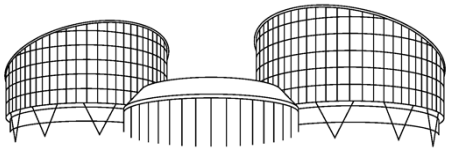

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TERGEK v. TÜRKİYE

(Application no. 39631/20)

JUDGMENT

Art 10 • Freedom to receive information and ideas • Proportionate refusal by prison authorities to deliver internet printouts posted to a prisoner by his wife • Reviewing a large volume of printed or photocopied documents, on top of regular publications, could overwhelm prison staff, impede their duties, and place an excessive burden on the judiciary • Inherent differences between officially published books or periodicals and printouts or photocopies which lacked pre-publication scrutiny entailing thus specific risks to the security and order of the prison environment • Various means available to prisoners for obtaining publications in accordance with the relevant domestic law • Reasonable for national authorities to regulate the manner in which prisoners may obtain photocopied or printed documents in order to ensure efficient functioning of all prison services • Detailed and carefully balanced assessment of competing interests by the Constitutional Court • Margin of appreciation not exceeded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 April 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tergek v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 39631/20) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Abdül Samed Tergek ("the applicant"), on 3 December 2020;

the decision to give notice to the Turkish Government ("the Government") of the complaint concerning Article 10 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 29 April 2025,

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

INTRODUCTION

1. The case concerns the refusal of the prison authorities to hand over to the applicant, a convicted prisoner, certain documents printed from the internet which had been sent to him by his relatives by post.

THE FACTS

2. The applicant was born in 1989 and is currently serving a prison sentence in Kocaeli T-Type Prison. He was represented by Mr S. Altıntaş, a lawyer practising in Kocaeli.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. At the time of the events giving rise to the present application, the applicant was detained following his conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY").

I. WITHHOLDING OF LETTERS SENT TO THE APPLICANT AND RELATED PROCEEDINGS

A. First letter and related proceedings

5. On 22 October 2018 the prison administration's letter-reading committee reviewed a letter sent to the applicant by his sister and found its enclosures to be objectionable (*sakıncalı*). The letter, which contained thirty-one pages of documents printed from the internet, was subsequently referred to the prison's Disciplinary Board for further examination.

6. On the same day, the Disciplinary Board, citing section 68(3) of the Law on the execution of sentences and preventive measures ("Law no. 5275" – see paragraph 19 below), decided to withhold the letter. That decision was based on the grounds that the letter's enclosures contained statements which could potentially pose a threat to prison security, that it was unclear who had published the information or for what purpose, and that the information included phrases which could facilitate communication within the FETÖ/PDY organisation.

7. On 26 October 2018 the applicant lodged an objection with the Kocaeli enforcement judge against the Disciplinary Board's decision. In his objection the applicant explained that he had injured his ankle on 1 October 2018 and had required a cast for several weeks. He stated that some of the withheld documents had been sent to him by his sister, a physiotherapist, and had contained information on various physiotherapy exercises he could do to assist with the rehabilitation of his ankle. The applicant further explained that the remaining documents related to a distance-learning course in real-estate management, which he was taking, and that he needed them in order to prepare for examinations.

8. On 19 August 2019 the enforcement judge upheld the applicant's objection, citing the relevant principles and case-law of both the Court and the Constitutional Court. The judge ruled that withholding the documents solely on the grounds that the information contained in them was unclear from a general inspection, without a specific assessment of their actual content, had been unlawful in the light of the freedom of communication and expression.

9. On 1 October 2019 the applicant was notified of that decision. On 25 October 2019 he received the letter and its enclosures.

B. Second letter and related proceedings

10. On 18 December 2018, the letter-reading committee deemed another letter sent by the applicant's wife to be objectionable. The letter, containing sixty-one pages of documents printed from the internet, a one-page handwritten note and four pictures, was forwarded to the Disciplinary Board for further examination.

11. On the same day, the Disciplinary Board, citing section 68(3) of Law no. 5275 and referencing a prior decision issued by the Administration and Monitoring Board on 4 November 2016 concerning the potential risks

associated with allowing internet printouts to be handed over to prisoners, decided to withhold the documents in question from the applicant. It authorised the remaining items – the one-page handwritten note and the four pictures – to be handed over to him. The decision did not in any way address the content of the withheld documents.

12. On 24 December 2018 the applicant objected to that decision before the enforcement judge. In his objection, he argued that the documents in question contained information on various physiotherapy exercises and real-estate management and were essential for both his rehabilitation and his ongoing education.

