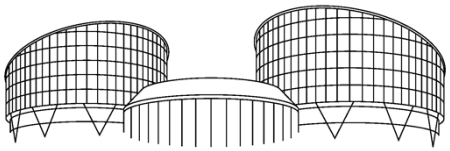

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ABDULLAH YALÇIN v. TURKEY (No. 2)

(Application no. 34417/10)

JUDGMENT

Art 9 • Manifest religion or belief • Positive obligations • Unjustified refusal to allocate room in high-security prison to Muslim prisoner for congregational Friday prayers • Fair balance not struck between competing rights and interests • Failure to carry out individualised assessment and explore less restrictive modalities

STRASBOURG

14 June 2022

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 Abdullah Yalçın v. Turkey (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Pauliine Koskelo,
Jovan Ilievski,
Saadet Yüksel,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 34417/10) against the Republic of Turkey 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 Abdullah Yalçın ("the applicant"), on 24 May 2010;

the decision to give notice of the application to the Turkish Government ("the Government");

the parties' observations;

Having deliberated in private on 24 May 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the question of whether the domestic authorities' refusal to allocate a room for congregational Friday prayers (Jumuah) (*cuma namazı*) on the premises of the Diyarbakır D-type High-Security Prison disclosed a breach of Article 9 of the Convention.

THE FACTS

2. The applicant was born in 1973 and lives in Diyarbakır. The applicant was represented by Mr M. Özbekli, a lawyer practising in Diyarbakır.

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 Turkey.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 19 June 2000 the Diyarbakır State Security Court decided to place the applicant in pre-trial detention on charges of membership of an illegal organisation, namely Hizbullah, and participation in acts on behalf of that organisation.

6. On 7 February 2011 the Court of Cassation ordered the applicant's release.

7. At the date on which this application was lodged, the applicant was a convicted person who had been in detention for more than eleven years and was serving his sentence in the Diyarbakır D-type High-Security Prison. In a previous application lodged by the same applicant, the Court has already found a breach of Article 5 § 3 of the Convention, holding that the length of the applicant's pre-trial detention was excessive (see *Abdullah Yalçın v. Turkey*, no. 2723/07, § 7, 21 April 2009).

8. On 23 March 2010 the applicant lodged a petition with the Diyarbakır D-type High-Security Prison administration and requested permission to offer congregational Friday prayers in a room on the premises of the prison. He noted that as a male Muslim he had to offer the congregational Friday prayers in order to fulfil one of the requirements of his religion, Islam.

9. In a letter dated 7 April 2010, the director of the Diyarbakır D-type High-Security Prison informed the applicant that his request had been rejected on the grounds that the prison was a high-security establishment, that there were risks in collective gatherings, that such a congregation would pose security risks and that there was no appropriate room for such a gathering. The applicant appealed.

10. In a decision dated 30 April 2010, the Diyarbakır Enforcement Judge dismissed the applicant's appeal for the reasons given by the director of the Diyarbakır D-type High-Security Prison. The applicant lodged an objection against that decision.

11. On 13 May 2010 the Diyarbakır Assize Court dismissed the applicant's objection, holding that the decision was in accordance with the law.

12. According to the information provided by the Government, the applicant shared his cell with up to four other inmates in the period between 1 January and 31 December 2010. During that period, the applicant was housed with three other inmates for a period of three weeks.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. TURKISH LAW

13. The relevant provisions of Law no. 5275 of 13 December 2004 on the enforcement of sentences and security measures provide as follows:

High-Security Closed Penal Institutions

"**Section 9.** (1) High-security closed penal institutions are facilities equipped with internal and external security personnel; [and] technical, mechanical, electronic and physical barriers against escape; and where the doors of the rooms and corridors are constantly kept closed; however, contacts between convicted persons that do not share the same room and with the outside world are allowed in cases provided for by legislation [and where] convicted persons subject to strict security regimes are accommodated in single or three-person rooms. In those institutions, personal or group rehabilitation methods shall be applied.

