SECOND SECTION

**CASE OF YURTSEVER AND OTHERS v. TURKEY**

*(Applications nos. 14946/08, 21030/08, 24309/08, 24505/08, 26964/08, 26966/08, 27088/08, 27090//08, 27092/08, 38752/08, 38778/08 and 38807/08)*

JUDGMENT

(Extracts)

STRASBOURG

20 January 2015

FINAL

20/04/2015

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Yurtsever and Others v. Turkey,

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

Guido Raimondi, *President,* Işıl Karakaş, András Sajó, Nebojša Vučinić, Egidijus Kūris, Robert Spano, Jon Fridrik Kjølbro, *judges,*and Stanley Naismith, Section Registrar,

Having deliberated in private on 13 November 2014,

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

PROCEDURE

1.  The case originated in twelve applications (nos. 14946/08, 21030/08, 24309/08, 24505/08, 26964/08, 26966/08, 27088/08, 27090/08, 27092/08, 38752/08, 38778/08 and 38807/08) 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 thirteen Turkish nationals, Mr Mesut Yurtsever, Mr Canar Yurtsever, Mr Aydın Şaka, Mr Ergin Atabey, Mr Habip Çiftçi, Mr Mahmut Cengiz, Mr Mehmet Ergezen, Mr İsmail Cengiz Oğurtan, Mr Fevzi Abo, Mr Abdullah Günay, Mr Mehmet Ali Kaya, Mr Adem Yüksekdağ and Mr Nezir Adıyaman (“the applicants”), on 6 May 2008.

2.  The applicants were represented by Mr M. Erbil, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3.  The applicants complained, in particular, of a breach of their right to freedom of expression and information (Article 10 of the Convention), alleging that they had not benefited from a fair trial (Article 6 of the Convention). They further complained of a violation of Articles 8, 13, 14, 17 and 18 of the Convention.

4.  On 3 June 2009 the applications were communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

**A.  Mr Mesut Yurtsever (application no. 14946/08)**

5.  The applicant was born in 1974. When his application was lodged he was being held in the F-type prison in Bolu.

6.  On 25 June 2007, while the applicant was being held in anther prison – the F-type prison in Tekirdağ – that prison’s education board decided not to deliver the 18, 19, 20, 21, 22, 23 and 24 June 2007 editions of the *Azadiya Welat* daily newspaper to the applicant or to other prisoners. They based their decision on section 62 § 3 of Law No. 5275 on the Execution of Sentences and Preventive Measures (“Law No. 5275”), which provides that no publication containing information, articles, photographs and comments which are obscene or liable to jeopardise prison security should be delivered to convicted prisoners. The board argued that the non-delivered publications were in the Kurdish language, that the prison had no staff able to understand Kurdish, that, furthermore, there were several dialects of that language and that it had therefore been impossible to have the publications in question translated. They consequently considered it impossible to ascertain whether those publications fulfilled the conditions laid down in the section of the relevant law.

7.  On 28 June 2007 the applicant appealed against that decision.

8.  On 22 October 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal. He adjudicated in the light of the State Prosecutor’s opinion that in order to assess the conformity with section 62 § 3 of Law No. 5275 of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that consequently, the appeal had to be dismissed.

9.  On 30 October 2007 the applicant applied to have that decision set aside, submitting that the prison administration had suspended the delivery to the prison of the *Azadiya Welat* newspaper, which in his submission was widely distributed outside the prison, on the ground that it had no staff who understood Kurdish. He requested the setting aside of the post-sentencing judge’s decision declaring the measure consistent with the law, because in his view that measure would prevent the newspaper from being distributed inside the prison, as had previously been normal practice.

10.  On 8 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, concluded that the impugned decision was not incompatible in procedural or legal terms, and dismissed the application.

B.  Mr Canar Yurtsever, Mr Aydın Şaka, Mr Ergin Atabey and Mr Habip Çiftçi (application no. 21030/08)

11.  The applicants were born in 1982, 1980, 1973 and 1973 respectively. When their application was lodged they were held in the F-type prison in Tekirdağ.

12.  On 28 May 2007 the Tekirdağ prison education board, drawing on section 62 of Law No. 5275, decided not to deliver to the applicants the 22, 23, 24, 25, 26, 27 and 28 June 2007 editions of the *Azadiya Welat* daily newspaper on the grounds that they were in the Kurdish language and that the prison had no staff capable of translating that language.