13. On 27 August 2018, citing section 62 of Law no. 5275 (see paragraph 17 below), the enforcement judge dismissed the applicant's objection. The judge noted that the internet printouts could not be classified as "books" or "correspondence" under the relevant legislation as a result of their unknown origin and their susceptibility to external interference. The judge also noted that prisoners were free to access publications through the prison library.

14. On 17 September 2019 the Kocaeli Assize Court, ruling on an objection lodged by the applicant, endorsed the reasoning provided by the enforcement judge.

II. INDIVIDUAL APPLICATION LODGED BY THE APPLICANT WITH THE CONSTITUTIONAL COURT

15. On 30 October 2019 the applicant lodged an individual application with the Constitutional Court, arguing, *inter alia*, that his right to respect for correspondence had been breached as a result of (i) the delayed delivery of the first letter and its enclosures, and (ii) the seizure of the second letter and its enclosures by the prison administration.

16. On 16 June 2020 the Constitutional Court, sitting as a panel of two judges, dismissed those complaints as manifestly ill-founded. It referred to its leading judgment in the case of *Diyadin Akdemir* (application no. 2015/9562, 4 April 2018). The reasoning for its decision reads as follows:

> "Having reviewed the application within the scope of the Constitutional Court's authority to examine individual applications, and having considered the documents submitted, it has been concluded that there was no interference with the fundamental rights and freedoms set forth in the Constitution, or that any interference that may have occurred did not constitute a violation of those rights (see, to the same effect, *Diyadin Akdemir*, application no. 2015/9562, 4 April 2018)."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LEGISLATION

17. Section 62 of Law no. 5275, entitled "The right to receive periodical and non-periodical publications", as in force at the material time, read as follows, in so far as relevant to the present case:

"1. The convicted person shall have the right to receive [any] periodical or non-periodical publication on payment of the [retail] price, provided that [such publications are not] prohibited by a court.

2. Newspapers, books and printed publications of public institutions, universities, professional organisations with the status of public institutions, foundations benefiting from a tax exemption [by decision of] the President of the Republic and associations working in the public interest shall be handed over free of charge to convicted persons. The textbooks used by convicted persons undergoing studies or training shall not be subject to inspection.

3. No publication endangering the security of the institution or containing obscene articles, writings, photographs, or comments shall be given to the convicted person.

..."

18. Following an amendment made by Law no. 7242 of 14 April 2020, subsection 3 of section 62 is now worded as follows:

"3. No publication that disturbs or endangers discipline, order, or security within the institution, [hinders] the achievement of the purpose of [rehabilitation] of convicted persons, or contains obscene articles, writings, photographs or comments, shall be given to the convicted person."

19. Section 68 of Law no. 5275, entitled "The right to receive and send letters, faxes, and telegrams", as in force at the material time, provided as follows, in so far as relevant:

"1. With the exception of the restrictions set forth in this section, convicted prisoners shall have the right, at their own expense, to send and receive letters, faxes, and telegrams.

2. The letters, faxes and telegrams sent or received by convicted prisoners shall be monitored by the reading committee in those prisons which have such a body or, in those which do not, by the highest authority in the prison.

3. [If] letters, faxes, and telegrams [to convicted prisoners] pose a threat to order and security in the prison, single out serving officials as targets, permit communication between members of terrorist or ... criminal organisations, contain false or misleading information likely to cause panic in individuals or institutions or contain threats or insults, they shall not be forwarded to [the addressee]. Nor shall [such letters, faxes, and telegrams] written by convicted prisoners be dispatched.

..."

20. Under section 116(1) of Law no. 5275, the provisions of the above sections may be applied to remand prisoners in so far as those provisions are compatible with the detention status of the prisoners concerned.

21. Regulation 91 of the Regulations of 20 March 2006 on the management of prisons and the execution of sentences and preventive measures ("the Regulations"), published in the Official Gazette of 6 April 2006, as in force at the material time, provided as follows:

"1. Convicted prisoners shall have the right to send and receive letters, faxes, and telegrams at their own expense.

2. The letters, faxes and telegrams sent or received by convicted prisoners shall be monitored by the reading committee in those prisons which have such a body or, in those which do not, by the highest authority in the prison.

3. [If] letters, faxes, and telegrams [to convicted prisoners] pose a threat to order and security in the prison, single out serving officials as targets, permit communication for organisational purposes between members of terrorist or ... criminal organisations, contain false or misleading information likely to cause panic in individuals or institutions or contain threats or insults, they shall not be forwarded to [the addressee]. Nor shall [such letters, faxes, and telegrams] written by convicted prisoners be dispatched.