(2) Persons sentenced to aggravated life imprisonment and, regardless of the length [of their sentence], [those convicted of] establishing or directing a criminal organisation for the purpose of criminal activity or of the [following] offences laid down in the Criminal Code within the framework of that organisation's activities:

a) crimes against humanity (Articles 77 and 78 [of the Criminal Code]);

b) intentional homicide crimes (Articles 81 and 82 [of the Criminal Code]);

c) manufacturing and trafficking of drugs and stimulants (Article 188 [of the Criminal Code]);

d) crimes against the security of the State (Articles 302, 303, 304, 307 and 308 [of the Criminal Code]);

e) crimes against the constitutional order and its function (Articles 309, 310, 311, 312, 313, 314 and 315 [of the Criminal Code]),

shall serve their sentences in these institutions.

(3) Whoever is designated as being dangerous on account of his actions or behaviour and whose placement under special control and supervision have been found necessary and [whoever] breaches order and discipline in the institutions in which he is placed or consistently resists rehabilitation measure[s], mean[s] and methods, shall be sent to these [high-security closed penal] institutions."

Non-opening of doors and prevention of contact

"**Section 34.**

(1) Corridors and room doors in closed penal institutions shall be kept closed. The doors shall be opened in the cases below:

a) visits to the institution's doctor, infirmary, baths, and hairdresser; transfer to another room;

b) transportation to a hospital or hearing, or transfer to another institution;

c) release, visit, search, count, inspection, education, training, sport and rehabilitation activities; employment at the institution;

d) summonses to [prison] boards;

e) extraordinary circumstances such as death, earthquake and fire;

f) [under] conditions [that are] deemed necessary by the prison authorities.

(2) Except as provided above, convicted prisoners shall not contact other convicted prisoners located in other rooms, or prison officials."

Prisoners' Board and Lodging

"**Section 63.**

(1) Convicted person[s] [designated as] being dangerous may only [be boarded] in rooms of one or three persons; other convicted persons shall be boarded in rooms which may accommodate a number of prisoners, which is determined by the prison administration, taking into account the physical structure and situation of the estate and security exigencies.

...

(3) Except in cases provided for by law, no meetings or contacts shall be allowed between women and men; convicted prisoners and detainees; minors and adults; terrorism offenders and those guilty of criminal and profit-oriented organisation [offences]."

Freedom of religion and conscience

"**Section 70.** (1) In penal institution[s], a convicted person may freely perform acts of worship of the religion to which he or she belongs in a manner that does not disturb order or hinder work, and may obtain the books and other written materials that are required for his or her religious life, or retain the possession thereof in the places in which he or she is located.

(2) A convicted person shall be given leave to receive visits from and communicate with representatives of the religion to which he or she belongs provided that the security of the institution is not thereby jeopardised."

"**Section 74. Number of prisoners and security measures to be applied**

(1) Due diligence shall be exercised in keeping the number of prisoners [who have been] placed in an institution or a section at such a level as to make their individualisation possible.

(2) Various security measures shall be put in place in accordance with the characteristics of groups in respect of which rehabilitation measures have been established.

(3) Convicted persons assessed as being dangerous shall be placed in groups of no more than ten persons for activities that shall be carried out to individualise them."

14. Article 1 of Part 3, entitled "common activities", of Circular no. 45/1 issued by the General Directorate of Prisons and Detention Centres provides as follows:

"Being grouped on the basis of the offences they have committed, their behaviours at the institution, their interest[s] and talents, convicted person[s] and detainees shall participate, to an extent that would not constitute a danger to the security [of the prison], in educational, sports, vocational, occupational, and other social and cultural activities devised for them in the framework of rehabilitation programmes. In high-security establishments and in high-security sections of other institutions, such activities shall be carried out in groups of no more than ten persons. The duration [of such activities] and the number of convicted persons and detainees that are to participate [therein] shall be determined by the administration and monitoring board, taking account of the features of each programme, the security conditions, and the facilities of the institution. This practice may be brought to an end or be subjected to necessary amendments regarding those convicted persons and detainees in respect of whom it is established that the rehabilitation programmes has brought about results that are incompatible with [their] purpose[s]."

