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La Corte Edu sulla violazione del diritto dei detenuti al rispetto della corrispondenza privata (CEDU, sez. II, sent. 12 dicembre 2023, ric. n. 60846/19)

La questione esaminata dalla Corte Edu nella pronuncia qui annotata verte sulla compatibilità con l'art. 8 della Convenzione, e in particolare con il diritto al rispetto della corrispondenza privata, del rifiuto delle autorità penitenziarie turche di inviare una lettera indirizzata dal ricorrente, all'epoca dei fatti detenuto presso una struttura carceraria, a suo fratello (anch'egli detenuto).

Da un punto di vista generale la Corte afferma che una qualsiasi ingerenza da parte di un'autorità pubblica nel diritto al rispetto della corrispondenza privata violerà l'articolo 8 della Convenzione a meno che tale ingerenza non sia "conforme alla legge", persegua uno o più scopi legittimi di cui al paragrafo 2 di detto articolo e sia "necessaria in una società democratica".

La nozione di necessità implica che l'ingerenza corrisponda a un bisogno sociale urgente e la sua valutazione spetta solo preliminarmente alle autorità nazionali poiché il giudizio sulla pertinenza e sufficienza delle ragioni addotte, sotto il profilo della compatibilità con i parametri convenzionali, rimane di competenza della Corte.

La questione appare ancora più problematica per l'ipotesi della corrispondenza tra detenuti poiché, per quanto una certa forma di controllo risulti certamente ammissibile, non va trascurata la circostanza che la possibilità di scrivere e di ricevere lettere costituisce talvolta l'unico legame del detenuto con il mondo esterno e perciò assume una notevole importanza anche al fine di mantenere dei contatti con i familiari più stretti.

La Corte ribadisce inoltre che quando vengono adottate misure che interferiscono con la corrispondenza dei detenuti, è essenziale vengano fornite le ragioni dell'ingerenza, in modo tale che il ricorrente e/o i suoi consulenti possano accertare che la legge sia stata applicata correttamente e che le decisioni assunte non siano irragionevoli o arbitrarie.

Nel merito, i giudici di Strasburgo ritengono che il rifiuto delle autorità penitenziare di spedire la lettera indirizzata dal ricorrente a suo fratello abbia costituito un'indebita ingerenza nel diritto del ricorrente al rispetto della corrispondenza privata ai sensi dell'articolo 8 § 1 della Convenzione; e in effetti le ragioni a sostegno di tale ingerenza, sebbene fondata su un'apposita base giuridica, non sono state considerate dalla Corte pertinenti e sufficienti né tantomeno la misura reputata come necessaria in una società democratica.

Per questi motivi la Corte ha ritenuto pienamente fondata la denuncia del ricorrente riscontrando una violazione del parametro convenzionale evocato.

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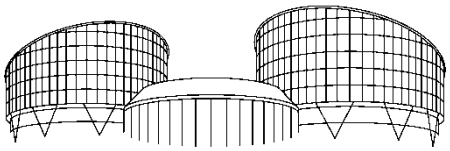

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF XXX v. TÜRKİYE
(Application no. 60846/19)

JUDGMENT
STRASBOURG
12 December 2023

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 XXX v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Arnfinn Bårdsen, *President*,
Jovan Ilievski,
Egidijus Kūris,
Saadet Yüksel,
Lorraine Schembri Orland,
Diana Sârcu,
Davor Derenčinović, *judges*,
and Hasan Bakırcı, *Section Registrar*,
Having regard to:
the application (no. 60846/19) 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 XXX ("the applicant"), on 31 October 2019;
the decision to give notice to the Turkish Government ("the Government") of the complaint concerning the refusal of the prison authorities to dispatch a letter addressed by the applicant to his brother and to declare the remainder of the application inadmissible;
the parties' observations;
Having deliberated in private on 21 November 2023,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the refusal of the prison authorities to dispatch a letter addressed by the applicant to his brother. The applicant complained of a violation of Articles 8 and 10 of the Convention.

THE FACTS

2. The applicant was born in XXX and lives in XXX. He was granted leave to represent himself in the proceedings before the Court (Rule 36 § 2 *in fine* of the Rules of Court).