13.  On 4 June 2007 the applicants appealed against that decision.

14.  On 10 August 2007, ruling on the basis of the State Prosecutor’s opinion that the education board’s decision had been justified, the Tekirdağ post-sentencing judge dismissed that appeal.

15.  On 21 August 2007 Mr Atabey and Mr Çiftçi and on 23 August 2007 Mr Yurtsever and Mr Şaka, applied to have that decision set aside.

16.  On 7 September 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, dismissed that application on the grounds that the impugned decision had been unobjectionable in procedural and legal terms.

C.  Mr Mahmut Cengiz and Mr Mehmet Ergezen (application no. 24309/08)

17.  The applicants were born in 1983. When their application was lodged they were held in the F-type prison in Tekirdağ.

18.  On 9 July 2007 the prison education board decided not to deliver the 2, 3, 4, 5, 6, 7 and 8 July 2007 editions of the *Azadiya Welat* daily newspaper to the applicants. They based their decision on section 62 § 3 of Law No. 5275. The Board emphasised that the publications were in Kurdish and that the prison had no staff who understood Kurdish, so that, in the Board’s view, it was impossible to have books, newspapers and magazines in that language translated and, consequently, to ascertain whether such publications fulfilled the conditions laid down in the section of the relevant law.

19.  On 10 July 2007 the applicants appealed against that decision. In a letter sent the same day to the Tekirdağ post-sentencing judge, Mr Cengiz submitted, *inter alia*, that no seizure order had been made in respect of the editions of the daily newspaper in question and that it had been absurd to request the translation of the newspaper since it had been on sale nationwide and was subject to statutory review. Moreover, he contended that the decision appealed against was unlawful.

20. Mr Ergezen sent a letter on 18 July 2007 to the Tekirdağ post‑sentencing judge alleging that the ban on delivery of publications in Kurdish to the prison had been lifted five months previously and that the prison authorities’ argument to the effect that there had been no staff who understood Kurdish was implausible. He also stated that the inmates of other F-type prisons had been authorised to receive such publications, so that the prison authorities’ practice had to be deemed arbitrary.

21.  On 23 October 2007 the Tekirdağ post-sentencing judge dismissed the appeal on the basis of the case file. He adjudicated in the light of the State Prosecutor’s opinion that in order to assess the conformity with section 62 § 3 of the relevant law of publications in a language other than the official language a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that consequently, the appeal had to be dismissed.

22.  On 1 November 2007 the applicants appealed against that decision. Mr Ergezen requested the lifting of the prohibition in issue. Mr Cengiz submitted that the newspaper in question had been distributed under the supervision of the Prosecutor responsible for the press and that the lack of any judicial proceedings or seizure order in respect of the newspaper demonstrated that it was unobjectionable. He therefore considered that access should be permitted to the publication.

23.  On 8 November 2007, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, the Assize Court, drawing on the case file and having taken cognisance of the State Prosecutor’s opinion, dismissed that application on the grounds that the impugned decision had been unobjectionable in procedural and legal terms.

D.  Mr İsmail Cengiz Oğurtan and Mr Fevzi Abo (application no. 24505/08)

24.  The applicants were born in 1974 and 1985 respectively. When their application was lodged they were being held in the F-type prison in Tekirdağ.

25.  On 25 June 2007 the prison education board, drawing on section 62 § 3 of Law No. 5275, decided not to deliver the 18, 19, 20, 21, 22, 23 and 24 June 2007 editions of the *Azadiya Welat* daily newspaper to the applicants. The Board explained that the publications were in the Kurdish language, that the prison had no staff who understood Kurdish, that, furthermore, there were several dialects of that language, that it had therefore been impossible to have the publications in question translated, and that consequently there was no way of ascertaining whether those publications fulfilled the conditions laid down in the relevant section of Law No. 5275.

26.  On 28 June 2007 the applicants appealed against that decision. Mr Abo sent a letter on the same day to the Tekirdağ post-sentencing judge complaining that he had been denied access to the editions in question, adding that the prison authorities’ decision had been geared to banning the daily newspaper and was unlawful.

