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

SECOND SECTION

DECISION

Applications nos. 24267/19 and 15415/21
Yiğit AKSAKOĞLU
against Türkiye

The European Court of Human Rights (Second Section), sitting on 17 June 2025 as a Committee composed of:

Oddný Mjöll Arnardóttir*, President*,
Stéphane Pisani,
Juha Lavapuro*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications nos. 24267/19 and 15415/21 against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 April 2019 and 19 February 2021 respectively by a Turkish national, Mr Yiğit Aksakoğlu ("the applicant"), who was born in 1976, lives in the Hague and was represented by Mr S. Cengiz, a lawyer practising in İzmir;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application mainly concerns the arrest and pre-trial detention of the applicant, who is a human rights activist, on the basis of accusations related to the Gezi Park events which occurred between May and September 2013 in Türkiye (for further information on the Gezi Park events, see *Kavala v. Turkey*, no. 28749/18, §§ 15-22, 10 December 2019).

2. In 2014, a criminal investigation was initiated against the applicant with certain measures of interception of phone calls as well as secret physical surveillance. According to the information provided by the applicant, on 31 March 2017 the Istanbul 9th Magistrates' Court ordered a restriction of access to the investigation file on the basis of Article 153 § 2 of the Code of Criminal Procedure (for the text of the said provision, see *Yüksekdağ Şenoğlu*

and Others v. Türkiye, nos. 14332/17 and 12 others, § 441, 8 November 2022).

3. On 16 November 2018 the applicant was arrested and placed in police custody on suspicion of attempting to overthrow the Government or to prevent, through force and violence, the authorities from carrying out their functions under Article 312 of the Turkish Criminal Code. The applicant, assisted by his lawyers, was questioned by police officers from the anti-terrorist branch of the Istanbul Security Headquarters. It transpires from the case file that he was mainly questioned about his relationship and contact with Mehmet Osman Kavala, about his role in certain actions of civil disobedience and his relations with several groups and associations. The questions were mostly based on the phone calls which had been intercepted during the earlier investigation phase, all concerning the Gezi Park events. It appears from the case file that during the questioning, the applicant was submitted the transcripts of the intercepted phone calls as well as covertly taken photographs of himself during the physical surveillance measure he had been subjected to.

4. On 17 November 2018 the applicant gave his verbal statement before the Istanbul 6th Magistrates' Court, largely reiterating what he had previously said during the interrogation. The said court subsequently ordered his pre-trial detention on the grounds that there existed concrete evidence indicating that he had had a significant role in the organisation of certain meetings and civil actions which had taken place after the Gezi Park events. In particular, he was suspected of having acted as "moderator" or "facilitator" in conferences and trainings for the purpose of the organisation of certain demonstrations and protests as actions of civil disobedience. It also referred to the existence of strong suspicions against the applicant, the nature of the offences with which he had been charged and the fact that these offences were among those listed in Article 100 § 3 of the Code of Criminal Procedure – namely, the so-called "catalogue offences", for which a suspect's pre-trial detention was deemed justified in the event of strong suspicion – and to the danger of absconding. It further noted that a judicial supervision measure would be insufficient at this stage and that it would not be sufficient to attain the aim pursued.

5. The applicant filed numerous challenges against his detention, mainly contesting the evaluation and interpretation of the evidence by the authorities, in particular the alleged aim and subject of the phone calls and the meetings subject to investigation. His appeals were all dismissed by the magistrates' courts in a summary fashion.

6. On 28 February 2019 he lodged an individual application with the Constitutional Court invoking, *inter alia*, Article 5 §§ 1 (c), 3 and 4 of the Convention. In particular, he complained that there had been no specific evidence giving rise to a reasonable suspicion as regards his initial arrest and detention, that the domestic courts had not provided relevant and sufficient reasons in their decisions ordering his placement in detention and his

continued detention, and that his access to the investigation file was restricted preventing him to effectively challenge his detention.

7. On 22 April 2019 he filed additional submissions to his individual application, under which he mainly complained about the reasons of detention and its material conditions, as well as the ineffectiveness of the judicial review under Articles 3, 5 §§ 3 and 4, 9, 10 and 11 of the Convention.

8. On 25 April 2019 the applicant submitted application no. 24267/19 to the Court, raising complaints about his detention under Articles 5 §§ 1, 3, 4 and 5, and 6 § 2, 7, 9, 10, 11, 13, 15 and 18 of the Convention, while his individual application was still pending before the Constitutional Court.

9. On 25 June 2019 the Istanbul 30th Assize Court imposed a judicial measure to the applicant preventing him to leave the country, and ordered his release. On 18 February 2020 the same trial court acquitted the applicant from all the charges.