..."

22. For other provisions of domestic law relevant to the present case, see *Halit Kara v. Türkiye* (no. 60846/19, §§ 16-18, 12 December 2023), *Mehmet Çiftci v. Turkey* (no. 53208/19, §§ 10-15, 16 November 2021) and *Osman and Altay v. Türkiye* (nos. 23782/20 and 40731/20, §§ 13-19, 18 July 2023).

II. RELEVANT CASE-LAW OF THE CONSTITUTIONAL COURT

23. In its judgment in the case of *Diyadin Akdemir* (application no. 2015/9562, 4 April 2018), the Constitutional Court examined an individual application challenging the prison authorities' refusal to provide a prisoner with photocopied documents sent to him by post. The court unanimously declared the application inadmissible as being manifestly ill-founded. It reasoned that photocopied documents were not covered by section 62 of Law no. 5275, which refers specifically to "periodicals and non-periodicals". Therefore, applying the same inspection criteria to photocopied documents as to periodicals and non-periodicals would impose an unreasonable burden on the prison administrations and domestic courts. The Constitutional Court further noted that photocopied documents could potentially raise copyright issues. The relevant parts of the judgment read as follows:

"20. ... Regarding publications that are not subject to any prohibition orders, the Constitutional Court has stated that any interference with freedom of expression without justification, or without meeting the criteria established by it (*Halil Bayık* [GK], App. No: 2014/20002, 30/11/2017, §§ 28-43), would constitute a violation of Article 26 of the Constitution.

21. It is clear that the inspection required in accordance with the principles and criteria outlined above cannot apply to photocopied documents, which do not fall within the scope of 'periodicals and non-periodicals' as referred to in section 62 of Law no. 2575. Expecting photocopied documents sent to convicted and remand prisoners to be subject to inspection in accordance with the above-mentioned provision, in the light of the principles and criteria approved by the Constitutional Court, would place an unreasonable burden on the prison administrations and the lower courts.

22. However, it should not be overlooked that documents in the form of photocopied books, as in the case at hand, may raise copyright issues. In this context, it cannot be argued that the intervention in question – refusing to provide photocopied books to the applicant, a convicted person, on the grounds that inspection was not feasible – was unnecessary in a democratic society."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant complained that the delayed delivery to him of the internet printouts enclosed with the first letter sent by his sister, and the withholding of other printed documents enclosed with the second letter sent to him by his wife, constituted a violation of his rights under Article 8.

25. The Court observes that, according to the documents submitted by both of the parties, the applicant's main complaint concerns his inability to access the printed documents enclosed with the letters, which contained physiotherapy exercises and notes on real-estate management. The applicant specifically contended that his rights had been violated as he had been unable to obtain the information contained within those documents (see paragraphs 7 and 12 above).

26. Having regard to the manner in which the applicant formulated his complaints in the application form and being the master of the characterisation to be given in law to the facts of the case, the Court considers that the above-mentioned complaints relate to the right to receive information and ideas and fall to be examined from the standpoint of Article 10 (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-126, 20 March 2018, and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023). Article 10 reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. The parties' submissions

27. The Government raised three different preliminary objections, arguing that the applicant lacked victim status, that he had not suffered a significant disadvantage, and that the complaint was manifestly ill-founded.

28. Firstly, the Government argued that the applicant had lost his status as a victim regarding the first letter, as its enclosures had eventually been delivered to him following a favourable ruling in the domestic proceedings. They also contended that the applicant lacked victim status in respect of the second letter, as he had failed to demonstrate any harm caused by the fact that

it had not been delivered to him, given that its content had been identical to that of the first letter.

29. Secondly, the Government asserted that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They argued that he had neither experienced any financial loss owing to the refusal in question, nor had he mentioned any other type of harm. The Government further noted that the applicant had had access to newspapers, books and other published material complying with section 62 of Law no. 5275, and that textbooks were not subject to monitoring under that section. They also emphasised that he had borrowed sixty-nine books from the prison library up until the date of his application to the Court.

30. Lastly, the Government invited the Court to reject the application as being manifestly ill-founded. They maintained that the domestic courts had reviewed the applicant's complaint in accordance with the case-law of the Constitutional Court and the Court, and that in line with the principle of subsidiarity, there was no justification for departing from the conclusion reached by the domestic courts.

31. The applicant did not submit any comments on the admissibility of the application within the time-limit given for that purpose.