27.  In a letter of 4 July 2007 Mr Oğurtan informed the Tekirdağ post‑sentencing judge he had been unjustifiably deprived of the *Azadiya Welat* newspaper since 18 June 2007. He requested that the newspaper be delivered to him in the standard manner in future.

28.  On 22 October 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed Mr Oğurtan’s appeal on the ground that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of the relevant law of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that the measure adopted by the prison authorities had consequently been justified.

29.  On 26 October 2007 Mr Oğurtan wrote to the Tekirdağ Assize Court to complain that he was no longer in receipt of the *Azadiya Welat* newspaper and that his appeal to the post-sentencing judge on that matter had been unsuccessful. He requested that the practice in question, which he described as undemocratic, be discontinued and that the newspaper in question be delivered to him in the standard manner.

30.  On 1 November 2007 Mr Abo wrote to the Tekirdağ Assize Court. He submitted that *Azadiya Welat* was a newspaper which was subject to the same kind of review as all other organs of the press. The lack of any judicial proceedings or of a ban against that daily newspaper was sufficient on its own to demonstrate that it raised no problems and that he should therefore have access to it. He consequently requested the setting aside of the post‑sentencing judge’s decision and its replacement by a decision to resume deliveries of the newspaper to him.

31.  On 8 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the request.

E.  Mr Abdullah Günay and Mr Mehmet Ali Kaya (application no. 26964/08)

32.  The applicants were born in 1979 and 1976 respectively. When their application was lodged they were being held in the prison F-type in Tekirdağ.

33.  On 28 June 2007 the Tekirdağ prison education board decided not to deliver to the applicants the 19, 20, 21, 22, 23 24 and 25 June 2007 editions of the *Azadiya Welat* daily newspaper on the grounds that they were in the Kurdish language and that the prison had no staff capable of translating that language.

34.  On 5 July 2007 Mr Kaya wrote to the Tekirdağ post-sentencing judge to challenge that decision and to request the delivery of the newspaper in question.

35.  On 9 July 2007 the applicants lodged an appeal against the impugned decision.

36.  On 22 October 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal on the grounds that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion that in order to assess the conformity with section 62 § 3 of the relevant law of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellants and that the measure adopted by the prison authorities had consequently been justified.

37.  On 26 October and 30 October 2007 respectively Mr Abdullah Günay and Mr Mehmet Ali Kaya appealed against that decision. In a letter to the Assize Court in Tekirdağ, Mr Kaya pointed out that the refusal to deliver the *Azadiya Welat* newspaper to him was arbitrary and requested delivery of the latter, which he said was published in accordance with the relevant legislation.

38.  On 8 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the appeal.

F.  Mr Abdullah Günay and Mr Adem Yüksekdağ (application no. 26966/08)

39.  The applicants were born in 1979 and 1986 respectively. When their application was lodged they were being held in the F-type prison in Tekirdağ.

40.  On 3 July 2007 the Tekirdağ prison education board decided not to deliver the 26, 27, 28, 29 and 30 June 2007 editions of the *Azadiya Welat* daily newspaper to the applicants on the grounds that they were in the Kurdish language and that the prison had no staff capable of translating that language.

41.  On 16 July 2007 the applicants appealed against that decision.

42.  On 23 October 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion that in order to assess the conformity with section 62 § 3 of Law No. 5275 of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellants and that the measure adopted by the prison authorities had consequently been justified.

43.  On 26 October and 30 October 2007 respectively, Mr Abdullah Günay and Mr Adem Yüksekdağ appealed against that decision. Mr Günay sent a letter to the Assize Court complaining that the post-sentencing judge had joined forces with the prison authorities to impede his right to receive information and had therefore infringed that right, as enshrined in the Convention. He submitted that the newspaper in question was published in conformity with the relevant legislation and that it was therefore unnecessary to translate it, because if its content had been unlawful it would have been subject to a seizure order. He added that the right to read a newspaper in Kurdish, his mother tongue, was a natural right.