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

4. The facts of the case may be summarised as follows.

5. At the time of the events giving rise to the present application, the applicant was detained in Şanlıurfa T-Type Prison ("the prison"). The Government submitted that at the material time the applicant had been in pre-trial detention on charges of 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"), that in March 2018 he had been convicted as charged and that his conviction had become final in November 2018.

6. On 25 December 2017 the applicant handed to the prison administration an eight-page letter, along with its enclosures, namely a six-page sample of a Court application form and a two-page sample of a submission to a domestic court, in order to have it dispatched to his brother N.K., who was detained in another prison. The Government submitted that in July 2019 N.K. had himself been convicted of membership of an armed terrorist organisation.

7. On 28 December 2017 the reading committee of the prison referred the applicant's letter to the Disciplinary Board of the prison ("the Disciplinary Board") for further examination, pursuant to section 123 of the Regulation on the management of prisons and the execution of sentences and preventive measures ("the Regulation"), which was in force at the material time. The reading committee considered that the letter in question contained objectionable (*sakıncalı*), false and slanderous statements.

8. On the same day the Disciplinary Board decided to confiscate the applicant's letter, along with its enclosures. The Disciplinary Board found that the letter indeed contained objectionable statements, and it identified the following extract as false and slanderous towards public officials:

"There are many people from different professional groups who are subjected to ill-treatment after being taken to the police station following their placement in prison, who have their heads covered with a sack and are sprayed with tear gas, who are given electric shocks on their groins, who are subjected to various forms of beatings, whose hands are tied behind a chair and kept [in that position] day and night for twenty-four hours, who are not allowed to sleep, who are placed in regular criminal wards where they are not easily allowed to go into the yard, who are continually beaten and hospitalised, whose requests to be moved to another ward upon their return [from the hospital] are continually rejected, whose prayers are interrupted when they perform the Salat and who are beaten again by those saying 'you are a traitor, why are you praying[?]', who are forced to spend almost all of their time on their beds (this is happening in a province in the western Black Sea [region]) and who are left in holding cells and in custody for days in a filthy and very cold environment."

Citing the text of section 91(3) of the Regulation (see paragraph 16 below), the Disciplinary Board concluded that the letter contained reprehensible (*konusu suç teşkil eden*) statements and was therefore objectionable in full under that provision.

9. On 11 January 2018 the applicant lodged an objection with the Şanlıurfa enforcement judge ("the enforcement judge") against the Disciplinary Board's decision. In his objection, the applicant submitted that the statements in question concerned allegations of ill-treatment and torture which he had heard from various people. He added that those allegations were not false. He pointed out that his detention limited his ability to provide detailed information about those statements, noting also that as a detainee, he was not obliged to furnish documentation for every statement mentioned in his letter. He maintained that it had not been explained to which officials the statements at issue had been considered slanderous, stressing that he had not named any specific officials or authorities in his letter. He added that the letter did not single out any officials as targets, posed no threat to security or order in the prison and contained no threats, defamatory remarks or illicit content. The applicant also referred to three newspaper articles containing allegations of ill-treatment and enclosed copies thereof. He further submitted that the eight-page letter had been accompanied by two enclosures, namely a six-page sample of a Court application form and a two-page sample of a submission to a domestic court, and that on account of the statements in question, the entirety of the sixteen pages had been withheld. The applicant, lastly, asserted that there had been no concrete reasons justifying the withholding of the letter in question.

10. On 24 January 2018 the enforcement judge dismissed the applicant's objection. Citing the text of the Disciplinary Board's decision, the enforcement judge considered that the impugned decision had been given in compliance with Law no. 5275 on the enforcement of sentences and preventive measures and that it had been in accordance with the law and procedure.

11. On 13 February 2018 the Şanlıurfa Assize Court, ruling on an objection lodged by the applicant, endorsed the reasoning provided by the enforcement judge.

12. On 19 March 2018 the applicant lodged an individual application with the Constitutional Court, alleging, *inter alia*, that his freedom of expression and his right to respect for his correspondence had been violated on account of the withholding of his letter by the prison administration.

