with their right to correspondence was arbitrary, unless it was based on a legal provision that was published and accessible. They recognised that some measure of control over prisoners' interaction with the outside world was necessary for prison security and for preventing criminality. However, they took the view that those aims, which they considered legitimate, should have been used proportionately and not as a justification for restrictions on the communication they wished to have with their family and the outside world in a language other than Turkish. They further submitted that the ban on communicating with the outside world in Kurdish could not be justified solely by a lack of personnel. They pointed to the fact that the domestic authorities had not investigated whether their telephone conversations had any illegal content or could have jeopardised prison security. They criticised the State authorities for simply assuming that, since they were to be conducted in Kurdish, their telephone conversations would necessarily have some illegal content. They complained of the automatic and unfair application of the impugned ban in their case. They alleged that the measure was neither proportionate nor necessary in a democratic society. In their view, the ban on communication in a minority language was not compatible

with a genuine democracy, since respect for cultural, ethnic and religious plurality was, for them, one of the most prominent values of contemporary democracies. The applicants stated that they belonged to an ethnic minority group which was not recognised by the respondent State, but that in international law the existence of a minority group did not depend on such recognition. They took the view that the Government were at least under an obligation not to prevent them from enjoying their identity, language and culture. They referred to the European Prison Rules of the Council of Europe, citing in particular Rule 38. This Rule required that special arrangements be made to meet the needs of prisoners who belonged to ethnic or linguistic minorities; that, as far as practicable, the cultural practices of different groups be allowed to continue in prison; and that linguistic needs be met by using competent interpreters and by providing written material in the range of languages used in a particular prison. Lastly, in the applicants' submission, it was clear from the Oslo Recommendations regarding the Linguistic Rights of National Minorities and from Article 51 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, that the State was required to take the necessary measures to meet their specific needs. They claimed that, in their situation, there were no pressing social needs that might justify the impugned ban.

(iii) The Court's assessment

49. The Court finds it appropriate to make the preliminary observation that the possibility for a prisoner to communicate orally on the telephone in his mother tongue constitutes a specific aspect not only of his right to respect for his correspondence but above all of his right to respect for his family life, within the meaning of Article 8 § 1 of the Convention.

50. The Court further reiterates that a measure interfering with rights guaranteed by Article 8 § 1 of the Convention can be regarded as being "necessary in a democratic society" if it has been taken in order to respond to a pressing social need and if the means employed are proportionate to the aims pursued (see, among many other authorities, *Campbell v. the United Kingdom*, 25 March 1992, § 44, Series A no. 233). In determining whether an interference is "necessary in a democratic society" regard may be had to the State's margin of appreciation (ibid.).

51. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see *Szuluk v. the United Kingdom*, no. 36936/05, § 45, ECHR 2009).

52. The Court would further observe that, in assessing whether an interference with the exercise of the right of a convicted prisoner to respect for his correspondence was "necessary" for one of the aims set out in Article 8 § 2, regard has to be had to the ordinary and reasonable

requirements of imprisonment; some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention (see, among other authorities, *Silver and Others*, cited above, § 98; *Kwiek v. Poland*, no. 51895/99, § 39, 30 May 2006; and *Ostrovar v. Moldova*, no. 35207/03, § 105, 13 September 2005).

53. As the Court has also found in previous cases, in a number of different contexts, linguistic freedom as such is not amongst the rights and freedoms governed by the Convention, with the exception of the specific rights stated in Article 5 § 2 (a person's right to be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him) and in Article 6 § 3 (a) and (e) (a person's right to be informed promptly of the nature and cause of the accusation against him and right to have the assistance of an interpreter if he cannot understand or speak the language used in court) (see *Kozlovs v. Latvia* (dec.), no. 50835/99, 10 January 2002, and *Kemal Taşkın and Others v. Turkey*, nos. 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05 and 45609/05, § 56, 2 February 2010).

54. In the present case the Court would again point out that the matter in issue relates not to the applicants' linguistic freedom as such but to their right to maintain meaningful contact with their families. It must therefore examine the conditions to which the applicants' telephone conversations were subjected, under the Rules in force at the relevant time, in order to assess whether those conditions were compatible with the requirements of the second paragraph of Article 8 of the Convention.