44.  On 8 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the appeal.

G.  Mr Abdullah Günay (applications nos. 27088/08 and 27090/08)

45.  The applicant was born in 1979. When his applications were lodged he was held in the F-type prison in Tekirdağ.

1.  Proceedings relating to the failure to deliver the 28 August 2007 to 3 September 2007 editions of the Azadiya Welat newspaper (application no. 27088/08)

46.  On 6 September 2007 the Tekirdağ prison education board decided not to deliver to the applicant the 28, 29, 30 and 31 August 2007 editions of the *Azadiya Welat* daily newspaper on the grounds that it did not understand their content and could not have them translated, also having regard to a decision given on 9 August 2007 by the Tekirdağ post-sentencing judge.

47.  On 13 September 2007 the applicant appealed against that decision.

48.  On 5 November 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of Law no. 5275 of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that the education board’s decision had consequently been justified.

49.  On 8 November 2007 the applicant appealed against the post‑sentencing judge’s decision.

50.  On 27 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the applicant’s appeal.

2.  Proceedings relating to the failure to deliver the 21 to 28 August 2007 editions (application no. 27090/08)

51.  On 31 August 2007, referring to a decision given by the Tekirdağ post-sentencing judge on 9 August 2007, the Tekirdağ prison education board decided not to hand over to the applicants the 21, 22, 23, 24, 25, 26, 27 and 28 August 2007 editions of the *Azadiya Welat* daily newspaper on the grounds that it could not understand their content or have them translated.

52.  On 7 September 2007 the applicant appealed against that decision.

53.  On 5 November 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of Law no. 5275 of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that the education board’s decision had consequently been justified.

54.  On 8 November 2007 the applicant appealed against the post‑sentencing judge’s decision.

55.  On 28 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the latter appeal.

H.  Mr Abdullah Günay, Mr Nezir Adıyaman and Mr Aydın Şaka (application no. 27092/08)

56.  The applicants were born in 1979, 1978 and 1980 respectively. When their application was lodged they were being held in the F-type prison in Tekirdağ.

57.  On 13 September 2007 the Tekirdağ prison education board decided not to deliver the 4, 5, 6, 7, 8 and 9 September 2007 editions of the *Azadiya Welat* daily newspaper to the applicants on the grounds that they were in the Kurdish language and that the prison had no staff capable of translating that language. The Board also had regard to the fact that the Tekirdağ post‑sentencing judge had adjudicated on other editions of that newspaper on 9 August 2007, as had the Assize Court on 7 September 2007.

58.  On 24 September 2007 the applicants appealed against that decision.

59.  On 5 November 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of the Law no. 5275 of publications in a language other than the official language, a translation of those publications was required, that the prison authorities had no budget for that purpose, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellants and that the education board’s decision had consequently been justified.

60.  Mr Günay appealed against that decision by the post-sentencing judge on 8 November 2007, and Mr Adıyaman and Mr Şaka followed suit on 12 November 2007.

61.  On 28 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the latter appeal.

I.  Mr Mahmut Cengiz (applications nos. 38752/08, 38778/08 and 38807/08)

62.  The applicant was born in 1983. When his applications were lodged he was being held in the F-type prison in Tekirdağ.

1.  Proceedings relating to the failure to deliver the 26 June to 1 July 2007 editions of the Azadiya Welat newspaper (application no. 38752/08)

63.  On 2 July 2007 the prison education board decided not to deliver the 25, 26, 27, 28, 29 and 30 June and 1 July 2007 editions of the *Azadiya Welat* daily newspaper to the applicant, pursuant to section 62 § 3 of Law No. 5275, on the grounds that that the publications were in Kurdish and that the prison had no staff who understood that language, making it impossible to secure a translation in order to ascertain whether the content of the newspapers complied with the aforementioned legislative provision.

64.  On 3 July 2007 the applicant appealed against that decision, submitting, *inter alia*, that the editions of the newspaper in question had not been the subject of any judicial seizure order and therefore ought to have been delivered to him. He further submitted that he had been in receipt of the newspaper for four months without any problem before being deprived of it, and that the decision taken by the prison authorities had been unlawful. He consequently requested that the impugned decision be set aside and he be allowed to receive the newspaper in question.

65.  On 23 October 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of the relevant law of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that the measure adopted by the prison authorities had consequently been justified.

