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

SECOND SECTION

DECISION

Applications nos. 6571/17 and 34234/19
Murat AYDIN against Türkiye
and Hilal SARI against Türkiye

The European Court of Human Rights (Second Section), sitting on 9 June 2026 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Stéphane Pisani,
Juha Lavapuro,
Hugh Mercer*, judges*,

and Andrea Tamietti, *Section Registrar,*

Having regard to the above applications lodged on 11 January 2017 and 17 June 2019 respectively,

Having regard to the decision to give notice of the complaints concerning Article 5 §§ 1 and 4 of the Convention to the Turkish Government ("the Government"), and to declare the remainder of the applications inadmissible;

Having regard to the observations submitted by the Government and the observations in reply submitted by the applicant in application no. 34234/19;

Having regard to the decision refusing the inclusion in the case file of the belated observations submitted by the applicant in application no. 6571/17;

Having deliberated, decides as follows:

INTRODUCTION

1. The present applications mainly concern the arrest and pre-trial detention of the applicants, in the aftermath of the coup attempt of 15 July 2016, on suspicion of their membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fethullahçı Terör Örgütü / Paralel Devlet Yapılanması*;

"FETÖ/PDY"), which was considered by the authorities to be behind the coup attempt (further information regarding the events that unfolded after the coup attempt, including the details of the state of emergency declared by the government and the ensuing notice of derogation given to the Secretary General of the Council of Europe as well as the legislative developments that followed the declaration of the state of emergency may be found in *Baş v. Turkey*, no. 66448/17, §§ 6-14 and 109-10, 3 March 2020).

2. At the material time, the applicant in application no. 6571/17 (Mr Murat Aydın, hereinafter "the first applicant"), was serving as a judge and the applicant in application no. 34234/19 (Ms Hilal Sarı, hereinafter, "the second applicant"), was a former judge.

THE FACTS

A. The circumstances relating to the first applicant

1. The first applicant's detention and the subsequent criminal proceedings

3. On 20 July 2016 the Gaziantep 3rd Magistrate's Court decided to place the first applicant in pre-trial detention on suspicion of membership of a terrorist organisation and attempting to overthrow the constitutional order. It took into consideration the nature of the offences with which he was charged, the state of the evidence and the potential sentence. It also noted that the offence was among the "catalogue" offences listed in Article 100 § 3 of the Code of Criminal Procedure. It held that detention appeared to be a proportionate measure at that stage and that judicial supervision would be insufficient.

4. The first applicant's pre-trial detention was subsequently extended on several occasions by the competent magistrates' courts, which relied on reasons similar to those set out in the detention order of 20 July 2016.

5. On 20 December 2018 the Gaziantep 8th Assize Court sentenced the first applicant to six years and three months' imprisonment for membership of a terrorist organisation. As of the date on which the parties submitted their observations, the proceedings were still pending before the national courts.

2. The individual application before the Constitutional Court

6. On 9 November 2016 the first applicant lodged an individual application with the Constitutional Court. In his application form, relying on the provisions of the Constitution (Articles 20 and 22) corresponding to Article 8 of the Convention, he argued that the refusal to allow him to meet with his wife and the monitoring of his meetings with his lawyer and family members had violated both the confidentiality of his communications and his right to respect for his private life.

7. By a decision of 3 July 2019, the Constitutional Court held that the authorities had failed to secure a minimum level of contact and communication between the first applicant and his wife, who had both been placed in pre-trial detention, and found a violation of the first applicant's right to respect for family life.

B. The circumstances relating to the second applicant

8. On 3 January 2019 the Gaziantep 7th Assize Court decided to place the second applicant in pre-trial detention on suspicion of membership of a terrorist organisation. It considered that there was a risk of her absconding, that detention appeared to be a proportionate measure at that stage and that judicial supervision would be insufficient.

9. On 9 May 2019 the same court sentenced the second applicant to ten years' imprisonment for membership of a terrorist organisation. It also ordered the continuation of the second applicant's detention following her conviction ("*hükmen tutukluluk*").

10. As of the date on which the parties submitted their observations, the proceedings were still pending before the national courts.

11. According to the information provided by the parties, the second applicant did not lodge an individual application with the Constitutional Court. The case file contains a decision of inadmissibility delivered by the Constitutional Court on 21 March 2019 in respect of an individual application lodged in 2017 by the second applicant's husband, Mr Halil Sarı, who had also been placed in pre-trial detention.

