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La CEDU sul diritto dei detenuti a mantenere i legami familiari
(CEDU, sez. II, sent. 16 dicembre 2025, ric. n. 2412/21)

Con la decisione in commento, la Corte EDU si è pronunciata sul ricorso presentato da un detenuto turco, a seguito del respingimento della sua richiesta di trasferimento in un istituto penitenziario più vicino al luogo di residenza dei suoi familiari**.**
La Corte ha osservato che la distanza geografica è un fattore che può incidere sulla frequenza delle visite e, di conseguenza, sulla solidità dei legami familiari, soprattutto quando la lontananza persiste per diversi anni. Il rigetto di una richiesta di avvicinamento costituisce dunque un'ingerenza nel diritto del detenuto alla vita familiare.
Sebbene nel caso di specie l'ingerenza avesse una base legale e perseguisse scopi legittimi – tra cui la tutela della sicurezza nazionale, della sicurezza pubblica e la prevenzione dei reati, anche all'interno degli stessi istituti penitenziari – essa non poteva reputarsi proporzionata allo scopo e dunque necessaria in una società democratica.
Secondo la Corte, le autorità nazionali avrebbero dovuto realizzare un bilanciamento degli interessi in gioco, tenendo conto della situazione personale del ricorrente. Esse, invece, non hanno effettuato una valutazione individualizzata circa la possibilità di trasferirlo in uno degli istituti penitenziari più vicini alla sua famiglia, indicati nella richiesta, né hanno esaminato la possibilità di adottare misure alternative per compensare la riduzione delle visite ricevute, quali visite o chiamate telefoniche più lunghe.
Vi è stata pertanto una violazione dell'articolo 8 della Convenzione.

***

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

SECOND SECTION

CASE OF XXX v. TÜRKİYE
(Application no. 2412/21)

JUDGMENT
STRASBOURG
16 December 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 XXX v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Arnfinn Bårdsen, *President*,
Saadet Yüksel,
Péter Paczolay,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Juha Lavapuro,
Hugh Mercer, *judges*,
and Hasan Bakırcı, *Section Registrar*,
Having regard to:
the application (no. 2412/21) 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 (OMISSIS) ("the applicant"), on 15 December 2020;
the decision to give notice to the Turkish Government ("the Government") of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;
the parties' observations;
Having deliberated in private on 25 November 2025,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the rejection of the applicant's request to be transferred to a prison closer to his family's place of residence. The applicant complains of a violation of his right to respect for family life under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1966 and lives in Edirne. He was represented by Ms (OMISSIS), his wife and legal guardian.
3. The Government were represented by their then Agent, Mr Hacı Ali Açıkgül, former 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. The applicant was convicted of membership of an organisation referred to by the Turkish authorities as FETÖ/PDY ("Fetullahist Terror Organisation/Parallel State Structure") and was serving his prison term in Kırşehir E-Type Penitentiary Institution ("the penitentiary institution") at the time of the events, where he had been detained since he was placed in pre-trial detention on 20 July 2016.
6. On 8 October 2018 the applicant submitted a request to be transferred to another penitentiary institution located closer to Edirne, where his wife and two school-aged children were residing. He indicated that his family had to travel forty to forty-five hours by bus with two connections to visit him in Kırşehir Penitentiary Institution, that his wife and children suffered during the trip and that

he had no other family member who could visit him. He specified that he was ready to pay the transfer fees. Therefore, he asked the Directorate General for Prisons and Detention Centres of the Ministry of Justice ("the Directorate General") to transfer him to a prison in Edirne city centre or, if this was not possible, to one of ten prisons that he suggested in the following cities near Edirne: Kırklareli, Tekirdağ, Silivri, Çanakkale, Gelibolu, Çorlu and Uzunköprü.

7. On 19 October 2018 the Directorate General rejected the applicant's transfer request on the grounds that the institutions to which he had requested to be transferred were at full capacity and not suitable for him on account of the type of offence of which he had been convicted.