II. EUROPEAN PRISON RULES

15. Recommendation Rec (2006)2 of the Committee of Ministers to member States of the Council of Europe on the European Prison Rules, adopted on 11 January 2006, as applicable at the relevant time, reads, in so far as relevant, as follows:

"29.1 Prisoners' freedom of thought, conscience and religion shall be respected.

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

16. The applicant complained that his right to freedom of religion had been breached owing to the authorities' refusal to make the necessary arrangements in the Diyarbakır D-type High-Security Prison in order to enable him to offer the congregational Friday prayers, which was prescribed by Islam, giving rise to a violation of Article 9 of the Convention, which provides as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

17. The Court 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

(a) The applicant

18. Noting that prisoners were able to gather once a week for a sporting activity in a place designated by the prison administration, the applicant argued that the prison authorities could have allocated a room, without bearing any burden, of forty to fifty square metres where forty to fifty people could gather in order to offer congregational Friday prayers, which was a request for humane treatment. In the applicant's view, carrying out acts of worship mandated by one's religion was an act giving inner peace to the followers of that religion. The allocation of a room for congregational Friday

prayers that are held once a week was thus a necessity, and the authorities' refusal to do so had caused him great mental suffering.

19. Lastly, the Government's view that the Friday prayers were not obligatory for those who were deprived of their liberty put the applicant in the position of "a slave" since such a view was only applicable in war conditions prevailing a thousand years ago; hence, it was not compatible with the principles of a social State governed by the rule of law. Accordingly, the applicant invited the Court to find a violation of Article 9 of the Convention.

(b) The Government

20. Relying on a document provided by the Diyarbakır D-type High-Security Prison showing the details of inmates placed in the applicant's cell in the period between January 2010 and January 2011, the Government submitted that the applicant had shared his cell with up to four other inmates in the relevant period. He had thus had the possibility and the freedom to perform acts of worship individually and collectively with the other inmates in his cell, including the congregational Friday prayers in question. In fact, the right to perform acts of religious worship had been bestowed on prisoners by section 70 of Law no. 5275, together with the right to obtain necessary items and to possess books and other written materials required for their religious life. In view of the above, the Government averred that the authorities' interference with the applicant's rights under Article 9 of the Convention had had a legal basis and the authorities had complied with their positive obligations arising from that provision.

21. Furthermore, the applicant had sought leave from the prison authorities to offer the Friday prayers collectively, that is together with other detainees and convicted persons located in different cells. In the Government's view, complying with that request could only be achieved by opening the doors of the cells in the prison and allowing all the detainees and convicts to gather. Doing so would have posed a clear and imminent risk and danger both to the maintenance of the institution's security and to the prisoners themselves, as they might have committed harmful acts against each other. In so far as the applicant had argued that a room for forty to fifty people could have been allocated for congregational Friday prayers, the Government maintained that such a gathering would not have been possible owing to section 63(3) of Law no. 5275, which regulated the contact between prisoners, and Circular no. 45/1, which provided that social and cultural activities could not be carried out in groups of more than ten persons in high-security penal institutions, such as the one in which the applicant had been held.

22. As for the applicant's claim that the Friday prayers was a communal act of worship which could not be offered individually, the Government maintained that according to the views of religious bodies and scholars, the congregational Friday prayers took the form in Islam of a mandatory religious

practice only in the case, *inter alia*, of the person being free. There was therefore no religious obligation on the part of the applicant to offer Friday prayers owing to his having been deprived of his liberty.

23. Lastly, the Government maintained that while the European Prison Rules provided that measures which were feasible for the prison administration should be taken for the fulfilment of the prisoners' religious obligations, this could not extend to religious duties which were found to be detrimental to other individuals in the prison. Under such circumstances, the rejection of religious requests should not raise any issues under Article 9 § 2 of the Convention. Accordingly, the Government invited the Court to hold that there had not been a violation of that provision.

