

4.1.1. Decision of Y.S. no. 2018/ 103 dated 27.11. 2018

Claims of the Applicant

In the application subject to the decision, the applicant has complaints on several issues which states that the applicant's newspaper request was not satisfied and only certain newspapers were given, that there were no social events in the penitentiary institution, that the visitor's hours are kept limited with 30 minutes, and that the applicant's demands for transfer were not accepted for various reasons; and the applicant requested attention for the necessary actions to be made, related to the claims in question.

Procedure

Claims of the applicant have been evaluated within the scope of the prohibition of ill treatment. In relation with the claims of the applicant and in accordance with the Law no. 6701 Article 18 Paragraph 2, a correspondence was made with the penitentiary institution. As required by the Law no. 6701 Article 18 Paragraph 2, addressee's written opinion has been communicated to the applicant, and the applicant is requested to present opinion. However, the applicant did not present any opinions regarding with the claims that take place in the application and responded by the penitentiary institution.

Response of the Addressee Institutions

In relation with the claims of the applicant and in accordance with the Law no. 6701 Article 18 Paragraph 2; it is stated in the written opinion sent by the Penitentiary Institution that the newspapers were not delivered or not distributed in time by the distributor, that when it was received, it was understood that terror organizations were praised in the content of the aforementioned newspapers as a result of the investigations made by the Board of Education; therefore, the newspapers were not delivered to the applicant with the decision taken. Regarding the claim that there is no social event in the institution; it is stated by the penitentiary institution that there were sentenced terrorists or detainees of terrorism in two different wards, that these prisoners could not be brought together due to security reasons, that it was impossible for those prisoners including the applicant to attend to conferences, special memorial days or fun activities that are set in the institution for their own safety and in accordance with the relevant legislation, also that, those sentenced terrorists and detainees of terrorism could not attend to the same courses with other sentenced or detained prisoners; furthermore, that courses could also be opened in institution by Public Education Centres in case of the number of participants had reached 12, but those courses could not be opened for those particular prisoners as they could never reach the number of minimum participant limit which is 12. As for the visitor's hours not being sufficient, it was stated that due to the capacity of the institution and the conditions of the visitor's room, non-contact visiting duration was 30 minutes and contact visit duration was 40 minutes in

accordance with the relevant legislation, normatively for all sentenced and detained prisoners without any discrimination.

Evaluation and Decision

It is accepted that in the places where people are deprived of their liberty, incidents that can be accepted as ill treatment can appear in different forms, that as these can originate from the deliberate behaviours of the officers and penitentiary institution directorate, it can also occur as a result of organisational failings or inadequate resources; therefore, living conditions in the wards of a penitentiary institution should be evaluated with all aspects --from the service range of social events provided to the prisoners to the relations between prisoners and the officers of the penitentiary institution.

In this framework, it is considered that benefiting from periodical and non-periodical publishing that the wards can spend their time in the penitentiary institution, and actions like attending to events and social, cultural or sports courses that are organized in the institution, as a whole with other conditions of being held, have a great impact over the life quality of the prisoners, also that it is highly significant for prisoners to keep in touch with the outer world to a reasonable extent, in addition, in penitentiary institutions, in some cases, it is possible to restrict the rights of the prisoners for the security of institution and to avoid crime and disorder when there are acceptable and reasonable necessities.

It is concluded, as a result of the investigation made, that the applicant could not reach the periodical publishing, could not attend the regular events in the institution, and visitor's hours were less than an hour. In addition, it is evaluated that even though the institution does not deliberately deprive the applicant of these events, for the applicant to be deprived of attending culture and arts events, the justification of not having a sufficient number of sentenced terrorists and detainees of terrorism is not enough as a justification on its own, that to provide social integration of these people, who are held in penitentiary institutions, to the society after they are released and to enable these people to comply with the law and to spend a self-sustaining life, it is important for Public Education Centres to open courses in the institutions without considering the number of participants, and necessary precautions should be taken to provide the continuity of these courses.

Along with these, in view of these explanations especially in the present case, referring to the judgement of *Mursic v. Croatia* of the European Court of Human Rights (ECHR), it is concluded that in accordance with the Paragraph 4 of the Article 18 of the Law no. 6701 on the Human Rights and Equality Institution of Turkey dated 20.04.2016 there are no violations of human rights, as the applicant has access to all kinds of non-detrimental periodical and non-periodical publishing including books and magazines, as the applicant does not have any complaints over going outside, even though the applicant was not able to attend social and cultural activities, the applicant can be situated in exercising outside

such as sports activities, and as it is evaluated that there are no violations of the prohibition of ill treatment beyond the sorrow that occurs inevitably due to imprisonment and the implementation of visitor's hours that is in accordance with the relevant legislation as well as being a result of necessity.