8. On 12 November 2018 the applicant lodged an objection with the Kırşehir enforcement judge ("the enforcement judge") against the decision of the Directorate General. He argued that the grounds put forward by the Directorate General to reject his request were not factually or legally reasonable or fair.

9. On 27 November 2018 the enforcement judge dismissed the applicant's objection. In that decision, the judge noted that the Directorate General had carried out an assessment of the applicant's request and had decided not to grant it on the grounds described above.

10. On 30 November 2018 the applicant lodged an objection against the decision of the enforcement judge. He noted that his official residence address was in Edirne, where his wife and children lived, and that he had no connection to Kırşehir. He further reiterated the difficulties that his wife and children had in travelling from Edirne to Kırşehir to visit him. He added that his family life had suffered, as he couldn't receive visits from his family.

11. On 14 December 2018 the Kırşehir Assize Court ("the Assize Court") dismissed the applicant's objection on the ground that the decision of the enforcement judge had been in compliance with procedure and law.

12. On 4 January 2019 the applicant lodged an individual application with the Constitutional Court, complaining of an alleged violation of his right to respect for private and family life owing to the rejection of his transfer request. He indicated that travelling between Edirne and Kırşehir took forty-five hours, that he had only been able to see his school-age children three times in two and a half years, that his children were growing up without seeing him and that his family life had been adversely affected by the situation. His individual application form contained a summary of each stage of the proceedings that he had undertaken and was accompanied by all the relevant decisions which had been taken in that context.

13. By a decision of 7 July 2020, the Constitutional Court declared the applicant's complaint concerning his right to respect for private and family life inadmissible as manifestly ill-founded. It considered that the applicant had not sufficiently substantiated his allegation of a violation, as he had not complied with the obligation to produce evidence and provide explanations in support of his allegations.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

14. A description of the relevant domestic and European framework and practice may be found in *Avşar and Tekin v. Turkey* (nos. 19302/09 and 49089/12, §§ 31-36, 17 September 2019) and *İlerde and Others v. Türkiye* (nos. 35614/19 and 10 others, §§ 107-37, 5 December 2023).

15. The relevant provisions of Law no. 5275 on the enforcement of sentences and preventive measures read as follows:

Section 53(1) – Transfer types
"Convicted prisoners may be transferred to another institution at their own request, or for reasons relating to mass referral, discipline, order and security, illness, training, education, or the location of an offence or trial."
Section 54(1) – Transfer at the request of a convicted prisoner
"The following conditions shall be fulfilled in order for a convicted prisoner to request a transfer to another institution:
(a) a request shall be submitted to the prison administration and shall indicate a choice of at least three ... prisons;
(b) [the prisoner shall] consent to paying transfer fees in advance;
(c) [the prisoner shall] have more than three months of imprisonment [left to serve];
(d) [the prisoner shall] possess a good behavioural record and shall not have a[n active] disciplinary record;
(e) the institution requested must have space available ...
..."
Section 56 – Transfer for compelling reasons
"Convicted prisoners may be transferred to other suitable prisons outside the jurisdiction area [of the trial court], as determined by the Ministry of Justice, for compelling reasons such as security and order, natural disaster, fire, major repairs, a lack of space in the [prisoners'] current prison, or other significant reasons."
16. Circular no. 167 of the Directorate General, entitled "Allocation, Referral Procedures and Other Provisions regarding the Penitentiary Institution", dated 5 June 2015, set out the principles and procedures regarding prisoner transfers according to the type of penitentiary institution. The relevant provisions of this circular read as follows:
Transfer at the convicted prisoner's own request
"Article 15(1). In order for convicted prisoners to be transferred from the penitentiary institution where they are staying to another institution at their own request,
(a) they must submit a petition indicating at least three institutions, suitable to their situation, to which they wish to be transferred;
(b) they must agree to pay the transfer expenses in advance;
(c) they must have stayed in the penitentiary institution for more than three months;
(d) they must demonstrate good behaviour and not have received any disciplinary penalty or those received must have been lifted;
(e) the institution to which they wish to be transferred must be suitable in terms of space, capacity and category [of prisoners] and must not be a remand centre;
...
(h) they must not pose, in the penitentiary institution to which they request to be transferred, any security risk to themselves, other convicts or the institution.
..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained that the rejection of his request to be transferred to another prison closer to his family's place of residence had violated his right to respect for family life. In this regard, he alleged that his family had experienced hardship in visiting him as they had to travel a distance of 1,000 kilometres from Edirne to Kırşehir, that he had only been able to see his wife and children four or five times since he had been placed in detention and that the distance between the penitentiary centre and his family's place of residence had had a negative impact on his family life and on his children's psychological state. He relied on Article 8 of the Convention, which reads, in so far as relevant, as follows:

"1. Everyone has the right to respect for his ... family life...

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

18. The Government raised several preliminary objections, arguing that the applicant had failed to exhaust domestic remedies. Firstly, they criticised the applicant for not having brought a claim in the administrative courts. In this regard, they cited decisions of the Court of Jurisdictional Disputes of 22 October 2018 and 28 January 2019, in which that court had held that the courts competent to examine decisions rejecting transfer requests had been the administrative courts. In this connection, the Government asserted that the applicant had failed to bring an action in the administrative courts for the quashing of the decisions or for a full remedy action in respect of the decisions on the refusal of his transfer request.

19. Secondly, the Government submitted that the Constitutional Court had declared the individual application lodged by the applicant inadmissible as manifestly ill-founded on the grounds that the applicant had failed to comply with the obligation to provide evidence and explanations in support of his complaints. They argued that the applicant could not thus be said to have duly exhausted the domestic remedies, as he had failed to submit his individual application to the Constitutional Court in accordance with the applicable rules and procedures.

20. Thirdly, and finally, the Government contended that the applicant had not provided sufficiently detailed explanations of his allegations of a violation of his right to respect for family life to the prison administration, the enforcement judge or the Assize Court and that he had not mentioned any obstacles, such as illness or economic difficulty, that might have prevented his family from visiting him at the Kırşehir Penitentiary Institution. They submitted that, therefore, the applicant could not be deemed to have duly exhausted the domestic remedies.

21. The applicant did not comment on the Government's objections.

22. Concerning the objections of the Government to the effect that the applicant had not brought a claim in the administrative courts and that he had not duly presented his allegations of violations in his petitions to the prison authorities, the Court notes that, in her impugned decision of 27 November 2018, the enforcement judge dismissed the applicant's objection on substantive grounds, stating that the Directorate General had carried out an assessment of the applicant's request and referring to the grounds for the Directorate's decision not to grant it. The enforcement

judge did not state in that decision that the applicant had not substantiated his claims or that she had no jurisdiction in respect of this issue, nor had she pointed to any other competent court (see paragraph 9 above; compare *İlerde and Others v. Türkiye*, nos. 35614/19 and 10 others, § 205, 5 December 2023). Likewise, the Assize Court dismissed on the merits the applicant's request on 14 December 2018 (see paragraph 11 above). The Court further notes that the Constitutional Court examined the applicant's individual application concerning his complaint under Article 8 of the Convention and found it inadmissible as being manifestly ill-founded and not for non-exhaustion of domestic remedies (see paragraph 13 above). The Court reiterates in this regard that it would be unduly formalistic to require an applicant to avail himself or herself of a remedy which even the highest court of the country had not obliged him or her to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 116-18, ECHR 2007-IV). Therefore, the Government's above-mentioned objections must be dismissed.