2. The Court's assessment

(a) Applicability of Article 9 of the Convention

24. The Court notes that acts of worship of Islam, such as praying, either individually or in community with others, including Friday prayers fall within the ambit of Article 9 of the Convention (see *Korostelev v. Russia*, no. 29290/10, § 38, 12 May 2020; *Masaev v. Moldova*, no. 6303/05, §§ 19-26, 12 May 2009; and *X v. the United Kingdom*, no. 8160/78, Commission decision of 12 March 1981, Decisions and Reports 22, p. 27; see also *Igors Dmitrijevs v. Latvia*, no. 61638/00, § 79, 30 November 2006, where the applicant was prohibited from attending religious services at the prison chaplaincy; and *Süveges v. Hungary*, no. 50255/12, § 152, 5 January 2016, where the authorities denied leave to attend Mass to an applicant who was under house arrest).

25. However, the Government argued, referring to "views of scholars" that Islam does not oblige those who were deprived of their liberty to practise congregational Friday prayers, a view that was fiercely disputed by the applicant on the grounds that that interpretation dated back to a thousand years ago and had essentially been based on a comparison of the situation of "slaves" with that of prisoners on the basis that both had been deprived of their liberty.

26. The Court reiterates that Article 9 does not protect every act motivated or inspired by a religion or belief and does not always guarantee the right to behave in the public sphere in a manner which is dictated by one's religion or beliefs (see, for example, *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 105 and 121, ECHR 2005-XI; *S.A.S. v. France* [GC], no. 43835/11, § 125, ECHR 2014 (extracts); and *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 104, 26 April 2016). As a general rule, an act which is inspired, motivated or influenced by a religion or beliefs, in order to count as a "manifestation" thereof within the meaning of Article 9, must be intimately linked to the religion or beliefs in question. An example would be an act of worship or devotion which forms part of the practice of a religion or beliefs

in a generally recognised form (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 73-74, ECHR 2000-VII).

27. It is not the Court's task to evaluate the legitimacy of religious claims or to question the validity or relative merits of interpretation of particular aspects of beliefs or practices. This does not, nevertheless, prevent the Court from making factual findings as to whether an applicant's religious claims are genuine and sincerely held (see *Skugar and Others v. Russia* (dec.), no. 40010/04, 3 December 2009, and *Kosteski v. the former Yugoslav Republic of Macedonia*, no. 55170/00, § 39, 13 April 2006).

28. Turning back to the present case, it is common ground that congregational Friday prayers are one of the precepts of Islam and that the Court discerns no element that may lead it to doubt that the applicant's wish to offer them is genuine, reasonable and sufficiently connected to his right to manifest his religion under Article 9 of the Convention. Although not decisive, the Court also takes into account the fact that at no point during the domestic proceedings did any of the domestic authorities give any consideration to the question of whether the applicant had (or had not) been required to offer Friday prayers owing to his being deprived of his liberty (compare *Enver Aydemir v. Turkey*, no. 26012/11, § 79, 7 June 2016). Accordingly, the applicant is entitled to lay claim to the protection afforded by Article 9 of the Convention (see, *mutatis mutandis*, *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, § 42, 10 January 2017, and *S.A.S. v. France*, cited above, § 56).

(b) Merits

29. It is common ground that the applicant was able to perform individual acts of worship in his cell and to obtain and possess books or other written material relating to his religious beliefs. While it is true that the Government argued that the applicant could have practised congregational Friday prayers in his own cell, given that he had been housed with three other persons at the material time, the Court is unable to subscribe to that argument, given that it is not possible to ascertain whether the applicant's cell mates were also willing to offer congregational Friday prayers.