13. On 8 July 2019 the Constitutional Court dismissed those complaints as manifestly ill-founded. It considered that there had been no interference with the rights and freedoms set forth in the Constitution or, even if there had been any interference, it had not amounted to a violation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGISLATION

A. Law no. 5275 on the enforcement of sentences and preventive measures

14. Section 68 of Law no. 5275 on the enforcement of sentences and preventive measures ("Law no. 5275"), as in force at the material time, provided as follows:

"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.

..."

15. Under section 116(1) of Law no. 5275 the provisions of section 68 of the same Law may be applied to remand prisoners in so far as these provisions are compatible with the detention status of the prisoners concerned.

B. Regulation of 20 March 2006 on the management of prisons and the execution of sentences and preventive measures, published in the Official Gazette of 6 April 2006 (as in force at the material time)

16. Section 91 of the Regulation, 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] are 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.

..."

17. Section 122(1) of the Regulation provided as follows:

"In the framework of the right to send and receive correspondence under section 91, letters, faxes and telegrams written by convicted prisoners shall be handed, in open envelopes, to the staff member responsible for surveillance and security, who shall transmit them to the reading committee ... A 'seen' stamp shall be affixed to those letters which, upon examination, appear unobjectionable. [Such letters] shall be placed in envelopes and given to the postal services ..."

18. Section 123 of the Regulation read as follows:

"1. Those incoming or outgoing letters which are considered objectionable ... by the reading committee shall be transmitted to the Disciplinary Board within twenty-four hours. If the Disciplinary Board finds a letter to be objectionable in full or in part, the letter shall be kept until the time-limit for lodging a complaint or an objection has expired, without the original being redacted or destroyed. If a letter is found to be objectionable in part, the original shall be kept by

the [prison] authorities and a photocopy of it – with the objectionable passages struck out in such a way as to be illegible – shall be delivered to the person concerned along with the Disciplinary Board's decision. If the whole letter is found to be objectionable, only the decision of the Disciplinary Board shall be delivered ... The Disciplinary Board's decision shall be enforced if no objection is lodged with the enforcement judge within the [prescribed] time-limit ... If the matter is sent before the enforcement judge, ... his [or her] decision shall apply in the event that an appeal is not lodged against [that] decision[.] If an appeal is lodged against [the decision of the enforcement judge], the decision of the court [examining the appeal] shall apply.

2. The notice given to the convicted prisoner must inform him [or her] that, if no objection is lodged with the enforcement judge within fifteen days of the serving of the Disciplinary Board's decision, or if no appeal against the decision of the enforcement judge is lodged with the Assize Court within one week of its being served, the decision of the Disciplinary Board shall become final and that the letter concerned shall be forwarded after the objectionable passages have been struck out in such a way as to be illegible, or that a letter which is considered objectionable in full will not be delivered.

3. Those letters considered objectionable in full or in part shall be kept by the [prison] authorities to be used if an appeal is lodged at the national or international level."

19. Under section 186 of the Regulation, the provisions of sections 91, 122 and 123 (see paragraphs 16-18 above) could be applied to remand prisoners in so far as those provisions were compatible with the detention status of the persons concerned.

II. RELEVANT CASE-LAW OF THE CONSTITUTIONAL COURT

20. In its judgments in *Muhittin Pirinççioğlu (3)* (application no. 2017/34566, 10 March 2020), *Rıdvan Türan* (application no. 2017/20669, 10 March 2020) and *Hasan Umut Özer* (application no. 2018/15894, 15 December 2020), the Constitutional Court summarised the general principles that should be considered by national authorities and courts in the context of interferences with prisoners' correspondence. The relevant parts of those judgments read as follows:

"... In determining whether a fair balance has been struck in the case of an interference with the freedom of correspondence, the reasoning provided by the interfering public authorities and the trial courts is of great importance. Public authorities and trial courts have an obligation to demonstrate with relevant and sufficient reasoning that an interference with fundamental rights and freedoms corresponds to a pressing need and is proportionate ... Accordingly, interferences with the freedom of communication that are made without [providing] reasons or with reasoning that fails to meet the criteria established by the Constitutional Court would constitute a violation Article 22 of the Constitution ["Freedom of communication"] ...

