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

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Cancellation of passports of three academics following attempted coup in 2016 violated Convention

In today's **Chamber** judgment[1] in the case of Telek and Others v. Türkiye (applications nos. 66763/17, 66767/17 and 15891/18) the European Court of Human Rights held:

- unanimously, that there had been **a violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights in respect of the three applicants**, and**

- by a majority (6 votes to 1), that there had been **a violation of Article 2 of Protocol No. 1 (right to education)** to the Convention in respect of the first two applicants.

The case concerned the withdrawal of the three academics' passports in connection with their dismissal from the civil service following the state of emergency declared after the attempted *coup d'état* of 15 July 2016 in Türkiye. The measure lasted two years and eight months for the first two applicants and three years and ten months for the third applicant.

As to the right to respect for private life, the Court found that the cancellation of the three applicants' passports by acts of the executive, in the context of the state of emergency, had been open to arbitrariness and had not satisfied the requirement of lawfulness. The interference had not therefore been "in accordance with the law" within the meaning of Article 8 of the Convention.

As to the right to education, the Court found that Article 2 of Protocol No. 1 imposed an obligation on the member States not to hinder without due justification the exercise of that right in the form of higher education courses in relevant institutions abroad. In the present case it took the view that the inability for the first two applicants, on account of the cancellation of their passports, to pursue their doctoral studies in the foreign universities to which they had been admitted had not been foreseeable.

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

Principal facts

The applicants, Alphan Telek, Edgar Şar and Zeynep Kıvılcım, are Turkish nationals who were born in 1990, 1991 and 1971 respectively. The first two applicants live in Türkiye and the third in Germany.

At the relevant time the three applicants worked in Turkish universities. They were among the signatories of a petition headed "We will not be accomplices to this crime" and signed by 1,128 academics and other intellectuals calling themselves "Academics for Peace".

Subsequently, a group of individuals belonging to the Turkish armed forces attempted to carry out a *coup d'état* on the night of 15 to 16 July 2016. A few days later, the government declared a state of emergency and the Council of Ministers adopted a number of legislative decrees providing, among other things, for the dismissal of civil servants who were considered to have, or to have had, a connection with (i.e. the fact of belonging to, being a member of, being affiliated to or associated with) a terrorist organisation or an organisation, structure or group which had been found by the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

National Security Council to have engaged in activities that were detrimental to national security. Those legislative decrees also provided for the cancellation of the passports of those concerned.

On various dates between 2016 and 2017 the three applicants – who were considered to have links with terrorist organisations or to have engaged in activities that were detrimental to the national security of the State – were dismissed from the civil service and their passports were cancelled.

At that time, Mr Telek and Mr Şar were research assistants at Yıldız Teknik University in Istanbul. Mr Telek was also enrolled in studies for his PhD at the Institute of Political Studies (*Institut d'études politiques*) in Paris, to which he had been admitted as a researcher. Mr Şar had been admitted to a PhD course at the European University Institute in Florence. Ms Kıvılcım was a lecturer-researcher at Istanbul University and was visiting Germany when her passport was cancelled. She did not return to Türkiye but settled in Germany, where she started working at an academic institution.

The three applicants subsequently lodged administrative and individual appeals against the decisions to cancel their passports, but their appeals were dismissed by the administrative courts and the Turkish Constitutional Court.

In May 2019 criminal proceedings were brought against Ms Kıvılcım on the ground that she had signed the above-mentioned petition. However, she was acquitted in October 2019, as the criminal court complied with the Constitutional Court's judgment in *Zübeyde Füsun Üstel and Others*[2], in which it had found that the criminal conviction of nine signatories to the petition had violated their right to freedom of expression.

Ultimately, the three applicants obtained new passports following the entry into force in 2019 of additional section 7 to the Passports Act (Law no. 5682).

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private life) the applicants complained mainly about the cancellation of their passports in connection with the state of emergency. The first two applicants argued that the withdrawal of their passports had prevented them from pursuing their university and professional plans and their academic research activities abroad. The third applicant argued that her inability to obtain a valid passport had caused difficulties for her in her private and professional life during her stay in a foreign country.

In addition, the first two applicants relied on Article 2 of Protocol No. 1 (right to education) to the Convention.

The applications were lodged with the European Court of Human Rights on 11 August 2017 (applications nos. 66763/17 and 66767/17) and 3 April 2018 (application no. 15891/18).

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

[2] *Zübeyde Füsun Üstel and Others* (no. 2018/17635), 26 July 2019.

Decision of the Court

Article 8 (right to respect for private life): complaint raised by all three applicants

The Court observed that the applicants were academics who had clearly needed to follow and participate in academic activities abroad, and who had also intended to continue their studies and research in foreign universities or to settle in a foreign country. They thus had close professional and private ties with the countries that they wished to visit or reside in. Accordingly, the fact that they had been unable to obtain a valid passport for a considerable period of time, pursuant to measures taken in the context of the state of emergency, had undoubtedly had a significant impact on their professional and private lives. The measure complained of had thus constituted an interference with the applicants' right to respect for their private life.

The Court also noted that the cancellation of the applicants' passports had been decided in the context of the state of emergency because they had been dismissed from the civil service, an administrative measure ordered under Legislative Decrees nos. 675 and 686, which subsequently became ordinary Laws (nos. 7082 and 7086) following their approval by the Grand National Assembly of Türkiye on 8 March 2018.