2. The Court's assessment

(a) Regarding the alleged lack of victim status

(i) Concerning the first letter

32. The Court reiterates that an applicant may lose his or her status as a "victim" of the alleged violation if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it. The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. The appropriateness and sufficiency of redress depend on the nature of the violation complained of by the applicant (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 67 and 70, 2 November 2010).

33. Turning to the present case, the Court notes that, by a decision of 19 August 2019, the enforcement judge explicitly acknowledged a violation of the applicant's Convention rights, ruling that the seizure of the documents without a specific assessment of their content had been unlawful. The Court further observes that, following that judgment, the applicant received the letter and its enclosures on 25 October 2019 (see paragraph 8 above).

34. In view of the above, the Court acknowledges that by explicitly recognising the violation of the applicant's rights and providing appropriate redress – namely, putting an end to the violation by delivering the letter and its enclosures to the applicant – the enforcement judge remedied the situation under domestic law. The Court thus accepts the Government's argument

concerning the loss of the applicant's victim status in relation to this complaint.

35. It follows that the applicant can no longer claim to be a "victim" of the alleged violation of Article 10 of the Convention within the meaning of Article 34 of the Convention with respect to the first letter sent to him by post. This part of the application must therefore be rejected pursuant to Articles 34 and 35 §§ 3 (a) and 4.

(ii) Concerning the second letter

36. The Court notes at the outset that, as submitted by the Government in their observations, the first letter enclosed thirty-one pages of printed pages, whereas the second letter enclosed sixty-one printed pages. However, the Court also notes that it has not been provided with a copy of either of the letters or their enclosures, preventing it from comparing their content.

37. Furthermore, the Court observes that the Disciplinary Board refused to deliver the printed documents enclosed with the second letter to the applicant, not on the basis of any substantive assessment of their content or any comparison with the first letter, but on the basis of a prior decision in which the general risks associated with allowing internet printouts to be handed over to prisoners were emphasised (see paragraph 11 above).

38. It appears that the reasoning provided by the domestic authorities was based solely on the type of the document concerned, rather than its content. In view of that line of reasoning, the Court observes that the national authorities did not consider that the applicant lacked victim status as regards the second letter.

39. The Court accordingly dismisses the Government's objection concerning the applicant's victim status in relation to the second letter.

(b) Regarding the alleged lack of significant disadvantage

40. The Court notes that, while the applicant had other means of receiving information and ideas in prison, he was specifically denied the printed documents which are the subject of the present case. The Court therefore considers that the applicant's access to other publications and to the prison library is irrelevant to the withholding of those particular documents and did not mitigate the negative impact of his not receiving them.

41. Furthermore, the Court observes that the administrative practices and case-law cited by the Constitutional Court in declaring the applicant's individual application inadmissible (see paragraph 23 above) introduced a novel issue regarding the right to receive and impart ideas in prison – specifically, the withholding of printed documents without examining their content, an issue which requires an examination on the merits as stated above (see paragraph 38 above). Consequently, it cannot be argued that respect for human rights as defined in the Convention and the Protocols thereto does not require an examination of the case on its merits (see, *mutatis mutandis*, *Mehmet Çiftci v. Turkey*, no. 53208/19, § 25, 16 November 2021, and *Osman and Altay v. Türkiye*, nos. 23782/20 and 40731/20, § 33, 18 July 2023).

42. In view of the circumstances outlined above, the Court dismisses the Government's objection based on Article 35 § 3 (b) of the Convention.

(c) Regarding the alleged manifestly ill-founded nature of the complaint

43. As regards the Government's final objection, the Court considers that the arguments put forward in this regard raise substantive issues that warrant an examination of the merits of the complaint under Article 10 of the Convention (see *Mehmet Çiftci*, cited above, § 26, with further references).

44. The Court concludes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

45. The applicant argued that the withholding of the documents in question constituted an infringement of his rights under the Convention. He contended that the reasons provided by the national authorities in the contested decisions did not reasonably justify withholding the documents.

46. The Government asserted that there had been no interference with the applicant's rights in the present case. They contended that the applicant had failed to demonstrate how the measure in question had negatively impacted him or had a deterrent effect. The Government also reiterated the arguments they had previously made regarding the admissibility of the complaint.

47. The Government submitted that the authorities' withholding of the documents had had a legal basis, namely section 68(3) of Law no. 5275 and Regulation 91(3) of the Regulations, as in force at the material time. They maintained that the measure in question had pursued the aims of maintaining discipline in the prison, preventing disorder or crime, and protecting national security and the rights of prisoners.

48. The Government submitted that the alleged interference had been proportionate and necessary within the meaning of Article 10 § 2 of the Convention. They invited the Court to take into consideration several criteria when examining the necessity of the interference with the applicant's freedom of expression.