30. Furthermore, the Court observes that the applicant's complaint centred on the authorities' refusal to make the necessary arrangements in the Diyarbakır D-type High-Security Prison enabling him to offer congregational Friday prayers with other inmates in a separate place allocated for that purpose. Viewed from this angle, the Court considers that the present case lends itself to an assessment of the positive obligations of the State under Article 9 of the Convention (see *Kovalkovs v. Latvia* (dec.), no. 35021/05, § 62, 31 January 2012). The Court will therefore seek to ascertain whether the domestic authorities struck a fair balance between the competing rights and interests, that is, on the one hand, the applicant's freedom of collective worship in the Diyarbakır D-type High-Security Prison and, on the other

hand, the public order interests (see paragraph 9 above), by adducing relevant and sufficient reasons for refusing the applicant's request relating to Friday prayers.

31. Accordingly, the Court's examination will focus on the reasons adduced by the prison authorities in rejecting the applicant's request for the holding of Friday prayers, which were essentially based on three grounds: (i) the institution in which he was held was a high-security prison, (ii) collective gatherings posed a risk to prison security, and (iii) there were no appropriate premises that could be utilised for Friday prayers in the prison setting. The Government further added that the granting of the applicant's request might only have been possible by the opening of the doors of all the cells, which was not possible, because the applicant had "requested" that forty to fifty people be allowed to gather for Friday prayers. The Court will assess each of those reasons in turn.

32. In that connection, the Court notes that the high-security prisons, such as the one in which the applicant was placed, are subjected to a stricter set of rules, which may call for a higher degree of restrictions on the exercise of rights under Article 9 of the Convention. Nevertheless, that fact alone should not be construed as excluding any real weighing of the competing individual and public interests but should rather be interpreted in the light of the circumstances of each individual case. On this point, the Court attaches importance to the fact that the domestic authorities did not appear to have carried out an individualised risk assessment in respect of the applicant, as borne out by their failure to have regard to whether he was classified as a dangerous or high-risk inmate or had otherwise acted violently, attempted to escape from prison or failed to abide by the disciplinary rules relating to prison order (see *Natoli v. Italy* (no. 26161/95, Commission decision of 18 May 1998, unreported).

33. As regards the second ground, the Court observes that the domestic authorities did not sufficiently assess whether the gathering of a certain number of inmates for Friday prayers may, in the individual circumstances of the case, generate a security risk that they should have been treated differently from the collective gatherings of inmates for cultural or rehabilitative purposes, which were permitted by law (see paragraphs 13 and 14 for section 74(3) of Law no. 5275 and Circular no. 45/1).

34. As regards the domestic authorities' reliance on the absence of appropriate premises for Friday prayers at the Diyarbakır D-type High-Security Prison, the Court attaches decisive weight to the fact that the domestic authorities did not seem to explore any other modalities, including those which were less restrictive of the applicant's rights under Article 9 of the Convention, (see, for example, *Janusz Wojciechowski v. Poland*, no. 54511/11, § 69, 28 June 2016 for an assessment of the steps taken by prison authorities to accommodate inmates' wishes to attend Masses on Sundays or religious holidays where it was not possible to allow all the

prisoners to do so at the same time). Accordingly, the Court is not convinced by the Government's argument that realising the applicant's request could only have been possible by opening the doors of all the cells. In any event, the applicant's argument for "forty to fifty people" could gather for Friday prayers was only raised before the Court, and it did not form part of his request to the domestic authorities.

35. In view of the above, the Court concludes that the Government have failed to demonstrate that the domestic authorities weighed the competing interests at stake by adducing relevant and sufficient reasons in a manner that was compliant with their positive obligations under Article 9 of the Convention to guarantee the applicant's freedom to manifest his religion in community with others, namely by offering Friday prayers in prison.

36. There has accordingly been a violation of Article 9 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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."

38. The applicant did not submit any claim under Article 41 of the Convention. Accordingly, there is no call for the Court to award any sum to the applicant under Article 41. Neither does the Court discern any exceptional circumstance which could have required it to make an award in respect of non-pecuniary damage (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 74-82, 30 March 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, the application admissible;

2. *Holds*, that there has been a violation of Article 9 of the Convention.

Done in English, and notified in writing on 14 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Jon Fridrik Kjølbro President