However, neither Legislative Decrees nos. 675 and 686 nor any authority or court which ruled on the applicants' appeals had provided any details whatsoever as to the terrorist organisation or organisation posing a threat to the security of the State with which the applicants were alleged to have links, or as to the acts they were alleged to have committed which had purportedly prompted such a conclusion. The applicants had never been the subject of any criminal investigation or prosecution in connection with the attempted coup.

Furthermore, it did not appear from any administrative or judicial act or decision adopted in respect of the applicants that the cancellation of their passports had been made necessary by the state of emergency. Moreover, the national authorities had not provided any detailed information capable of justifying the impugned measure against the applicants under legislative decrees adopted in the context of the state of emergency.

The Court also noted that section 22 of the Passports Act (Law no. 5682) allowed the authorities to refuse to issue a passport to a person whose departure from the country would be considered "objectionable". It observed in this connection that it had previously found in the context of cases concerning prisoners' correspondence that regulations containing the expression "objectionable", without providing any clarification as to its scope or defining what was to be understood by that word, did not indicate with sufficient clarity the scope and manner of the authorities' discretion in such matters.

Moreover, neither section 22 of Law no. 5682, nor Legislative Decrees nos. 675 and 686, pursuant to which the applicants' passports had initially been cancelled, nor any other legal provision relied on by the authorities in the present case, had specified the manner and duration of the passport cancellation or the conditions that had to be satisfied before the measure could be terminated.

Lastly, the domestic courts had dismissed the applicants' appeals challenging the cancellation of their passports, relying mainly on the grounds that the measure had been taken in connection with their dismissal from the civil service pursuant to legislative decrees adopted in the context of the state of emergency, and without carrying out a thorough examination of the measure in question, even though its repercussions for the applicants' right to respect for their private life had been significant. In the Court's view, even where national-security considerations were taken into account in the context of a state of emergency, the principles of legality and the rule of law applicable in a democratic society required that it should be possible for any measure affecting the fundamental rights of the individual to be referred, under some form of adversarial procedure, to an independent body competent to examine the reasons for the decision in question and the relevant evidence. If it

were impossible effectively to challenge a national security imperative invoked by the authorities, the State authorities would be able arbitrarily interfere with Convention rights. The domestic courts had therefore failed in the present case to fulfil their obligation to verify whether there had been any concrete reasons for the cancellation of the applicants' passports. Consequently, the judicial review of the application of the impugned measure had not been adequate or effective.

In conclusion, the Court observed that the administrative authorities' discretion to order the cancellation of the applicants' passports, in accordance with the above-mentioned provisions of domestic law, had been unconditional, that the scope of that discretion and the manner of its exercise had not been defined and that no other specific safeguards had been provided for in that regard. Consequently, the imposition of the impugned measure on the applicants by acts of the executive in the context of the state of emergency had been open to arbitrariness and had not satisfied the requirement of lawfulness. The interference complained of had not therefore been "in accordance with the law" within the meaning of Article 8 of the Convention, and the measure could not be regarded as having complied with the strict sense of proportion required by the particular circumstances of the state of emergency. **There had therefore been a violation of Article 8 of the Convention**.

Article 2 of Protocol No. 1 to the Convention (right to education): complaint raised by first two applicants

Admissibility

The Government submitted that the Court's case-law did not contain any precedent for considering that doctoral studies, particularly those pursued abroad, were covered by the right to education. They invited the Court to declare this complaint inadmissible.

The Court was of the opinion that, in view of their crucial role today in the conduct and progress of scientific research in all fields, specialised studies and advanced research, such as doctoral studies, formed an integral part of the right to education. It further emphasised the central role now played by cooperation and exchanges between countries in the field of education and research, particularly in the form of student and academic staff mobility, as essential components of higher education and academic research within the Council of Europe. It referred in that connection to the Lisbon Convention on the Recognition of Qualifications, ratified by Türkiye.

In the Court's view, Article 2 of Protocol No. 1 imposed an obligation on member States not to hinder unjustifiably the exercise of the right to education in the form of higher education in institutions of higher education abroad. In the present case, however, the Court observed that, as a result of the cancellation of their passports for a considerable period of time, the first and second applicants had been deprived of the possibility of travelling abroad in order to pursue, in the exercise of their right to education, their doctoral studies in foreign higher education institutions to which they had been admitted. It therefore considered that this complaint was not manifestly ill-founded and declared it admissible.

Merits

The Court found that the inability of the first two applicants, as a result of the cancellation of their passports, to pursue their doctoral studies in the foreign universities to which they had been admitted for such studies constituted a limitation on their right to education. The conclusion reached by the Court under Article 8 applied to the complaint under Article 2 of Protocol No. 1 and, consequently, the limitation of the applicants' right to education had not been foreseeable for them. It thus concluded that there had been a violation of Article 2 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Türkiye was to pay Mr Telek and Mr Şar 12,000 euros (EUR) each, in respect of pecuniary and non-pecuniary damage, and to pay Ms Kıvılcım EUR 9,750 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

Separate opinion

Judge Saadet Yüksel expressed a separate opinion which is annexed to the judgment.

The judgment is available only in French.

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