49. Firstly, they requested that the Court consider the nature of the offences leading to the applicant's imprisonment. The Government pointed out that the applicant had been convicted of offences related to the FETÖ/PDY armed terrorist organisation, a fact that had significantly influenced the need for the measures imposed. They argued that the printed documents could have included material connected to that terrorist organisation or have facilitated intra-organisational communication, and that this would have been in contradiction with the goal of rehabilitation in prison.

50. Secondly, the Government stressed that the nature and content of the letters should be taken into consideration. They argued, in that connection, that the documents included with the second letter sent to the applicant

consisted of printouts of various articles taken from different websites and went beyond the purpose of communication.

51. Thirdly and finally, the Government argued that due consideration should be given to the purposes and functions of imprisonment. Restrictions on certain communications were directly linked to the aim of rehabilitation, as allowing access to content that might hinder the rehabilitation process or encourage further criminal activity would undermine the goals of imprisonment.

52. The Government therefore claimed that the measure in question had met a pressing social need and that it had been necessary in a democratic society and had also been proportionate to the legitimate aims pursued.

2. The Court's assessment

53. The Court notes that the case concerns the applicant's request to receive information, in the form of internet printouts, which his wife sent to him by post and which the prison authorities refused to deliver. In that connection, the Court reiterates that, in general, prisoners continue to enjoy all the fundamental rights and freedoms guaranteed by the Convention, with the exception of the right to liberty. Thus, they continue to enjoy the right to freedom of expression (see *Yankov v. Bulgaria*, no. 39084/97, §§ 126-45, ECHR 2003-XII, and *Tapkan and Others v. Turkey*, no. 66400/01, § 68, 20 September 2007), which includes the right to receive information or ideas (*see Mesut Yurtsever and Others v. Turkey*, nos. 14946/08 and 11 others, § 101, 20 January 2015; *Mehmet Çiftci*, cited above, § 32; and *Osman and Altay*, cited above, § 40).

54. The Court considers that the refusal of the national authorities to hand the documents in question over to the applicant amounted to an interference with his right to receive information and ideas (*see Mehmet Çiftci*, § 33, and *Osman and Altay*, § 41, both cited above).

55. The Court observes that it is not disputed between the parties that the interference was prescribed by law. Accordingly, it accepts that the interference complained of by the applicant had had a legal basis under domestic law, namely either section 62 or section 68(3) of Law no. 5275.

56. The Court further notes that the interference pursued legitimate aims within the meaning of Article 10 § 2 of the Convention, namely the protection of national security, the prevention of disorder and the prevention of crime.

57. As regards the necessity of the interference, the Court reiterates the principles deriving from its case-law on freedom of expression, which are summarised in, *inter alia*, *Bédat v. Switzerland* ([GC], no. 56925/08, 29 March 2016) and *Kula v. Turkey* (no. 20233/06, §§ 45-46, 19 June 2018).

58. In order to determine whether the interference with the applicant's right to freedom of expression has been convincingly justified in the present case, the Court must assess, in line with its case-law, whether the reasons provided by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aim pursued".

59. As to the assessment of whether the reasons provided were "relevant and sufficient", the Court notes that its task in exercising its supervisory jurisdiction is not to take the place of the competent domestic courts, but rather to review under Article 10 the decisions they have taken pursuant to their margin of appreciation. The domestic courts, given their constant contact with the realities of the country, are often better placed than an international judge to determine whether a fair balance was struck at a given moment. If the balancing exercise undertaken by the national authorities was carried out in compliance with the criteria established by the Court's case-law, serious reasons are required for the Court to substitute its opinion for that of the domestic courts (see *Haldimann and Others v. Switzerland*, no. 21830/09, §§ 54 and 55, ECHR 2015, and *Bédat*, cited above, § 54).

60. In determining the proportionality of a general measure, such as the one at issue in the present case – namely, the withholding of printed documents from a prisoner solely on the basis of their format – the Court further reiterates that the quality of the judicial review of the necessity of the measure at the national level is of particular importance, including with regard to the application of the relevant margin of appreciation (see *Animal Defenders International v. United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (extracts)). The Court has already held that a general measure is a more practical means of achieving the legitimate aim pursued than a provision allowing for case-by-case examination, as the latter system is likely to lead to considerable uncertainty, litigation, costs, and delays, or to discrimination and arbitrariness. Nevertheless, the way in which a general measure has been applied to the facts of a given case helps to reveal its practical impact and is therefore relevant to the assessment of its proportionality, making it an important factor to take into account (ibid.). It follows that the more persuasive the general justifications put forward in support of the general measure, the less importance the Court attaches to the impact of that measure in the particular case before it (ibid., § 109).