In order for the reasoning of the trial courts and other authorities exercising public power to be considered relevant and sufficient in [the context of] complaints similar to [the one in] the present application, the elements, which may vary depending on the circumstances ..., that must be contained in the [relevant] decisions may include the elements set out below.

(i) The reasonable grounds that are cited to justify interferences with correspondence received by or sent from prisons should be explained with case-specific facts and information that may satisfy an objective observer that the right to communication was abused [and with] reasonable and acceptable reasons specific to the letter in question. It should be justified with concrete evidence

which statements in the objectionable ... letter pose a threat to security in the prison and for what reason. Section 68(3) of Law no. 5275 provides that '[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 prisoner, nor shall [such letters, faxes and telegrams] written by prisoners be dispatched. A mere citation of this provision in the decisions of the disciplinary board ... or of the enforcement judge shall not constitute relevant and sufficient justification ...

(ii) The content of the letter and the identity of the addressee should be taken into account in the assessment [and] the reasons for which dispatching the letter to that addressee poses a threat to prison security and public order should be explained. An investigation should be conducted within the limitations of available resources with a view to identifying the addressee, [and] the information obtained by administrative and judicial authorities in this regard should be reflected in the reasoning of the decision ...

(iii) The prison regime applied to the prisoner and the reasons for [his or her] conviction should also be taken into account in the assessment concerning the letter's content ... The impacts of such information on the reception or dispatching of the letter at issue (such as letters aimed at permitting communication among members of terrorist ... or criminal organisations or increasing motivation among members of [such] organisations) should be demonstrated in the reasoning of the decision.

(iv) In the specific circumstances of each case, it should be assessed whether, instead of confiscating the entire letter, it would be possible to dispatch it or deliver it to its addressee after striking out the phrases which were deemed to be objectionable in such a way as to render them illegible. The proportionality of an interference in the form of confiscating an entire letter should be demonstrated ..."

THE LAW

I. PRELIMINARY REMARKS CONCERNING THE DEROGATION BY TÜRKİYE

21. The Government pointed out that the application should be examined with due regard to the Notice of Derogation transmitted to the Secretary General of the Council of Europe on 21 July 2016 under Article 15 of the Convention (see, for the text of the Notice of Derogation and further details, *Pişkin v. Turkey*, no. 33399/18, §§ 55-56, 15 December 2020). Article 15 reads as follows:

"1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the

reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

22. At this stage the Court would reiterate that in *Mehmet Hasan Altan v. Turkey* (no. 13237/17, § 93, 20 March 2018), it noted that the attempted military coup had revealed the existence of a "public emergency threatening the life of the nation" within the meaning of the Convention (see *Pişkin*, cited above, § 59). As to whether the measure taken in the present case was strictly required by the exigencies of the situation and consistent with the other obligations under international law, the Court considers it necessary to examine the applicant's complaint on the merits, and will do so below (ibid.).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that the prison authorities' refusal to dispatch the letter in question had violated his right to respect for his correspondence and his freedom of expression. He relied on Articles 8 and 10 of the Convention.

24. The Court, being master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined solely under Article 8 of the Convention (see *Tur v. Turkey*, no. 13692/03, § 14, 11 June 2013). The relevant parts of that provision read as follows:

"1. Everyone has the right to respect for ... 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 or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

25. The Government submitted that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They argued in that connection that he had neither experienced any financial disadvantage due to the refusal at issue nor mentioned any non-financial disadvantage. They further contended that despite being unable to send the letter in question, the applicant had had access to various means of communication with the outside world during his time in prison. In particular, the applicant had corresponded numerous times with N.K. before and after the date on which the letter in question had been withheld. There had been no blanket ban preventing the applicant from sharing and receiving information and that his inability to send one letter had not met the threshold of significant suffering.