66.  On 1 November 2007 the applicant appealed against that decision. He submitted that the newspaper in question had been published in accordance with the law, that it had been subject to review by the Prosecutor responsible for the press before distribution and that, in the absence of any judicial proceedings or seizure order against it, the newspaper could not be deemed problematic. He consequently requested access to the impugned editions of the newspaper.

67.  On 8 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the applicant’s appeal.

2.  Proceedings relating to the failure to deliver the 19 - 15 July 2007 editions of the Azadiya Welat newspaper (application no. 38778/08)

68.  On 16 July 2007 the prison education board decided not to deliver the 9, 10, 11, 12, 13, 14 and 15 July 2007 editions of the *Azadiya Welat* daily newspaper to the applicant, pursuant to section 62 § 3 of Law No. 5275, on the grounds that that the publications were in Kurdish and that the prison had no staff who understand that language, making it impossible to secure a translation in order to ascertain whether the content of the newspapers complied with the aforementioned legislative provision.

69.  On 17 July 2007 the applicant appealed against that decision. He sent a letter dated 19 July 2007 to the Tekirdağ post-sentencing judge stating that the impugned newspaper had not been the subject of any seizure order, and that it was both pointless and unlawful to demand a translation of its content when it had already been subject to statutory review.

70.  On 23 October 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of the relevant law of publications in a language other than the official language, a translation of those publications was required, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that the measure adopted by the prison authorities had consequently been justified.

71.  On 1 November 2007 the applicant appealed against that decision, submitting, *inter alia*, that the newspaper in question had been subject to review by the Prosecutor responsible for the press before distribution. The absence of any judicial proceedings or seizure order against it proved that the newspaper did not raise any problems.

72.  On 8 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the latter appeal.

3.  Proceedings relating to the failure to deliver the 27 August to 2 September 2007 editions of the Azadiya Welat newspaper (application no. 38807/08)

73.  On 4 September 2007the prison education board decided not to deliver the 27, 28, 29, 30 and 31 August and 1 and 2 September 2007 editions of the *Azadiya Welat* daily newspaper to the applicant, pursuant to section 62 § 3 of Law No. 5275, on the grounds that that the publications were in Kurdish and that the prison had no staff who understand that language, making it impossible to secure a translation in order to ascertain whether the content of the newspapers complied with the aforementioned legislative provision.

74.  The applicant appealed against that decision.

75.  On 5 November 2007, ruling on the basis of the case file, the Tekirdağ post-sentencing judge dismissed that appeal, finding that the impugned decision had been unobjectionable in procedural and legal terms. He adjudicated in the light of the State Prosecutor’s opinion to the effect that in order to assess the conformity with section 62 § 3 of the Law no. 5275 of publications in a language other than the official language, a translation of those publications was required, that the prison authorities had no budget for that purpose, that there was no legal provision requiring the prison to finance the translation costs, that such expenses had not been covered by the appellant and that the education board’s decision had consequently been justified.

76.  On 12 November 2007 the applicant appealed against the post‑sentencing judge’s decision. He submitted, *inter alia*, that the newspaper in question had been published in accordance with a procedure prescribed by law and that if the newspaper had been in an unlawful situation the Prosecutor responsible for the press would have taken the necessary action. The applicant submitted that the newspaper had not been the subject of any ban or seizure order. Consequently, he requested that he be given access to the publication.

77.  On 20 November 2007 the Tekirdağ Assize Court, ruling on the basis of the case file and having taken cognisance of the State Prosecutor’s opinion, found that the impugned decision had been unobjectionable in procedural and legal terms and dismissed the latter appeal.

...

THE LAW

81.  Given the similarity of the applications as to the facts and the complaints, the Court has decided to join them and to examine them jointly in a single judgment.

...

II.  ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

828.  The applicants complained that the prison authorities had refused to deliver a daily newspaper to them, adding that they had taken that decision because the newspaper in question was published in Kurdish. They complain that the decision had been in breach of Article 10 of the Convention, which reads as follows:

“1.  Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2.  The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime...”

89.  The Government contested that argument.

B.  Merits

1.  The applicants’ submissions

91.  The applicants submitted that the education board had decided not to deliver various editions of the *Azadiya Welat* daily newspaper to them on the ground that the board members had been unable to understand the content of the newspaper or have it translated. The applicants questioned the capacity of the board – which had accepted that it was unable to understand publications in the Kurdish language – to assess the danger posed by such publications to order and security in prisons. Furthermore, the applicants submitted that the newspaper in question was freely available throughout Turkey and that it was not the subject of any ban or seizure order. They supported their submissions with the fact that the Government had not cited any decision to the contrary.