61. Turning to the present case, the Court notes at the outset that the Constitutional Court, in its judgment in the *Diyadin Akdemir* case, set out the criteria that prison authorities must consider when examining photocopied documents sent to prisoners (see paragraph 23 above). Those criteria were reiterated and elaborated upon in detail in the written submissions by the Government (see paragraphs 46-51 above).

62. The Constitutional Court explicitly stated that section 62 of Law no. 5275 referred specifically to "periodicals and non-periodicals" and that photocopied documents were not covered by that section. It held that applying the same inspection criteria to photocopied documents as to periodicals and non-periodicals would impose an unreasonable burden on prison administrations and the domestic courts. The Government, in their written submissions, also pointed out the significant risk of intra-organisational communication, particularly on account of the large volume of incoming documents relating to prisoners convicted of terrorism-related crimes.

63. The Court notes that, although the receipt of photocopied or printed documents in prison was not explicitly regulated by domestic law, the Constitutional Court carried out a thorough and detailed assessment of the matter in the *Diyadin Akdemir* case. In its assessment, that court balanced the right of prisoners to access information and ideas with the duties and workload of the prison authorities, as well as the serious risks associated with intra-organisational communication. The Court recognises that reviewing a large volume of printed or photocopied documents, in addition to the regular publications sent to prisoners could indeed overwhelm prison staff, impede their duties, and place an excessive burden on the judiciary, including the Constitutional Court. It also acknowledges the inherent differences between printouts or photocopies and officially published books or periodicals, which typically undergo thorough reviews and regulatory controls prior to release to ensure compliance with legal standards. By contrast, printouts and photocopies sent to prisoners lack such pre-publication scrutiny, thereby presenting specific risks to the security and order of the prison environment, including the heightened risk of infiltration of certain external communications within large number of printouts (compare with *Osman and Altay*, cited above, § 53, which concerned publications sent to the applicants via postal services in disregard of the legal procedures laid down in that regard). The Court further notes that similar considerations were reflected in the decisions of the prison authorities (see paragraphs 11, 13 and 14 above).

64. The Court has already noted the various means available to prisoners for obtaining publications in accordance with the relevant domestic law, namely obtaining publications upon request, internal access to publications issued by official authorities and certain organisations, books kept in prison libraries and school textbooks, and the possibility of receiving books as gifts on specific occasions (see the full text of the relevant provisions in *Osman and Altay*, cited above, §§ 14-17), which were still valid at the time of the events in the present case.

65. The Court therefore finds that, in the circumstances of the case, it cannot be considered that the applicant's right to freedom to receive information and ideas was disproportionately restricted by his inability to access the printed material sent to him by post.

66. In the light of the above, the Court finds it reasonable for the national authorities to regulate the manner in which prisoners may obtain photocopied or printed documents, a matter which falls within their margin of appreciation, in order to ensure the efficient functioning of all prison services. The Court therefore sees no reason in the present case to substitute its opinion for that of the Constitutional Court, which carried out a detailed and carefully balanced assessment of the competing interests involved and did not exceed its margin of appreciation.

67. Consequently, the Court concludes that the retention of the printed documents that had been sent to the applicant did not constitute a violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the complaint concerning the non-delivery of the second letter admissible and the remainder of the application inadmissible;

2. *Holds*, by four votes to three, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 29 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Bårdsen, Seibert-Fohr and Lavapuro is annexed to this judgment.

JOINT DISSENTING OPINION OF JUDGES BÅRDSEN, SEIBERT-FOHR AND LAVAPURO

1. This case concerns a blanket ban on prisoners' receiving any internet printouts or photocopied documents, based solely on their format. Our colleagues in the majority find no violation of Article 10 of the Convention regarding the prison authorities' withholding of such documents from the applicant, without addressing their content in any way (see paragraphs 10-14, 36-44 and 55-67, and point no. 2 of the operative part of the judgment). We respectfully disagree because the majority's reasoning cannot be reconciled with the Court's established case-law, for the following reasons.

2. According to the Court's well-established case-law, the Convention does not stop at the prison gate (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, 6 October 2005); *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 836, 25 July 2013; *Klibisz v. Poland*, no. 2235/02, § 354, 4 October 2016; and *Campbell and Fell v. the United Kingdom*, nos. 7819/77 and 7878/77, § 69, 28 June 1984). Prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention. All restrictions on rights other than those provided for in Article 5 must therefore be justified in accordance with the conditions set forth in the Convention under each respective Article.