26. The Government referred to *Kaya and Bal v. Turkey* ((dec.) [Committee], no. 6992/18 and 3 other applications, 19 January 2021), arguing that the Court had declared those applications inadmissible for lack of significant disadvantage because the letters at issue in that case had not been related to the applicants' personal situations. The Government also cited *Akkurt v. Turkey* ((dec.), [Committee], no. 41726/20, 22 February 2022), asserting that the inability to access one issue of a newspaper had not been found to cause a significant disadvantage. The Government pointed out

that at the material time the applicant and his brother had been detained for terrorism-related offences in connection with the FETÖ/PDY. They further contended that rather than being relevant to the applicant's personal situation, the letter in question had aimed at maintaining communication within the FETÖ/PDY and conveying baseless and provocative remarks. They also argued that the applicant had not clearly demonstrated the importance of the letter at issue or the specific disadvantage he had faced from its non-delivery to the intended recipient.

27. In the alternative, the Government averred that the application was inadmissible for being manifestly ill-founded. They argued in this connection 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 reason to deviate from the domestic courts' conclusions.

28. The applicant did not submit comments on the admissibility of the application within the time allocated for that purpose.

2. *The Court's assessment*

29. As regards the Government's objection concerning the alleged lack of a significant disadvantage, the Court notes that *Kaya and Bal*, to which the Government referred, had concerned letters addressed to recipients with which the applicants had had no ties (see *Kaya and Bal*, cited above, § 26). Indeed, the Court emphasised in that decision that the correspondence at issue in that case had not been between the applicants and someone within their family or social circles (ibid., § 27). The present case, where the addressee of the letter at issue is the applicant's brother, is therefore not comparable to *Kaya and Bal*. Likewise, *Akkurt* (cited above, § 11), which concerned the inability to access a single issue of a daily newspaper, is also clearly not comparable to the present case.

30. The Court further notes that the subjective importance of the matter for the applicant is evident, since it appears that he genuinely wished to maintain contact with his brother, as evidenced by numerous written correspondences between them, to which the Government referred (see paragraph 25 above). In addition to the above, the applicant's brother was also a detainee, which increased the importance of written correspondence as one of the limited means of communication between them. Lastly, having regard to the importance for prisoners of maintaining contact with their close family (see, *mutatis mutandis*, *Nusret Kaya and Others v. Turkey*, nos. 43750/06 and 4 others, § 55, ECHR 2014 (extracts), and *Kyriacou Tsiakkourmas and Others v. Turkey*, no. 13320/02, § 303, 2 June 2015), the Court considers that the present case involves a question of principle, namely the applicant's right to respect for private correspondence with a close family member and the existence of effective judicial supervision in that regard.

31. In view of the circumstances above, it cannot be said that the authorities' refusal to dispatch the letter in question did not result in a significant disadvantage for the applicant. The Government's objection in this connection must therefore be dismissed.

32. As to the Government's second objection, the Court considers that the arguments put forward in that regard raise issues requiring an examination of the merits of the complaint under Article 8 of the Convention (see *Mehmet Çiftci v. Turkey*, no. 53208/19, § 26, 16 November 2021, with further references).

33. The Court lastly notes 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*

34. The applicant maintained that the statements in question had not been false. In that connection, he mentioned in a general manner that various complaints of ill-treatment and torture had been raised both before the domestic authorities and before the Court. He also provided copies of the three newspaper articles to which he had referred in his objection lodged with the enforcement judge (see paragraph 9 above), claiming that the articles had concerned facts similar to those mentioned in his letter. He further argued that the domestic authorities had failed to provide concrete reasons to justify the impugned measure. He also pointed out that his letter had consisted of sixteen pages and that the prison authorities had withheld not only the page containing the statements in question but also the remaining pages. The applicant argued that the impugned measure had not been necessary in a democratic society.

35. The Government submitted that there had been no interference with the applicant's right to respect for his correspondence. They asserted that the letter at issue had not concerned the applicant's personal situation and had contained false and slanderous statements which had been capable of causing panic. They added that the dispatching of the letter had been refused on the grounds of prison security and public interest. They also referred to the arguments that they had put forward with respect to the alleged lack of a significant disadvantage (see paragraphs 25 and 26 above).