55. In that connection, the Court observes that it has previously drawn the attention of the national authorities to the importance of the recommendations set out in the European Prison Rules of 2006 (Recommendation Rec(2006)2) [of the European Prison Rules]..., even though they are not binding on member States (see, among other authorities, *Sławomir Musiał v. Poland*, no. 28300/06, § 96, 20 January 2009). It reiterates in that connection that it is essential for the authorities to help prisoners maintain contact with their close relatives.

56. The Court would first observe, in the present case, that domestic law allowed inmates to maintain contact with the outside world through telephone conversations. Those conversations could, however, for security reasons, be subjected to the scrutiny of the prison authorities and, in order to enable adequate supervision, the inmates were in principle required to speak only in Turkish during their telephone calls.

57. On the one hand, domestic law allowed that principle to be relaxed and did not contain any provision prohibiting the use of a language other than Turkish by inmates during their telephone conversations with their relatives. However, Rule 88/2 (p) subjected that exception to certain formalities. In particular, it enabled the prison authorities to verify that the

person with whom the inmate wished to converse in another language genuinely did not understand Turkish.

58. In addition, it can be seen from the Rules as then applicable ... and from the decisions of the domestic courts (see paragraphs 13 and 19 above) that, when the prison authorities decided to verify the indications given on the form requesting a telephone conversation, the cost of that investigation was charged to the inmate concerned.

59. Admittedly, the Court has previously acknowledged that specific security considerations – such as the prevention of escape attempts – might justify the application of a particular detention regime and the prohibiting of a prisoner from corresponding with his relatives in the language of his choosing, where it has not been established that it would be impossible for him to use one of the permitted languages (see *Baybaşın*, cited above). That being said, the Court would observe that, in the circumstances of the present case, the Rules in issue were generally applicable to all inmates without distinction, regardless of any individual assessment of the requirements, in terms of security, that might stem from the person's character or the offences with which he was charged. It further takes the view that the domestic courts could not have been unaware, when assessing the applicants' requests to make telephone calls in Kurdish, that this language was one of those most commonly spoken in Turkey – unlike the situation in issue in *Baybaşın* – and that it was used by some inmates in the context of their family relations. In spite of that, the courts do not appear to have envisaged a system of translation. The Court reiterates that it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his family (see, among other authorities, *Baybaşın*, cited above, and *Van der Ven v. the Netherlands*, no. 50901/99, § 68, ECHR 2003-II). In that connection, it observes that there is no reason for it to call into question the applicants' assertion that Kurdish was the language used in their family relations, or that this was the only language understood by their relatives, a fact that the Court considers to be of significance in the present case.

60. The Court is therefore of the view that, having regard to the case file and the information in its possession, the practice of imposing on the applicants, who wished to use the Kurdish language in their telephone conversations with members of their family, a preliminary procedure for the purpose of ascertaining whether their relatives were genuinely unable to express themselves in Turkish was not based on relevant and sufficient grounds in view of the ensuing restriction on the applicants' contact with their families.

61. The Court thus finds that the interference with the applicants' right to conduct their telephone conversations with their relatives in Kurdish cannot be regarded as necessary. The amendment to the wording of Rule 88/2 (p) of the Rules ..., as relied on by the Government (see

paragraph 44 above), modifying the conditions governing requests for permission to make a telephone call in a language other than Turkish, certainly supports that finding. Under that Rule, as amended, a mere signed statement that the requesting inmate or his relatives do not understand Turkish would now appear to suffice.

62. Having regard to the foregoing, the Court finds that there has been a violation of Article 8 of the Convention.

...

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

...

3. *Holds*, by five votes to two, that there has been a violation of Article 8 of the Convention;

...

Done in French, and notified in writing on 22 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Raimondi and Karakaş is annexed to this judgment.

G.RA.
S.H.N.