3. On 18 December 2018 the Disciplinary Board decided to withhold from the applicant a sixty-one-page printout from the internet which his wife had sent him with a letter (see paragraphs 10-11 of the judgment). According to the applicant's uncontested submissions, the printout contained information on various physiotherapy exercises and real-estate management and was essential for both his rehabilitation and his ongoing education (see paragraph 12 of the judgment). The Board's decision was a restriction on the applicant's right to receive information under Article 10 of the Convention (see *Osman and Altay v. Türkiye*, nos. 23782/20 and 40731/20, § 41, 18 July 2023). Any such interference with a prisoner's right to receive information that others wish or are willing to impart must comply with the requirements under Article 10 § 2, namely, it must be prescribed by law, pursue one or more of the legitimate aims listed in that provision and be necessary in a democratic society to achieve the relevant aim or aims.

4. Regarding the requirement that any restriction should be prescribed by law, we note that neither section 62 nor section 68 of Law no. 5275 refers to photocopied or printed documents. Nor do these sections provide that the prison authorities have the power to withhold information from a prisoner solely on the basis of the format of the document in which it is contained. Whereas the Disciplinary Board had cited section 68(3) of Law no. 5275, the enforcement judge cited section 62 of that Law, explaining that the internet printouts could not be classified as "books" or "correspondence" under the relevant legislation. The enforcement judge thereby followed the approach

taken by the Constitutional Court, which had explained in the case of *Diyadin Akdemir* (see paragraph 23 of the judgment) that section 62 did not cover photocopied documents, an approach which that court went on to confirm in the present applicant's case (see paragraph 16 of the judgment).

5. Since section 62 of Law no. 5275 was considered inapplicable and the Constitutional Court did not refer to any alternative legal basis (see paragraph 16 of the judgment), it is difficult to see which provision prescribed a restriction on the applicant's access to the printouts in question. This observation would appear to be consistent with the majority's acknowledgment that the receipt of photocopied or printed documents in prison was not explicitly regulated by domestic law (see paragraph 63 of the judgment). Nevertheless, the judgment starts from the assumption that the interference was prescribed by law (see paragraph 55).

6. For our part, we have serious doubts as to whether the interference with the applicant's right of access to information was "prescribed by law" within the meaning of Article 10 § 2 of the Convention (compare also *Günana and Others v. Turkey*, nos. 70934/10 and 4 others, §§ 66-67, 20 November 2018). We note, in particular, that the starting point in domestic law, as interpreted by the domestic courts and applied in the present case, appears to be that a prisoner may only receive information to the extent that this is expressly permitted by domestic legislation. This would be the very opposite point of departure from that of the Convention, namely, that prisoners start out with the right to receive any information and that any limitation must be prescribed by law (see paragraph 2 of the present opinion and, among other authorities, *Osman and Altay*, cited above, § 40).

7. Even assuming that a general ban could be derived from the domestic legislation, in our view it has not been convincingly shown that such a ban was necessary to achieve any of the legitimate aims listed in Article 10 § 2 of the Convention. While we agree that, as recognised under this provision, significant security concerns may necessitate interference with the right of prisoners to access information, particularly for the prevention of crime and disorder, the relevant interference must be shown to be necessary in a democratic society. In this regard, in accordance with the Court's case-law, Contracting States have "a certain margin of appreciation", which is subject to the Court's review of both the law and its application (see *Bédat v. Switzerland* [GC], no. 56925/08, § 54, 29 March 2016, and *Osman and Altay*, cited above, § 51; contrast paragraph 59 of the judgment).

8. We reiterate in this connection that, as the majority themselves acknowledge, the case concerned a general measure that was imposed by the prison authorities in the form of what was effectively a blanket ban on all information received via photocopies or printouts, based solely on its format and irrespective of its content, origin, or source (see also paragraph 60 of the judgment). This blanket ban apparently applied indiscriminately to all prisoners. It was not limited to those convicted of certain crimes or to prisoners posing a particular security risk. There were no exemptions, for example, for material relevant to the prisoner's education, health, or rehabilitation (see, *mutatis mutandis*, *Jankovskis v. Lithuania*, no. 21575/08,

§ 61, 17 January 2017). Moreover, it is noteworthy that no distinction was made between photocopies from physical originals like books and magazines, on the one hand, and printouts from electronic sources such as the internet, on the other. In effect, the ban blocked prisoners' access to any information available on the internet unless they were given access to the internet itself.