23. As regards the Government's objection that the individual application lodged by the applicant with the Constitutional Court had been declared inadmissible on the ground that the applicant had not sufficiently substantiated his allegation of a violation, the Court notes that it has already dealt with a similar objection in *Durukan and Birol v. Türkiye* (nos. 14879/20 and 13440/21, §§ 39-42, 3 October 2023 and the references cited therein), in which it held that the applicants had duly raised their complaints before the Constitutional Court by invoking their rights under Article 10 of the Convention and Article 26 of the Constitution, setting out the relevant facts and submitting the necessary documents. The Court found that the Constitutional Court's conclusion that the complaints were insufficiently substantiated, without specifying what further elements were required, amounted to an excessively formalistic application of procedural rules and created a disproportionate obstacle to the effective exercise of the right of individual petition. It therefore dismissed the Government's preliminary objection of non-exhaustion.

In the present case, the Court observes that in the application form submitted to the Constitutional Court, the applicant relied on his right to respect for family life and argued that travelling the distance between the penitentiary institution and his family's residence had caused serious inconvenience to his family members and adversely affected his family life. He also provided a summary of all the acts and decisions adopted in the course of the proceedings by referring to the relevant documents that he had annexed to his application form (see paragraph 12 above). The Court considers that, by doing so, the applicant communicated all the relevant facts and made sufficiently reasoned complaints to enable the Constitutional Court to examine his allegation of a violation of his right to respect for family life. Reproaching the applicant for not having provided additional material or more elaborate arguments, without specifying the nature or extent of what was allegedly lacking, would amount to an excessively formalistic approach, capable of unduly restricting the effective exercise of the right of individual application (compare *Durukan and Birol*, cited above, § 42). Therefore, this objection must also be rejected.

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

25. The applicant did not submit observations within the time-limit set by the Court.

26. The Government argued that there had not been an interference with the applicant's right to family life due to the domestic authorities' refusal of the applicant's transfer request. In their opinion, the time that the applicant had already spent in Kırşehir Penitentiary Institution had not been so long as to constitute a significant burden on him in respect of his contact with his family and he had regularly been visited by his family and had been able to communicate with them by various means, such as telephone and letters.

27. In the event that the Court considered otherwise, the Government argued that the interference had had a legal basis, namely Articles 8-15, 23 - 24 and 53-54 of Law no. 5275 and Circular no. 167, and that these provisions complied with the requirements of clarity, accessibility and foreseeability. The interference had pursued legitimate aims, including the protection of national security and public safety and the prevention of crime, in particular the maintenance of security and discipline and the prevention of crime in penitentiary institutions.

28. Regarding the necessity of the interference, the Government submitted that, in determining the type and location of the prison where the applicant was held, the domestic authorities had struck the right balance between their resources and the applicant's request. The applicant became a detainee pending appeal only following his conviction by a first-instance court judgment on 10 May 2018. Before that date, he had been placed in Kırşehir Penitentiary Institution near Aksaray, where the criminal investigations against him had first been initiated. The applicant was being held in a high-security penitentiary institution on account of his conviction for membership of an armed terrorist organisation and that his request to be transferred had been rejected by the authorities on the grounds that the other prisons to which he could be transferred were either full or not suitable due to the type of offence of which he had been convicted. The applicant had not put forward concrete reasons in respect of his family as a basis for his transfer request. Furthermore, the applicant had been visited many times and regularly by his family and that the geographical distance had not been the main criterion as to whether the applicant's family had been adversely affected.

29. Having regard to the above, the Government submitted that the interference with the applicant's right to respect for family life had been necessary in a democratic society and proportionate to the legitimate aims pursued.

2. The Court's assessment

30. The general principles concerning the rejection of prisoners' requests to be transferred to a prison closer to the place of residence of their family have been summarised in *Avşar and Tekin v. Turkey* (nos. 19302/09 and 49089/12, §§ 68-74, 17 September 2019) and *İlerde and Others* (cited above, §§ 212-15). In particular, in assessing the necessity of such measures, the Court has acknowledged that the assignment of prisoners to different prisons according to criteria such as the penal and penitentiary profile of the detained persons, their dangerousness, the risk of them continuing criminal activities, security risks and prison overcrowding could not in itself be considered arbitrary or unreasonable. However, the maintenance of family ties by prisoners must also be a criterion to be taken into account in this context (see *Avşar and Tekin*, cited above, § 71).