36. The Government maintained that the authorities' refusal to dispatch the letter had had a legal basis, namely section 68(3) of Law no. 5275 and section 91(3) of the Regulation, which was in force at the material time. They also submitted that the impugned measure had pursued the aims of maintaining discipline in the prison, preventing disorder or crime and protecting national security and the rights of prisoners.

37. As regards the necessity of the impugned measure, the Government asserted that the letter in question had contained baseless and provocative allegations of ill-treatment and torture supposedly inflicted on members of the FETÖ/PDY, of which the applicant had been convicted of being a member. The Government also endorsed the reasoning adopted by the Disciplinary Board (see paragraph 8 above) and maintained that the statements at issue could cause panic, incite hostility and violence, endanger public order and prison security and provoke the incarcerated members of the FETÖ/PDY. Moreover, the intended recipient of the letter had also been detained for offences relating to the FETÖ/PDY and had been convicted of being a member of it. Accordingly, the letter in question had been aimed at conveying baseless information and news to other incarcerated members of the FETÖ/PDY, sustaining organisational ties among its members and inciting hatred towards public officials through baseless accusations.

38. The Government also referred to the circumstances of the attempted coup of 15 July 2016 and emphasised the increased workload of penitentiary institutions due to the subsequent influx of prisoners. They argued that the prison regime applicable to the applicant, the type of prison that he had been held in and the grounds for his detention and conviction should be taken into

consideration. They referred in that connection to the nature of the offences for which the applicant and his brother had been detained. In particular, the letter had been intended for both the applicant's brother and, through the latter, other members of the FETÖ/PDY. This being so, dispatching the letter in question would have been inconsistent with the policies aimed at rehabilitating the applicant. The Government also referred to various pressing social needs, such as preventing the applicant's communication with other members of the FETÖ/PDY, curbing his organisational commitment, maintaining order and discipline in the prison and ensuring a successful rehabilitation process.

39. The Government cited certain excerpts of the letter that had not been mentioned in the decision of the Disciplinary Board, arguing that the statements contained therein had demonstrated the applicant's inclination to actively engage within the FETÖ/PDY, maintain loyalty to it and prevent the severing of organisational ties with its other incarcerated members, including his brother.

40. The Government further maintained that, in contrast to the cases mentioned in paragraph 20 above, in which the Constitutional Court had found that the impugned interferences had not been based on relevant and sufficient reasons, the prison authorities and the domestic courts in the present case had duly fulfilled their duty to balance the different interests at stake by providing convincing, relevant and sufficient reasons to justify the refusal to dispatch the applicant's letter. The Government also cited several decisions of the Constitutional Court in which the latter had dismissed individual applications lodged by prisoners whose incoming or outgoing correspondence had been confiscated by prison authorities.

41. The Government added that the impugned measure had been lenient, emphasising that the applicant had not been subjected to any disciplinary sanctions or investigations. Furthermore, the prison administration had not destroyed the documents in question but had decided to secure them until the exhaustion of all judicial remedies. The Government also argued that the impugned measure had been of an exceptional nature, as the applicant had had access to various means of communication, with no general restriction being imposed on him. Furthermore, the applicant had been able to communicate with his brother through exchanges of letters both before and after the impugned refusal to dispatch the specific letter in question.

42. The Government submitted that the alleged interference had been proportionate and necessary in terms of Article 8 § 2 of the Convention.

2. *The Court's assessment*

(a) General principles

43. The Court reiterates that an interference by a public authority with the right to respect for correspondence will contravene Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is "necessary in a democratic society" in order to achieve them (see *Enea v. Italy* [GC], no. 74912/01, § 140, ECHR 2009; *Kwiek v. Poland*, no. 51895/99, § 37, 30 May 2006; and *Nuh Uzun v. Turkey*, nos. 49341/18 and 13 others, § 83, 29 March 2022).

44. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" regard may be had to the State's margin of

appreciation (see, among other authorities, *Yefimenko v. Russia*, no. 152/04, § 142, 12 February 2013). 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 *Yefimenko*, § 142, and *Nusret Kaya and Others*, § 51, both cited above).