9. Under the Court's well-established case-law, the wide-ranging nature of the ban and its seemingly absolute character significantly increase both the threshold for allowing it and the overall intensity of the Court's scrutiny thereof (see, *mutatis mutandis*, *Hirst*, cited above, § 82, and *Lacatus v. Switzerland*, no. 14065/15, § 101, 19 January 2021).

10. The heart of the matter, as presented to the Court, is whether the respondent State has convincingly demonstrated that the ban on prisoners' access to photocopies and printouts that was applied in the applicant's case rested on a careful and proper weighing-up of the prisoners' right to receive information against relevant and weighty security concerns. Absent any specific reasoning by the Disciplinary Board or the domestic courts as to the necessity of the interference in the applicant's case – and given the general nature of the ban, which did not require any assessment *in concreto*, we can only examine the considerations behind the ban as such.

11. Even if sections 62 or 68 of Law no. 5275 could be considered a legal basis for the general ban on photocopies and printouts, there is little in the material presented to the Court that enables us to conclude that, in the legislative process leading to the adoption of these provisions, the legislature carefully weighed up the rights and interests at stake in relation to the blanket ban in question (compare *Kalda v. Estonia (no. 2),* no. 14581/20, § 45, 6 December 2022, and contrast *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, in particular §§ 113-15, 22 April 2013).

12. Moreover, it is difficult to infer from the relevant structure or wording of Law no. 5275 that it was based on a careful weighing-up of the rights and interests involved in the question of prisoners' access to photocopied documents and printouts (see paragraph 6 of the present opinion).

13. In addition to the apparent absence of any weighing-up of the relevant interests during the legislative process leading to the enactment of sections 62 and 68 of Law no. 5275 and the configuration of that legislation as described above, we also note that the Constitutional Court only briefly addressed the issue in its leading judgment in the *Diyadin Akdemir* case (see paragraph 23 of the judgment). The Constitutional Court held that the impugned ban was generally justified by the need to avoid placing "an unreasonable burden on the prison administrations and the lower courts".

14. We have no difficulty accepting that such administrative issues are relevant for the choice of measures to be taken to address security concerns in prisons. Moreover, it is indeed vital that Article 10 § 2 should allow for a realistic and practical approach to the challenges that prison authorities face in the day-to-day administration of their facilities.

15. However, the Court's case-law also makes clear that such concerns must in any event be weighed at some point against the right of prisoners to receive information (see *Osman and Altay*, cited above, §§ 52 and 57). We

note in this regard that it is not clear from the Constitutional Court's judgment in *Diyadin Akdemir* that it took as its starting point the fact that, under the Convention, prisoners have the right, from the outset, to receive information in any format. Nor did the Constitutional Court's judgment address the broad scope of the ban or its potential impact on the effective enjoyment of the right in question. Unlike the majority, we cannot see how the Constitutional Court's reasoning, which relied solely on an unreasonable burden that might otherwise be placed on the prison administration and the lower courts, without any attempt to weigh that interest against the right of prisoners to receive information, can be described as "a detailed and carefully balanced assessment of the competing interests involved" (see paragraph 66 of the judgment). Nor do we see any grounds for replacing the legal requirements stemming from the Court's established case-law with those adopted by the Constitutional Court.

16. Lastly, in the applicant's case, the Constitutional Court confined its reasoning to a very brief reference to its ruling in *Diyadin Akdemir*, stating simply that there had been no interference with the rights and freedoms set out in the Constitution and that any interference that might have occurred had not amounted to a violation.

17. In the light of the foregoing considerations, we are not able to conclude that the respondent Government have convincingly demonstrated that the blanket ban on prisoners' access to information via photocopies and printouts that was applied in the applicant's case was introduced on the basis of a careful weighing-up of the rights and interests at stake. Nor are we persuaded by the Government's supplementary arguments, in their written submissions to the Court (see paragraphs 49-51 of the judgment), that the impugned blanket ban, as it was applied in the applicant's case, was "necessary in a democratic society", as required by Article 10 § 2.

18. We therefore cannot agree with the majority that there has been no violation of Article 10 in the present case.

19. The majority's acceptance of the Constitutional Court's justification for the general ban on receiving photocopies and printouts, and the reasons they give for doing so, may have serious implications for prisoners' rights more generally throughout Europe. The majority's point of departure and their approach both to the question of the standard of review and to the lack of a balanced assessment – in striking resemblance to the joint dissenting opinion in the *Osman and Altay* case (cited above) – substantially diverges from established case-law (see paragraphs 2, 6, 7, 9 and 15 of the present opinion). Such important changes to the Court's jurisprudence go beyond the remit of a Chamber formation.