31. The Court also observed that, geographical distance is a factor that can contribute to the frequency of family visits and, by extension, the strength of family ties. This is particularly true when the geographical distance to be travelled by relatives is great and the geographical distance between

the prisoner and his or her family persists for several years (ibid., § 72). Therefore, the authorities must carry out a thorough examination of transfer requests and proceed to an individualised balancing of the interests at stake, taking into account, in the reasoning of their decisions, the prisoners' personal situation, including the period spent in detention far from their families' places of residence, as well as constraints linked to the age, state of health and financial situation of their family members which may prevent them from travelling to visit them (ibid., § 73).

32. In the present case, the applicant's request to be transferred to a prison closer to his family's place of residence was rejected by the Directorate General and his subsequent objections were dismissed by both the enforcement judge and the Assize Court. The Court notes in this context that the applicant is detained in the Kırşehir Penitentiary Institution, while his family resides in Edirne, the distance between the two being more than 850 kilometres according to publicly available sources. It further notes that the applicant provided sufficient information about the personal circumstances of his wife and two school-aged children, as well as the considerable difficulties they faced in travelling from Edirne to Kırşehir, a journey requiring two separate connections, in order to visit him (contrast *Fraile Iturralde v. Spain* (dec.), no. 66498/17, § 30, 7 May 2019). Accordingly, the Court considers that there has been an interference with the applicant's right to respect for his family life within the meaning of Article 8 § 1, which covers the right to family visits (compare *Avşar and Tekin*, cited above, § 62).

33. It is not disputed between the parties that the impugned interference had a legal basis in Law no. 5275 and Circular no. 167 (see paragraphs 15 and 16 above). The Court also accepts that the interference in question pursued the legitimate aims cited by the Government (see paragraph 27 above; compare *Avşar and Tekin*, cited above, § 67).

34. As regards the necessity of the interference in a democratic society, the Court observes that the applicant's request for his transfer to a prison located closer to the place of residence of his family was rejected in the absence of an individualised balancing by the domestic authorities of the interests at stake while taking account of the applicant's personal circumstances (see paragraphs 6-13 above). Indeed, even though the applicant submitted before domestic authorities that his wife and children had had to endure a journey of forty to forty-five hours by bus with two connections to visit him in Kırşehir Penitentiary Institution (see paragraph 6 above), the Directorate General rejected the applicant's transfer request for the reason that the prisons were at full capacity and the prisons were not suitable for him on account of the type of offence for which he had been convicted (see paragraph 7 above) and this assessment was accepted by the enforcement judge and the Assize Court (see paragraphs 9 and 11 above).

35. While the Court is not in a position to doubt the veracity of the reasons advanced by the national authorities, it observes that the domestic authorities did not make an individualised assessment of whether the applicant could be transferred to one of the prisons closer to his family, suggested by the applicant in his request, or whether any alternative means of making up for the fewer visits he received would be possible, such as longer visits or even longer telephone calls (compare *İlerde and Others*, cited above, §§ 214-215 and 219). The Court notes in this regard that the interest of convict prisoners in maintaining at least some family and social ties must somehow be taken into account (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 837 and 850, 25 July 2013).

36. In the light of the foregoing considerations, the Court finds that, in the circumstances of the present case, it does not appear that the national authorities gave sufficient consideration to the applicant's arguments concerning his personal situation and the difficulties faced by his family members, notably his children, in travelling to visit him in Kırşehir Penitentiary Institution (see, *mutatis mutandis*, *Rodzevillo v. Ukraine*, no. 38771/05, § 85, 14 January 2016). It therefore considers that the interference was not proportionate to the legitimate aim pursued and, therefore, not necessary in a democratic society (compare *Avşar and Tekin*, cited above, §§ 73-74).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides as follows:

"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."

39. The applicant did not submit a claim for just satisfaction within the time-limit set by the Court. 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 16 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar

Arnfinn Bårdsen President