

The Second section of the European Court of Human Rights (ECHR), with a judgment of 16th November 2021, ruled against Turkey for a violation of the right to freedom of expression, guaranteed by art. 10 of the European Convention on Human Rights.

Invoking this article, the applicant – detained in a maximum-security prison for terrorism – complained of a violation of his right to freedom of expression, caused by the refusal of the prison administration to provide him with copies of a newspaper that had been sent to him by post. According to the applicant, the margin of discretion granted to the prison administration by national legislation gives rise to unjust and arbitrary decisions; in support of his argument, he recalled the jurisprudence of the Turkish Constitutional Court which notes a structural problem concerning the acceptance of periodicals in penitentiaries due to the lack of uniform practice among Turkish penitentiary administrations.

The Court of Strasbourg first recalled that prisoners continue to enjoy all the fundamental rights and freedoms guaranteed by the Convention, with the exception of the right to liberty and security, when legitimate detention expressly falls within the scope of art. 5 therein. Therefore, they continue to enjoy the right to freedom of expression, which includes the right to receive and impart information and ideas. The refusal of the national authorities to provide the applicant with copies of the newspaper sent to him constitutes an interference in this right; although the ECHR has found that such interference is provided for by Turkish law and that it pursues legitimate purposes, such as the protection of national security, the maintenance of public order and the prevention of crimes, it had to assess whether, in this case, it was also «necessary».

In this regard, Strasbourg judges noted that the Turkish Constitutional Court has established, in several judgments, the criteria that the prison authorities must take into account when checking publications sent to prisoners in penitentiaries: they must carry out a detailed analysis of the content of the publications sent to prisoners in order to assess whether their content can incite violence, justify and glorify the use of violent acts, endanger the security, discipline and order of the penitentiary and allow communication between members of criminal organizations, taking into account the personal and particular situations of the detainees concerned, the level of tension prevailing in the country and in the prison concerned; they should also evaluate the possibility of removing parties that are contrary to these criteria and hand over the rest of the publication to the person concerned. In this case, the educational commission of the penitentiary administration refused to provide the applicant with five copies of a newspaper because their content could endanger the security of the prison, causing indiscipline among prisoners and amplifying activities related to illicit and terrorist organizations, such as resistance, insurrection and violence for separatist purposes. The enforcement judge dismissed the applicant's opposition to the commission's decision, noting that it contained a relevant assessment and statement of reasons. The Assize Court, in turn, rejected the applicant's opposition to the execution judge's, considering that the decision was legitimate.

The European Court noted that the considerations taken in the decisions of the Turkish authorities could certainly be considered suitable to justify the refusal to deliver the controversial publications to the applicant. However, these decisions have not shown that the authorities have made an adequate balance between the right to freedom of expression and other interests at stake, such as the maintenance of order and discipline in the penitentiary, in accordance with the relevant criteria established by the Turkish Constitutional Court and the jurisprudence of the European Court in cases relating to freedom of expression. Therefore, the refusal to deliver the copies to the applicant does not appear to be duly and sufficiently justified, given that the possibility of deliver them after eliminating the pages with inappropriate content was not even considered. This led to a violation of art. 10 of the Convention, due to the fact that the measure adopted by the Turkish authorities was not necessary in a democratic society.

Riferimenti Normativi:

- art. 10 Convenzione Europea dei Diritti dell'Uomo



Prisoners continue to enjoy all fundamental rights and freedoms guaranteed by the European Convention on Human Rights, including freedom of expression and to receive and impart information and ideas

Diritto civile Tutela dei Diritti

Denise Campagna

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