



Extradition of five school teachers to Turkey because of alleged ties with the Gülen movement was in breach of the Convention

In today's **Chamber judgment**¹ in the case of **[Ozdil and Others v. the Republic of Moldova](#)** (application no. 42305/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and

a violation of Article 8 (right to respect for private and family life).

It further declared the complaint under **Article 6 § 1 (right to a fair trial)** inadmissible.

The case concerned the disguised extradition of five Turkish nationals sought by the Turkish authorities for alleged ties with the Fethullah Gülen movement.

The Court found in particular that arresting the applicants and extraditing them to Turkey had amounted to an extra-legal transfer from the territory of the respondent State to Turkey which had circumvented all the guarantees offered to the applicants by domestic and international law.

Principal facts

The applicants, Yasin Ozdil, Mujdat Celebi, Riza Dogan, Sedat Hasan Karacaoglu, and Mehmet Feridun Tufekci, are five Turkish nationals who were born in 1976, 1972, 1976, 1970, and 1976 respectively. They are currently detained in Turkey.

The applicants were secondary school teachers in a chain of schools in Moldova called Orizont. In connection with the attempted military coup of 15/16 July 2016 in Turkey, the Turkish ambassador to Moldova accused the Orizont schools of ties to the Gülen movement and accused the teachers in those schools of terrorism.

In March 2018 the principal of the Chişinău-based Orizont school was arrested and questioned by the Moldovan secret services concerning allegations of supporting terrorist organisations. In connection with the above events, in April 2018 all the applicants applied to the Moldovan Bureau for Migration and Asylum ("the BMA") for asylum. They sought to obtain refugee status in Moldova because they feared reprisals in their country of origin, Turkey, on the grounds of their political views. The applicants were informed in June 2018 by the prosecutor's office that there were no pending criminal investigations involving them.

In September 2018 seven teachers from the Orizont schools – among them the applicants – were arrested in the course of a joint operation conducted by the Moldovan and Turkish services. They were taken directly to Chişinău Airport, where a specially chartered aeroplane was waiting for them and which took them immediately to Turkey. The applicants' families had no knowledge of their fate for several weeks.

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.

Shortly afterwards their families received letters from the BMA containing decisions in which the applicants' applications for asylum were rejected and in which the applicants were banned from entering Moldovan territory for a period of five years and their expulsion under supervision from Moldova was ordered. The BMA concluded that the applicants fulfilled the legal requirements to be granted asylum in Moldova, but found nevertheless, on the basis of a secret note received from the Moldovan secret services, that they presented a threat to national security.

In September and October 2018 the applicants' representative, who had received powers of attorney from their wives, contested the BMA's decisions in court. However, their actions were dismissed on the grounds that the powers of attorney had not been signed by the applicants.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (f) (right to liberty and security), Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private and family life), and Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) to the European Convention, the applicants complained, in particular, that they had been unlawfully deprived of their liberty and extradited to Turkey.

The application was lodged with the European Court of Human Rights on 6 September 2018.

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

Robert Spano (Iceland), *President*,
Marko Bošnjak (Slovenia),
Julia Laffranque (Estonia),
Valeriu Grițco (the Republic of Moldova),
Egidijus Kūris (Lithuania),
Ivana Jelić (Montenegro),
Darian Pavli (Albania),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 5 § 1

The Government submitted that the Moldovan authorities had not been aware of the applicants' fears of travelling to Turkey. However, the Court noted that the applicants had clearly expressed their fear of criminal prosecution in Turkey in their asylum applications. Moreover, the Moldovan authorities had not only failed to give the applicants a choice of jurisdiction to be expelled to, but had deliberately transferred them directly into the hands of the Turkish authorities.

Since the applicants had been transported to Turkey in a specially chartered aeroplane, it was also clear that the joint operation of the Moldovan and Turkish secret services had been prepared well in advance of September 2018. The facts of the case showed that the operation had been organised in such a manner as to take the applicants by surprise so that they would have no time or possibility to defend themselves.

The Court further noted that the BMA had not served its decisions on the applicants, but had posted them to their families after the applicants' removal.

Viewing the circumstances of the case and having regard to the evidence and to the speed with which the Moldovan authorities had acted, the Court concluded that depriving the applicants' of their liberty in September 2018 had been neither lawful nor necessary within the meaning of Article 5 § 1 (f), nor devoid of arbitrariness. Depriving the applicants of their liberty in this way amounted to

an extra-legal transfer of persons from the Moldovan territory to Turkey which circumvented all guarantees offered to them by domestic and international law. There had therefore been a breach of Article 5 § 1.

Article 8

Since the applicants had been integrated into Moldovan society and had had genuine family lives there, the Court considered that their exclusion from Moldova had radically disrupted their private and family lives. Accordingly, there had been an interference with their rights under this heading.

The Court noted that Moldovan law regulated expulsion and extradition. Nevertheless, the applicants had been removed by way of an extra-legal transfer which had circumvented domestic and international legal guarantees. Since this forcible transfer had lacked a sufficient legal basis, it had not been in “accordance with the law” within the meaning of paragraph 2 of Article 8.

The Court reiterated that a person subjected to a measure based on national security considerations must be able to have it scrutinised by an independent and impartial body.

The Court observed that no proceedings had been brought against the applicants for participating in the commission of an offence. In breach of domestic law, they had not been served with the decisions declaring their presence undesirable until after they had been expelled. As the applicants had not enjoyed the minimum degree of protection against arbitrariness on the part of the authorities, the Court concluded that the interference with their private and family lives had not been in accordance with the law. There had accordingly been a violation of Article 8.

Article 6 § 1 and Article 1 of Protocol No. 7

Decisions regarding the entry, stay and deportation of aliens did not concern the determination of civil rights or obligations or of a criminal charge within the meaning of Article 6. Thus, since the complaint under Article 6 § 1 was incompatible *ratione materiae* with the provisions of the Convention, the Court declared it inadmissible.

Having regard to the findings under Articles 5 § 1 and 8, the Court held that there was no need to separately examine the complaint under Article 1 of Protocol No. 7.

Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay each applicant 25,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.