JOINT DISSENTING OPINION OF JUDGES RAIMONDI AND KARAKAŞ

(Translation)

1. Unlike the majority, we are of the view that there has been no violation of Article 8 of the Convention.

2. At the outset, and to circumscribe our discussion, we would like to point out that, as the majority have in fact observed (see paragraphs 36 and 42 of the judgment), Article 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where facilities for contact by way of correspondence are available and adequate (see *A.B. v. the Netherlands*, no. 37328/97, § 92, 29 January 2002, and *Ciszewski v. Poland* (dec.), no. 38668/97, 6 January 2004). In addition, where, as in the present case, telephone facilities are provided by the prison authorities, these may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example, in the light of the shared nature of the facilities and the requirements of the prevention of disorder and crime (see *A.B. v. the Netherlands*, cited above, § 93, and *Coşcodar v. Romania* (dec.), no. 36020/06, § 30, 9 March 2010).

3. In the present case, we have no difficulty accepting that the restriction on the possibility for the applicants to communicate by telephone with their relatives can be regarded as an interference with the exercise of their right to respect for their correspondence, within the meaning of Article 8 § 1 of the Convention. Like the majority, we are of the view that this interference was in accordance with the law and pursued a legitimate aim, namely the prevention of disorder or crime.

4. However, we are unable to agree with the majority's assessment as to the necessity of the interference, and we do not think that the circumstances of the present case entailed a finding that there had been a violation of Article 8 of the Convention.

5. It being an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X), we would observe that, in the present case, domestic law did enable inmates to stay in contact with their relatives through telephone conversations. For security reasons, those conversations were regulated and could be monitored by the prison authorities. The fact that, for security reasons and in order to enable adequate supervision of telephone conversations, domestic law required inmates to speak in Turkish, where they themselves and their relatives could communicate in that language, does not seem to us to be sufficient in itself to justify the conclusion reached by the majority,

especially as domestic law allowed this principle to be relaxed. We consider the existence of such flexibility to be of significance in the present case.

6. In that connection, it should be pointed out in particular that the domestic law did not contain any provisions prohibiting the use by inmates of the Kurdish language or any language other than Turkish in their telephone conversations with their relatives. Rule 88/2 (p) of the Rules [on the enforcement of sentences and preventive measures], as in force at the relevant time, thus allowed those who so requested, subject to the prior completion of certain formalities ..., to speak on the telephone in a language other than Turkish. Under the Rules, a prisoner could thus be authorised to speak a language other than Turkish where it had been established that the prisoner himself or the person with whom he wished to speak did not understand Turkish.

7. The applicants called into question the Rules as such, arguing that the supervision of their telephone conversations in Kurdish was in itself incompatible with Article 8 of the Convention. The majority likewise appear to consider that no formality should be imposed on prisoners in this connection. We cannot agree with that approach, especially in view of the offences for which the applicants had been convicted (see in that connection the Government's observations in paragraph 43 of the judgment). In the circumstances of the case, we are of the view that when the competing interests at stake, namely the right of prisoners to respect for their correspondence and the need for the authorities to maintain security in prisons and prevent crime, are weighed up, there is no appearance of any unreasonable imbalance in the impugned Rules.

8. Accordingly, we are of the view that the supervision of the applicants' telephone conversations was not in itself a disproportionate measure (for a similar approach, see *Baybaşın v. the Netherlands* (dec.), no. 13600/02, 6 October 2005). In this connection, we find in particular that there is nothing to suggest that there was any arbitrariness in the conducting or the conditions of implementation of the procedure which, in domestic law as it then stood, enabled inmates to obtain permission to use a language other than Turkish.

9. Lastly, unlike the majority, we are of the view that the grounds justifying the inadmissibility decision in *Baybaşın* (cited above) were perfectly transposable to the present case, which did not justify a different approach in our opinion. We would point out that the rules in issue in *Baybaşın* were far more restrictive than those examined in the present case: under the Dutch rules assessed by the Court in *Baybaşın*, prisoners were only allowed to use certain specifically designated languages (Dutch, English, French, German, Spanish, Italian, Turkish or Moroccan). As the applicant in that case could speak Turkish he had not been allowed to use Kurdish in conversations with his family, and the Court did not find this fact to be incompatible with the Convention.