92.  The applicants then submitted that if the Government had considered the content of the impugned newspaper liable to jeopardise prison security they ought first of all to have had the editions translated and then specified what information was liable to represent a danger, explaining why.

93.  The applicants added that they paid for the delivery of the publications, and that they therefore considered that they should have been able to receive newspapers in the language of their choice, particularly in Kurdish, their mother tongue. They considered that it was incumbent on the State to grant them all the necessary facilities for obtaining such newspapers.

94.  Lastly, they contested the Government’s argument that a measure which they considered as an interference in the exercise of their right as secured by Article 10 § 2 of the Convention complied with that provision.

2.  The Government’s submissions

95.  The Government submitted that under section 62 of Law no. 5275 on the Execution of Sentences and Preventive Measures prisoners had the right to receive periodical and non-periodical publications providing they defrayed the corresponding costs. Furthermore, section 62 [3] of the Law provided that prisoners could not receive publications containing information, articles, photographs and comments which were obscene or liable to jeopardise prison security.

96.  The Government added that under Article 11 (b) of the Instruction on Prison Libraries, publications posing a threat to prison security or containing information, articles, photographs or comments considered as obscene were not allowed into prison, even in the absence of a judicial decision.

97.  The Government submitted that the decisions at issue in the present case had been taken in pursuance of section 62 § 3 of Law no. 5275 and Articles 11 and 12 of the aforementioned instruction, and that the publications in issue had not been delivered to the applicants because they could have posed a threat to prison security.

98.  Moreover, perusal of the decisions in question showed that that had been the case. The Government contended that the non-delivered publications had contained articles condoning a terrorist organisation and terrorist activities and damaging the reputation of Turkey and members of the law-enforcement agencies.

99.  The Government pointed out in that context that, contrary to the applicants’ allegations, the decisions concerning the refusal to deliver the publications had not been based on the fact that the editions in question had been in Kurdish. There was no prohibition on publications in languages other than Turkish, and decisions on whether or not to deliver publications to prisoners did not depend on which language they used. The Government explained that publications which had not been the subject of a judicial prohibition, whose content comprised no criminal element and which posed no threat to prison security were delivered to prisoners regardless of the language in which they were printed.

100.  With reference to the Court’s case-law (specifically, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24), the Government explained that the right to freedom of expression was not absolute but also included duties and responsibilities. Furthermore, they submitted that the scope of this right was not the same for prisoners as for other persons. In support of their assertion they cited situations where that right could, in their view, be restricted, and they stated that the authorities’ refusal in the instant case to deliver the publications should be assessed in the light of Article 10 § 2 of the Convention. The Government contended that such delivery could be subject to restrictions under the material conditions and according to the formalities prescribed by law. In the present case they considered that the restriction complained of had been lawful and that there had therefore been no violation of the applicants’ right to freedom of expression. Finally, they stated that the restriction had had the further aim of preventing a terrorist organisation from acquiring supremacy in the prison through the intermediary of those publications, which had rendered the impugned decision necessary. The Government referred in that connection to the *Erdem v. Germany* judgment (no. 38321/97, ECHR 2001‑VII) and the decision in the case of *Fethi Oktay v. Turkey* ([dec.] no. 24803/05, 16 December 2008).

3.  The Court’s assessment

101.  The Court reiterates at the outset that prisoners in general continue to benefit from all the fundamental rights and freedoms secured under the Convention, apart from the right to liberty in cases where lawful detention falls expressly within the scope of Article 5 of the Convention. They thus continue to enjoy the right to freedom of expression (see *Yankov v.* *Bulgaria*, no. 39084/97, §§ 126‑145, ECRH 2003‑XII, and *Tapkan and Others v. Turkey*, no. 66400/01, § 68, 20 September 2007), which embraces the right to receive information and ideas.