10. On 3 December 2020 the Constitutional Court rendered its judgment on the applicant's individual application in which it notably examined his complaints under Article 5 of the Convention. It found that the investigation file contained no evidence that the applicant had used force or violence, incited acts of violence, directed these actions or supported such criminal behaviour. The incidents on which his pre-trial detention was based were lawful activities or actions clearly related to the exercise of constitutional rights, which were also evidently non-violent. The court concluded that there was no reasonable suspicion that the applicant had committed an offence, necessitating his pre-trial detention. Moreover, stressing in particular that the applicant's detention was ordered some five years after the occurrence of the events referred to, during which no attempt to flee was established and no new evidence was collected, the Constitutional Court also found that the applicant's pre-trial detention was ordered in the absence of relevant and sufficient reasons. Consequently, it found that there had been a violation of Article 5 §§ 1 and 3 of the Convention. Having due regard to the fact that the applicant had already been released while his application was still pending before it, the Constitutional Court awarded non-pecuniary compensation in the amount of 30,000 Turkish liras (TRY) (equivalent to approximately 3,157 euros (EUR) at the material time) to the applicant.

11. In its judgment, the Constitutional Court further declared the applicant's complaints concerning the restrictions of access to the investigation file under Article 5 § 4 of the Convention inadmissible as manifestly ill-founded. In doing so, the said court concluded that despite the decision of the domestic bodies to restrict the access to the investigation file, the applicant had access to the essential evidence in the case file, which was particularly made available to him during the interrogation, and was able to effectively challenge the lawfulness of his detention before the domestic courts. It also decided not to examine the complaint concerning the allegedly excessive length of the applicant's detention in the light of its finding of a

violation of Article 5 of the Convention. That said, the Constitutional Court also stated that the complaints invoked in the applicant's submissions of 22 April 2019 were disregarded for non-compliance with the procedural requirements defined under its Internal Directive. In particular, the Constitutional Court found that new complaints had to be submitted on the standard application form along with the application fee.

12. On 22 January 2021 the Istanbul Regional Court of Appeal quashed the trial court's judgment on the applicant's acquittal. On 28 January 2021 the Istanbul 30th Assize Court imposed a judicial measure to the applicant preventing him to leave the country.

13. It transpires from the case file that the criminal proceedings against the applicant were still pending before the domestic courts at the time of lodging of the second application.

14. The applicant complained before the Court, in particular, under Article 5 §§ 1, 3 and 5 of the Convention that he was unlawfully detained pending trial and under Article 5 § 4 of the Convention about the restriction of access to the investigation file. He raised further complaints under Articles 3, 5 §§ 3 and 4, 6 §§ 1 and 2, 7, 9, 10, 11, 13, 15 and 18 of the Convention.

THE COURT'S ASSESSMENT

15. Having regard to the similar subject matter of the applications, which were lodged by the same applicant, the Court finds it appropriate to examine them jointly in a single decision.

A. Alleged violation of Article 5 §§ 1, 3 and 5 of the Convention

16. The applicant complained under Article 5 §§ 1, 3 and 5 of the Convention that he was unlawfully detained pending trial and that the amount of compensation awarded to him by the Constitutional Court was insufficient to remedy the alleged violation.

17. The Court considers that this complaint falls to be examined under Article 5 §§ 1 and 3 alone. It reiterates its general principles concerning victim status as set out in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 180, ECHR 2006-V; see also *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019).

18. In the present case, the Court observes that in its judgment of 3 December 2020 the Constitutional Court expressly found the applicant's pre-trial detention to be in breach of Article 5 §§ 1 and 3 of the Convention owing to the lack of reasonable suspicion regarding the commission of an offence as well as the absence of relevant and sufficient reasons for the applicant's detention. Consequently, it awarded TRY 30,000 (equivalent to EUR 3,157 at the material time) to the applicant for the violations it had found

(see paragraph 10 above). In doing so, the Constitutional Court also noted that the applicant was released while his individual application was pending, hence he was no longer detained at the time the judgment was rendered.

19. Accordingly, there has been an acknowledgment of a violation of Article 5 §§ 1 and 3 by the domestic court. As to whether appropriate and sufficient redress was granted, the Court, bearing in mind its own practice, finds that although the amount awarded in compensation is lower than what the Court itself would have awarded, it cannot be regarded as manifestly insufficient in the circumstances of the case (see for the relevant standards in that regard *Vedat Doğru v. Turkey*, no. 2469/10, § 40, 5 April 2016, with further references, and, *mutatis mutandis*, *Turan and Others v. Turkey*, nos. 75805/16 and 426 others, § 106, 23 November 2021).

