[Altay v. Turkey (no. 2)](http://www.prisonlitigation.org/?email_id=116&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTkyMjEw&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank) (no. 11236/09)

The applicant, a prisoner serving a life sentence, had received a package from his lawyer containing items, such as a book and a newspaper, which the domestic courts held did not relate to the rights of the defence and should not be handed over to him. A subsequent request to the public prosecutor was lodged by the prison administration requesting that section 5 of Law no. 5351, which provided for an official to be present during consultations between a prisoner and his or her lawyer, be applied to the applicant. The domestic court, in an examination carried out on the basis of the case file, without holding a hearing and without seeking submissions from the applicant or his lawyer, granted the application.

*Complaint under Article 8*

Article 8 encompassed the right of each individual to approach others in order to establish and develop relationships with them and with the outside world, that is, the right to a “private social life”, and might include professional activities or activities taking place in a public context. There was, therefore, a zone of interaction of a person with others, even in a public context, which might fall within the scope of “private life”. A person’s communication with a lawyer in the context of legal assistance fell within the scope of private life, since the purpose of such interaction was to allow an individual to make informed decisions about his or her life. More often than not the information communicated to the lawyer involved intimate and personal matters or sensitive issues. It therefore followed that whether it be in the context of assistance for civil or criminal litigation or in the context of seeking general legal advice, individuals who consulted a lawyer could reasonably expect that their communication would be private and confidential.

As regards the content of the communication, and the privilege accorded to the lawyer-client relationship in the context of persons deprived of their liberty, there was no reason to distinguish between the different categories of correspondence with lawyers which, whatever their purpose, concerned matters of a private and confidential character. The borderline between correspondence concerning contemplated litigation and that of a general nature was especially difficult to draw and correspondence with a lawyer might concern matters which had little or nothing to do with litigation. That principle applied a fortiori to oral, face-to-face communication with a lawyer. It therefore followed that, in principle, oral communication and correspondence between a lawyer and his or her client was privileged under Article 8.

In spite of its importance, the right to confidential communication with a lawyer was not absolute but might be subject to restrictions. The margin of appreciation of the respondent State in the assessment of the permissible limits of interference with the privacy of consultation and communication with a lawyer was narrow in that only exceptional circumstances, such as to prevent the commission of serious crime or major breaches of prison safety and security, might justify the necessity of limitation of these rights. The Convention did not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. That was the case in particular where credible evidence had been found of the participation of a lawyer in an offence, or in connection with efforts to combat certain practices. On that account, however, it was vital to provide a strict framework for such measures, since lawyers occupied a vital position in the administration of justice and could, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law.

In the applicant’s case the domestic courts had referred to section 59 of Law no. 5275 as the legal basis for their interference with the confidentiality of the applicant’s meetings with his lawyer. They had ruled in that connection that the lawyer’s behaviour had been incompatible with the profession of a lawyer in so far as she had sent books and periodicals to the applicant which had not been defence-related.

However section 59 of Law no. 5275 was an exceptional measure which contained an exhaustive list of circumstances in which the confidentiality of lawyer-client communication might be restricted. According to that provision, only when it was apparent from documents or other material that the privilege enjoyed by a prisoner and his or her lawyer was being used as a means for communication with a terrorist organisation, or for the commission of a crime, or otherwise jeopardised the security of the institution, might the presence of a prison official during lawyer-client meetings be ordered.

The interception of correspondence solely because it did not relate to the rights of defence was not provided in that section as grounds for restricting the confidentiality of consultation with a lawyer. To conclude otherwise would run counter to the plain meaning of the text of the provision and would mean that any correspondence from a lawyer which was not defence-related could result in such a serious measure being imposed, without any limitation in duration.

In the applicant’s case, although the letter and spirit of the domestic provision in force at the time of the events were sufficiently precise – save for the lack of temporal limits to the restriction –, its interpretation and application by the domestic courts to the circumstances of the applicant’s case was manifestly unreasonable and thus not foreseeable within the meaning of Article 8 § 2. It followed that such an extensive interpretation of the domestic provision in the present case did not comply with the Convention requirements of lawfulness.

Conclusion: violation (unanimously).

*Complaint under Article 6*

(a)  Applicability – It was evident that Article 6 did not apply under its criminal head to those proceedings, as the applicant did not have any criminal charge to answer. The question was whether the civil limb of Article 6 § 1 was applicable.

The relevant domestic legislation conferred on prisoners the right to have confidential communication with their lawyers in line with the European Prison Rules. It followed that a “dispute over a right”, for the purposes of Article 6 § 1, could be said to have existed. With regard to whether the right in question was civil, the Court had developed an extensive approach, according to which the “civil” limb had covered cases which might not initially appear to concern a civil right but which might have direct and significant repercussions on a private pecuniary or non-pecuniary right belonging to an individual. Through that approach, the civil limb of Article 6 had been applied to a variety of disputes which might have been classified in domestic law as public-law disputes.

With regard to procedures instituted in the prison context, some restrictions on prisoners’ rights fell within the sphere of “civil rights”. The substance of the right in question, which concerned the applicant’s ability to converse in private with his lawyer, was of a predominately personal and individual character, a factor that brought the present dispute closer to the civil sphere. Since a restriction on either party’s ability to confer in full confidentiality with each other would frustrate much of the usefulness of the exercise of this right, the Court concluded that private-law aspects of the dispute predominated over the public-law ones. Article 6 § 1 was therefore applicable under its civil limb.

(b)  Merits – In proceedings concerning the prison context, there might be practical and policy reasons for establishing simplified procedures to deal with various issues that could come before the relevant authorities. The Court did not rule out that a simplified procedure might be conducted via written proceedings, provided that they complied with the principles of a fair trial as guaranteed under Article 6 § 1. However, even under such a procedure, parties had to at least have the opportunity of requesting a public hearing, even though the court might refuse the application and hold the hearing in private.

In the applicant’s case no oral hearing had been held at any stage of the domestic proceedings. Under domestic legislation the proceedings had been carried out on the basis of the case file and neither the applicant nor his chosen representative had been able to attend their sittings. It was therefore of little importance that the applicant had not explicitly requested a hearing, as the relevant procedural rules did not require one except in the case of disciplinary sanctions. The relevant rules concerning the procedure before assize courts in those types of disputes indicated that the question of holding a hearing was a matter to be decided by the assize courts of their own motion. In other words, it was not up to the applicant to request a hearing and he could not reasonably be considered to have waived his right to one.

The decision to restrict the applicant’s right to confidential meetings with his lawyer had been taken by the domestic court in a non-adversarial manner without obtaining the applicant’s defence submissions. The applicant’s objections to that decision before the assize court had also been determined on the basis of the case file alone without holding a hearing, even though the applicant’s objections had concerned factual and legal issues. The assize court had had full jurisdiction to assess the facts and the law of the case and render a final decision by annulling the decision of the first-instance court had it allowed the applicant’s objection. The holding of a hearing would therefore have allowed the assize court to form its own impression of the sufficient factual basis for the consideration of the case and the legal issues raised by the applicant.

In the circumstances of the case – namely the combined effect of the non-adversarial nature of the proceedings before the enforcement court, the seriousness of the measure imposed and the lack of a hearing either before the enforcement court or at the objection stage before the assize court – it meant that the applicant’s case had not been heard in accordance with the requirements of Article 6 § 1.

Conclusion: violation (unanimously).

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