45. Some measure of control over prisoners' correspondence is called for, and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 98, Series A no. 61, and *Klibisz v. Poland*, no. 2235/02, § 338, 4 October 2016). In assessing the permissible extent of such control in general, the fact that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world should, however, not be overlooked (see *Campbell v. the United Kingdom*, 25 March 1992, § 45, Series A no. 233, and *Yefimenko*, cited above, § 143).

46. Furthermore, where measures interfering with prisoners' correspondence are taken, it is essential that reasons be given for the interference, such that the applicant and/or his or her advisers can satisfy themselves that the law has been correctly applied to him or her and that decisions taken in the case are not unreasonable or arbitrary (see *Onoufriou v. Cyprus*, no. 24407/04, § 113, 7 January 2010).

47. The Court also reiterates that it has previously found that the interception of private letters simply because they contained material deliberately calculated to hold the prison authorities up to contempt or allegations against prison officers was not necessary in a democratic society (see *Silver and Others*, cited above, §§ 64, 69, 91 and 99, and *Ekinci and Akalın v. Turkey*, no. 77097/01, § 47, 30 January 2007).

(b) Application of those principles in the present case

(i) Existence of an interference, its legal basis and the legitimate aim pursued

48. The Court has previously held that the mere monitoring of prisoners' correspondence by the authorities amounted to an "interference" with their right to respect for their correspondence within the meaning of Article 8 of the Convention (see *Mehmet Nuri Özen and Others v. Turkey*, nos. 15672/08 and 10 others, § 41, 11 January 2011, with further references). That is to say that the actual content of the correspondence is immaterial in determining whether a restrictive measure constitutes an "interference": what counts is whether the private correspondence was interfered with (see *Frérot v. France*, no. 70204/01, § 54, 12 June 2007, and *Mehmet Nuri Özen and Others*, cited above, § 41). Accordingly, the Court concludes that the authorities' refusal to dispatch the letter in question, which was addressed by the applicant to his brother, amounted to an interference with the applicant's right to respect for his correspondence under Article 8 § 1 of the Convention (see, for example, *Vlasov v. Russia*, no. 78146/01, § 130, 12 June 2008, and *Mehmet Nuri Özen and Others*, cited above, § 42).

49. Furthermore, it is not in dispute between the parties, and the Court accepts, that the interference in question had a legal basis, namely section 68(3) of Law no. 5275 and section 91(3) of the Regulation, which was in force at the material time, read in conjunction with other relevant domestic provisions (see paragraphs 8, 10 and 14-19 above; compare and contrast *Tan v. Turkey*, no. 9460/03, §§ 22-24, 3 July 2007, and *Mehmet Nuri Özen and Others*, cited above, §§ 53-59).

50. The disputed measure may also be regarded pursuing at least one of the legitimate aims set out in paragraph 2 of Article 8, namely the prevention of disorder or crime (see *Vlasov*, cited above, §§ 135 and 137).

(ii) Necessity of the interference in a democratic society

51. Turning to the question of the "necessity" of the interference, the Court must assess whether the reasons adduced by the national authorities to justify the impugned measure were relevant and sufficient (see paragraphs 44 and 46 above). Accordingly, the Court will examine the reasons given by the prison authorities in refusing to dispatch the letter in question and the manner in which the domestic courts addressed those reasons in the light of the applicant's arguments (see, *mutatis mutandis*, *Subaşı and Others v. Türkiye*, nos. 3468/20 and 18 others, § 85, 6 December 2022).

52. In that connection, the Court notes that in its judgments mentioned in paragraph 20 above, the Constitutional Court summarised the general principles that should be considered by national authorities and trial courts in the context of interference with prisoners' correspondence. The Court would, in general terms, endorse those principles developed in the case-law of the Constitutional Court. Even though the above-mentioned judgments were rendered by the Constitutional Court after the dismissal of the applicant's individual application by that court (see paragraphs 13 and 20 above), those principles were clearly aimed at preventing potential abuses by public authorities, in line with the principles established in the Court's own case-law (see paragraphs 44 and 46 above; see also, for example, *Vlasov*, cited above, § 138, with further references). The Court reiterates in that connection that the rule of law, one of the fundamental principles of a democratic society, is inherent in all of the Articles of the Convention and implies, *inter alia*, that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the Convention (see, among many other authorities, *Mehmet Çiftci*, cited above, § 38, with further references).