20. It follows that the applicant's complaints under Article 5 §§ 1 and 3 in this regard are incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 thereof.

B. Alleged violation of Article 5 § 4 of the Convention due to the alleged restriction of access to the investigation file

21. The applicant complained under Article 5 § 4 of the Convention that he was not capable of effectively challenging his detention due to the restrictions imposed on his access to the investigation file.

22. The Court reiterates at the outset the general principles concerning the right of access to the investigation file within the context of Article 5 § 4 of the Convention (see, in particular, *Schöps v. Germany*, no. 25116/94, § 44, ECHR 2001-I; *Mooren v. Germany* [GC], no. 11364/03, § 124, 9 July 2009; *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 202-11, ECHR 2009; *Atilla Taş v. Turkey*, no. 72/17, § 150, 19 January 2021; and *Yüksekdağ Şenoğlu and Others v. Türkiye*, nos. 14332/17 and 12 others, §§ 573-77, 8 November 2022).

23. In particular, since the persistence of a reasonable suspicion that the accused person has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, the detainee must be given an opportunity effectively to challenge the basis of the allegations against him. This may also require that the detainee or his representative be given access to documents in the case file which form the basis of the prosecution case against him (see *A. and Others*, cited above, § 204, and *Yüksekdağ Şenoğlu and Others*, cited above, § 575). Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (*Mooren,* cited above, § 124, and *Yüksekdağ Şenoğlu and Others*, cited above, § 576). Even in proceedings under Article 6 for the determination of guilt on criminal charges, there may be restrictions on the right to a fully adversarial

procedure where strictly necessary in the light of a strong countervailing public interest, such as national security, the need to keep secret certain police methods of investigation or the protection of the fundamental rights of another person. There will not be a fair trial, however, unless any difficulties caused to the defendant by a limitation on his rights are sufficiently counterbalanced by the procedures followed by the judicial authorities (*A. and Others*, cited above, § 205, and *Yüksekdağ Şenoğlu and Others*, cited above, § 577).

24. The Court notes at the outset that, in the present case, the decision on limitation of access to the investigation file was not submitted to the case file, thereby circumscribing its ability to consider the scope of the said decision. That said, the Court observes that the essential elements leading to the applicant's detention were the contents of the intercepted phone calls and the findings of the physical secret surveillance (see paragraph 3 above). It further observes that during the interrogation of the applicant, assisted by his lawyers, the authorities posed direct and detailed questions to him about his connections with several individuals and groups and his roles in the organisation of particular events, which were, for the most part, based on the intercepted phone calls. It transpires from the case file that the applicant was handed over the transcripts of the said phone calls, the content of them was transcribed in the minutes of the interrogation, and the officers as well as the applicant specifically addressed the relevant parts of those transcripts during the interrogation. The Court further observes that while the applicant had been asked about a number of meetings, the questions were accompanied by the photographs covertly taken of him during the physical surveillance measure he was subjected to. He was specifically shown the photographs, which he verified before structuring his responses accordingly. The Court also notes that the applicant referred to the said transcripts and the photographs both before the Magistrates' Court and while challenging his detention in its aftermath, and filed very detailed arguments concerning the acts which were taken as a basis for his detention by the domestic authorities, in particular as to their alleged aim and subject (see paragraphs 4 and 5 above). Moreover, the Court observes that no specific argument or complaint was raised concerning the accessibility of evidence or the file by the applicant during the domestic proceedings, in particular while challenging his detention.

25. The Court therefore considers that, despite the restricted access to the complete investigation file, the applicant was able to consult the essential documents needed to effectively challenge the lawfulness of his detention before the domestic courts. Moreover, it could not be established that the restriction in question was not strictly necessary in the light of a strong countervailing public interest, nor that the difficulties encountered by the defence as a result of the limitation of access to the file were not sufficiently

counterbalanced by the procedures followed by the judicial authorities (see, *a contrario, Yüksekdağ Şenoğlu and Others*, cited above, § 579).

26. It follows that this complaint is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Other complaints

27. The applicant also complained that the length of his detention was excessive under Article 5 § 3 of the Convention, that the reviews of his detention took place without a hearing, that he was not notified of the opinion of the public prosecutor on those reviews, and that the time taken by the Constitutional Court to conduct its examination of his individual application was excessive under Article 5 § 4 of the Convention. He also raised other complaints under Articles 3, 6 § 1 (regarding access to the Constitutional Court), 6 § 2, 7, 9, 10, 11, 13, 15 and 18 of the Convention.

28. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention, notably that of exhaustion of domestic remedies, or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

29. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 10 July 2025.

Dorothee von Arnim Deputy Registrar	Oddný Mjöll Arnardóttir President