102.  In the present case the Court observes that the prison authorities refused to deliver to the applicants specified editions of the *Azadiya Welat* newspaper. It considers that that refusal amounts to an interference in the applicants’ right to receive information and ideas. Such interference is in breach of Article 10 unless it is “prescribed by law” and pursues one or more legitimate aims as set out Article 10 (2) and is, moreover “necessary in a democratic society” to attain those aims.

103.  The Court further reiterates its case-law according to which the expression “prescribed by law” or “in accordance with the law” not only requires the impugned measure to have some basis in domestic law but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000‑V). The Court emphasises in this context that a rule is “foreseeable” when it affords a measure of protection against arbitrary interferences by the public authorities and against the extensive application of a restriction to any party’s detriment (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 143, ECHR 2012). It also reaffirms that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports* 1998-II, and *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A).

104.  In the circumstances of the present case, although there is no question as to the existence and accessibility of a legal basis, the same does not apply to the condition of foreseeability of the law in terms of the meaning and the nature of the applicable measures.

105.  The Court observes that domestic law recognised the possibility of convicted prisoners receiving periodical and non-periodical publications provided that the latter were not subject to a prohibition order ... Furthermore, the domestic legislation relating to that matter apparently sets out an exhaustive list of the circumstances in which a publication may be withheld from a prisoner, that is to say publications containing information, articles, photographs and comments which are obscene or liable to jeopardise prison security ...

106.  In the instant case, the Court observes that even though they justified their decisions with reference to section 62 § 3 of Law no. 5275, the national authorities refused to deliver certain editions of the *Azadiya Welat* daily newspaper not because their content was obscene or liable to jeopardise prison security, which are conditions set out in the aforementioned legislative provision, but because those authorities were unable to assess the content of the publications in question. In that regard, although the Government submitted that the publications had contained articles condoning a terrorist organisation and terrorist activities and damaging the reputation of Turkey and members of the law-enforcement agencies (see paragraphs 97-98 above), which were the reasons why they had not been delivered, the Court notes that such a contention is absent from the reasons given for the decisions of the national authorities as examined under the present case. It further notes that in their observations, the Government made no mention whatever of the procedure for translating the publications at issue or of the responsibility for payment of the costs of translation.

107.  In the circumstances of the present case, the Court notes that the national authorities, being unable to understand the language in which the newspaper in question was published, declared that they were not in a position to assess the conformity of the content of the publication with the relevant legislative provision. The absence of such assessment despite its constituting a statutory condition precedent begs the question of the legal basis of the impugned interference.

108.  In this regard, the Court reiterates that it has in the past declared that while a law which confers a discretion must indicate the scope of that discretion, it is impossible to attain absolute certainty in the framing of the law, and the likely outcome of any search for certainty would be excessive rigidity (see, *inter alia*, *Calogero Diana v. Italy*, 15 November 1996, § 32, *Reports* 1996‑V). Law must be able to adapt to changing situations, and the Court accepts that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 88, Series A no. 61).

109.  In the instant case, however, the Court notes from the Government’s observations (see paragraphs 94-99 above) that there was no legislative provision mentioning the least possibility of imposing on prisoners a restriction or prohibition of access to publications on the ground of the language in which they were published. It further notes that the power of review granted by domestic law to the prison authorities regarding prisoner access to publications only concerned the content of the latter. In the present case those authorities reached a decision without prior assessment of the content of the publications at issue, thus exercising their discretion to deprive prisoners of access to category of publications which they might have liked to read. It transpires from the case file that the prison authorities’ decisions not to deliver certain editions of the *Azadiya Welat* daily newspaper to the applicants were not based on any of the grounds listed in the relevant law.

110.  The Court infers from this that the impugned interference was, at all events, not “in accordance with the law” (see, for a similar approach to the supervision of prisoners’ written correspondence in a language other than Turkish, *Mehmet Nuri Özen and Others v. Turkey*, nos. 15672/08, 24462/08, 27559/08, 28302/08, 28312/08, 34823/08, 40738/08, 41124/08, 43197/08, 51938/08 and 58170/08, §§ 55-62, 11 January 2011).

111.  This finding is sufficient to enable the Court to conclude that there has been a violation of Article 10 of the Convention.

...

FOR THESE REASONS, THE COURT,

1.  *Decides*, unanimously, to join the applications;

...

3.  *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

...

Done in French, and notified in writing on 20 January, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Guido Raimondi Registrar President