53. In the present case, the Court observes that the Disciplinary Board refused to dispatch the letter at issue, considering that it contained objectionable and reprehensible statements, and deeming certain parts of it to be false and slanderous towards public officials (see paragraph 8 above). The enforcement judge dismissed the applicant's objection against that decision, considering that it had been given in compliance with Law no. 5275 and that it had been in accordance with the law and procedure (see paragraph 10 above). As to the Assize Court, it endorsed the reasoning provided by the enforcement judge (see paragraph 11 above).

54. The Court considers, however, that none of those decisions enable it to establish that the Disciplinary Board or the trial courts conducted a concrete and Convention-compliant assessment. Indeed, although the Disciplinary Board cited certain excerpts from the letter that were deemed to contain false and slanderous statements towards officials, it did not provide any explanation as to why those statements were characterised as such, despite the fact that the cited parts of the letter did not reference any specific official or authority, as properly pointed out in the applicant's objection lodged with the enforcement judge (see paragraphs 8 and 9 above). The Court further observes that, before the enforcement judge, the applicant also relied on some newspaper articles containing allegations of ill-treatment (see paragraph 9 above). However, it is not apparent from the decisions of the trial courts that they carefully considered the applicant's arguments and

adequately weighed up his right to respect for his correspondence against other interests at stake, such as the maintenance of prison order and discipline.

55. The prison authorities and the trial courts in the present case also did not provide adequate reasoning as regards the possibility of dispatching the letter after redacting the specific parts that were considered to be objectionable (compare and contrast *Pfeifer and Plankl v. Austria*, 25 February 1992, §§ 47-48, Series A no. 227, where the Court, despite finding a violation of Article 8, emphasised that the deletion of a part of a letter was a less serious interference than stopping it). In this regard, the Court notes that the letter at issue, along with its enclosures, consisted of sixteen pages, while the Disciplinary Board only cited a single paragraph from the letter as false and slanderous (see paragraphs 8-9 above).

56. The Court further notes that, despite the above-mentioned shortcomings in the decisions of the prison authorities and trial courts, the Constitutional Court merely held that there had been no interference with the rights and freedoms set forth in the Constitution or that any interference had not amounted to a violation in the present case (see paragraph 13 above).

57. As regards the Government's references to specific excerpts of the letter which were not mentioned in the decision of the Disciplinary Board (see paragraph 39 above) or to other considerations, such as the applicable prison regime and the nature of the offences leading to the detention and conviction of the applicant and his brother (see paragraphs 37-38 above), the Court considers that the decisions of the Disciplinary Board and domestic courts do not enable it to conclude that those excerpts of the letter or such other considerations were ever taken into account by them. The same is true for the decisions of the Constitutional Court cited by the Government, wherein that court dismissed individual applications lodged by prisoners whose incoming or outgoing correspondence had been confiscated by prison authorities (see paragraph 40 above).

58. In view of the foregoing, the Court considers that the domestic authorities in the present case did not fulfil their task of balancing the competing interests at stake and preventing an arbitrary interference with the applicant's right to respect for his correspondence (see, *mutatis mutandis*, *Subaşı and Others*, cited above, §§ 91 and 93). Accordingly, it has not been demonstrated that the reasons adduced by the national authorities to justify the refusal to dispatch the letter in question were relevant and sufficient or that the impugned measure was necessary in a democratic society. In that connection, the Court refers once again to the considerations outlined in paragraph 52 above concerning the principles developed in the Constitutional Court's case-law.

59. Lastly, as the applicant did not benefit from a minimum degree of protection against arbitrary interference as required by Article 8 of the Convention, the Court considers that the impugned measure cannot be said to have been strictly required by the special circumstances of the state of emergency (see, *mutatis mutandis*, *Pişkin*, cited above, § 229).

60. There has accordingly been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

62. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention.

Done in English, and notified in writing on 12 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar
Arnfinn Bårdsen President