RELEVANT LEGAL FRAMEWORK

12. The domestic law governing the right of individual application to the Constitutional Court and the Rules of the Constitutional Court are summarised in *Uzun v. Turkey* ((dec.) no. 10755/13, §§ 14-27, 30 April 2013).

COMPLAINTS

13. The applicants complained under Article 5 § 1 of the Convention that there had been no specific evidence giving rise to a reasonable suspicion that they committed a criminal offence requiring pre-trial detention.

14. The first applicant further complained under that provision that he had been placed in pre-trial detention in breach of the domestic law governing the arrest and pre-trial detention of members of the judiciary and disputed that there had been a case of discovery in *flagrante delicto* for the purposes of section 94 of Law no. 2802. He further argued that the magistrates' courts had lacked competence and territorial jurisdiction to decide on his detention.

15. The second applicant argued that the domestic courts had not provided relevant and sufficient reasons in their decisions ordering her placement in detention and her continued detention, in breach of Article 5 § 3 of the Convention. She further complained under Article 5 § 4 of the Convention of the ineffectiveness of the judicial review of the lawfulness of her detention.

THE LAW

16. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

17. The Government raised a plea of non-exhaustion of domestic remedies in respect of both applicants.

18. They submitted that the first applicant had failed to raise his complaints under Article 5 of the Convention before the Constitutional Court prior to submitting them to the Court.

19. As regards the second applicant, they submitted that she had never lodged an individual application with that court. They submitted to the Court a document issued by the Constitutional Court stating that no individual application had been registered in the name of the second applicant.

20. The applicants did not submit any observations in reply to the Government's objection of non-exhaustion but maintained their complaints under Article 5 of the Convention.

21. The general principles concerning exhaustion of domestic remedies are summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-145, 27 November 2023) and *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). In particular, the Court may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII).

22. In this connection, the Court reiterates that the obligation to exhaust domestic remedies requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. Applicants must comply with the applicable rules and procedures of domestic law, failing which their application is likely to fall foul of the condition laid down in Article 35 (see *Vučković and Others*, cited above, §§ 72 and 80, with further references).

23. The Court has already held that, before bringing complaints against Türkiye before the Court, applicants are required, in accordance with the principle of subsidiarity, to afford the Turkish Constitutional Court the

opportunity to remedy their situation. An individual application before the Constitutional Court is a remedy that needs to be exhausted in relation to alleged violations of the rights and freedoms protected by the Convention (see *Uzun v. Turkey* (dec.) no. 10755/13, §§ 68-71, 30 April 2013).

24. Turning to the circumstances of the present case, the Court notes the Government's submission that the first applicant failed to raise before the Constitutional Court his complaints under Article 5 of the Convention (see paragraph 18 above). It observes in this connection that, in his individual application to that court, the first applicant complained about his inability to communicate with his wife and the monitoring of his communications with his family members and lawyer (see paragraph 6 above).

25. In the light of the Government's submissions, which were not contested by the first applicant (see paragraph 20 above), the Court upholds the Government's plea of non-exhaustion (see, in the same vein, *Yüksekdağ Şenoğlu and Others v. Türkiye*, nos. 14332/17 and 12 others, §§ 452-54, 8 November 2022, and *Baş v. Turkey*, no. 66448/17, §§ 284-85, 3 March 2020).

26. As regards the second applicant, the Court notes that she did not lodge an individual application with the Constitutional Court before applying to the Court. The only decision of the Constitutional Court contained in the case file concerns an application lodged in 2017 by her husband, Mr Halil Sarı (see paragraph 11 above). Moreover, as indicated by the Government, the Constitutional Court confirmed that no individual application had been lodged by the second applicant (see paragraph 19 above). The second applicant did not submit any material or arguments capable of calling that finding into question. In these circumstances and having regard to the principles set out above (see paragraphs 21-23 above), the Court upholds the Government's objection that the second applicant failed to exhaust the domestic remedies available to her, namely the individual application before the Constitutional Court.

27. In these circumstances, and having regard to the principles set out above, the Court upholds the Government's objection of non-exhaustion of domestic remedies (see paragraphs 17-19 above) in respect of both applicants and rejects the applications pursuant to Article 35 §§ 1 and 4 of the Convention.

28. This conclusion dispenses the Court from examining the parties' remaining arguments.

For these reasons, the Court,

Decides, unanimously, to join the applications;

Declares, by a majority, the applications inadmissible.

Done in English and notified in writing on 2 July 2026.

Andrea Tamietti Registrar	Arnfinn Bårdsen President