

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

SECOND SECTION

CASE OF ÇİNİCİ v. TÜRKİYE

(Application no. 32264/19)

JUDGMENT

STRASBOURG

9 July 2024

This judgment is final but it may be subject to editorial revision.



In the case of Çinici v. Türkiye,

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

Jovan Ilievski*, President*,
Diana Sârcu,
Gediminas Sagatys*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 32264/19) 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 10 June 2019 by a Turkish national, Mr Fırat Çinici, born in 1979 and living in Ankara ("the applicant");

the partial decision declaring the applicant's complaint concerning the lack of a reasonable suspicion that he had committed an offence inadmissible (see *Çinici and Others v. Turkey* (dec.), no. 32264/19 and 6 others, §§ 44-52, 16 March 2021);

the decision to give notice to the Turkish Government ("the Government"), represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, of the remaining complaints under Article 5 §§ 1, 3 and 4 of the Convention and to declare the remainder of the application inadmissible;

the decision of 5 December 2023 to disjoin the present application from the other applications to which it had been joined (see above);

the decision to reject the Government's objection to the examination of the application by a Committee;

the parties' observations;

Having deliberated in private on 18 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The application mainly concerns the arrest and pre-trial detention of the applicant, who was a military judge at the material time, on suspicion of being involved in the attempted coup d'état that took place on 15 July 2016 and membership of an organisation described by the Turkish authorities as FETÖ/PDY ("Fetullahist Terror Organisation / Parallel State Structure").

2. On 19 July 2016 the Erzurum 1st Magistrate's Court decided to place the applicant in pre-trial detention on suspicion of membership of a terrorist organisation. It noted that the applicant was amongst those whose names were indicated on the list of judges to be appointed by the instigators of the attempted coup to sit on the courts martial that were envisaged to be set up following the coup (*Sıkıyönetim Mahkemeleri Atama Listesi*; for further information on this list, see *Çinici and Others,* cited above, §§ 12 and 27-29). The court took into consideration the nature of the alleged offence, the state

of the evidence and the potential sentence. It also noted that the alleged offence was among the "catalogue" offences listed in Article 100 § 3 of the Code of Criminal Procedure (CCP). It considered that there was a risk of absconding given the nature of the alleged offence and the potential sentence, and there was also a risk of tampering with evidence. It held that detention appeared to be a proportionate measure at that stage and that judicial supervision would be insufficient.

3. On 21 July 2016 the Erzurum 2nd Magistrate's Court dismissed an objection by the applicant against the order for his detention, on the same grounds as those put forward in the original order.

4. On various dates during the course of the ensuing criminal investigations and trials, the competent judicial authorities ordered the applicant's continued detention on the same grounds as those referred to previously. Additionally, at the later stages of the proceedings, the competent judges took also into account the time spent by the applicant in pre-trial detention when deciding to extend his detention.

5. On 15 November 2016 the applicant lodged an individual application with the Constitutional Court. It appears from the application form submitted to the Constitutional Court that under Article 5 of the Convention the applicant complained about the lack of reasonable suspicion that he had committed an offence, the alleged lack of reasons to justify the decision to remand him in pre-trial detention and the length of his pre-trial detention. On 28 January 2019 the Constitutional Court declared inadmissible the applicant's individual application.

6. On 22 December 2017 the applicant was released pending trial.

7. On 26 November 2018 the applicant was convicted of membership of an armed terrorist organisation by the court of first instance. It appears that the proceedings are still pending before the appeal courts.

RELEVANT LEGAL FRAMEWORK

8. For the relevant provisions of domestic law and practice see *Kavala v. Turkey* (no. 28749/18, §§ 71-72, 10 December 2019), and *Çinici and Others* (decision cited above, §§ 30-33).

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

9. The applicant complained that he had been placed in pre-trial detention in breach of domestic law. In that regard he argued that he was detained on remand in breach of the procedural guarantees provided in the Military Judges Act (Law no. 357). The applicant further submitted that the domestic courts had given insufficient reasons for their decisions on his detention. He

also maintained that the domestic authorities had failed to consider alternative measures to detention. In these respects, he claimed that there had been a violation of Article 5 §§ 1 and 3 of the Convention.

A. Alleged lack of lawfulness of the applicant's pre-trial detention (Article 5 § 1 of the Convention)

10. The Government objected that the applicant had not exhausted domestic remedies in respect of his complaint under Article 5 § 1 of the Convention, arguing that he had not raised it in an individual application to the Constitutional Court.

11. The Court recalls that on 16 March 2021, it has declared inadmissible the applicant's complaint under Article 5 § 1 of the Convention concerning the lack of reasonable suspicion that he had committed a criminal offence (see *Çinici and Others,* cited above, §§ 44-52). It further notes that the applicant did not raise his complaint under Article 5 § 1 of the Convention regarding a breach of the procedural guarantees provided in Law no. 357 with the Constitutional Court, before submitting it to the Court (see paragraph 5 above). It therefore accepts the Government's objection that the applicant failed to exhaust domestic remedies in respect of his complaint under this head.

12. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

B. Alleged lack of reasoning in the decisions ordering the applicant's pre-trial detention (Article 5 § 3 of the Convention)

1. Admissibility

13. The Government first urged the Court to declare this complaint inadmissible arguing that the applicant had not made use of the compensatory remedy under Article 141 of the CCP.

14. The Court notes that similar objections raised by the Government have already been dismissed in other cases against Türkiye (for instance, *Baş v. Turkey*, no. 66448/17, §§ 118-124, 3 March 2020, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 212-214, 22 December 2020), and sees no reason to depart from those findings in the present case. The Court therefore considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

15. The applicant submitted that the competent courts have not provided sufficient reasons for its decisions on his pre-trial detention.

16. The Government submitted that the applicant's initial and continued pre-trial detention had complied with the domestic legislation and Article 5 § 3 of the Convention.

17. Under the Court's established case-law under Article 5 § 3, the persistence of a reasonable suspicion that the detainee has committed an offence is a condition *sine qua non* for the validity of his or her continued detention. The Court must further establish whether the national authorities gave relevant and sufficient reasons for the detention from the time of the first decision ordering detention on remand onwards. Those other grounds may be a risk of flight, a risk of pressure being brought to bear on witnesses or of evidence being tampered with, a risk of collusion, a risk of reoffending, or a risk of public disorder and the related need to protect the detainee (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87-88 and 101-102, 5 July 2016). Those risks must be duly substantiated, and the authorities' reasoning on those points cannot be abstract, general or stereotyped (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 222, 28 November 2017).

18. Turning to the present case, the Court observes that when ordering the initial and continued pre-trial detention of the applicant, the competent judicial authorities did not rely only on the elements of evidence that were present at the time of detention – that is the fact that the applicant's name was on the list of judges appointed to the courts martial – and thus to a persisting reasonable suspicion that the applicant had committed an offence. They also relied on the following grounds for the detention: the nature of the offence; the severity of the sentences prescribed by law for the offence concerned; the state of evidence; the period spent in detention; the risk of absconding and tampering with evidence; and the finding that alternative measures to detention appeared insufficient (paragraph 2 above).

19. To the extent that the detention was justified on the basis of the "nature of the offence", the Court notes that the judges ruling on the applicant's detention considered that he was accused of an offence listed in Article 100 § 3 of the CCP, also referred to as the "catalogue" offences. Concerning these so-called "catalogue" offences, the Court notes that under Article 100 § 3 of the CCP, Turkish law provides that for certain offences there is a statutory presumption of the existence of grounds for detention (risk of absconding, tampering with evidence or putting pressure on witnesses, victims and other persons). In this connection, the Court reaffirms that any system of mandatory detention on remand is *per se* incompatible with Article 5 § 3 of the Convention. Where the law provides for a presumption concerning the grounds for pre-trial detention, it must nevertheless be convincingly demonstrated that there are concrete facts warranting a departure from the rule of respect for individual liberty. This is also the case where the judicial authorities justify the detention of a suspect by the nature of the offence in question or the severity of the potential sentence prescribed by law (compare also *Tuncer Bakırhan v. Turkey*, no. 31417/19, §§ 46-49, 14 September 2021). The Court therefore needs to examine whether the national courts

carried out an individualised examination when ordering and prolonging the applicant's pre-trial detention.

20. As regards the other reasons given by the national courts for placing or maintaining the applicant in pre-trial detention, the Court observes firstly that they entail a formulaic enumeration of the grounds for detention under domestic law in a general and abstract manner, such as the state of the evidence, the period spent in detention and the risk of absconding and tampering with evidence. While the Court is prepared to accept that, in view of the particular circumstances surrounding the attempted coup d'état, the risk of absconding and/or tampering with evidence might justify the detention measure, at least during the initial phase of the criminal investigation, it nevertheless observes that the subsequent decisions ordering the applicant's continued pre-trial detention do not contain an individualised analysis in that regard. In the Court's view, decisions worded in formulaic and stereotyped terms as in the present case can on no account be regarded as sufficient to justify a person's continued pre-trial detention (see, *mutatis mutandis*, *Şık v. Turkey*, no. 53413/11, § 62, 8 July 2014). This is particularly so given that the applicant was remanded in pre-trial detention for more than one year and five months (see, in this regard, *Kolay and others v. Türkiye* [Committee]), nos. 15231/17 and 283 others, § 16, 12 December 2023).

21. The Court notes that it has already examined many cases in which it has found a violation of Article 5 § 3 of the Convention for similar reasons (see, among other authorities, *Tuncer Bakırhan*, cited above, §§ 40-58, and the cases cited therein). In the present case, having regard to the grounds provided by the national judicial authorities, the Court considers that they ordered and extended the applicant's pre-trial detention on grounds that cannot be regarded as "sufficient" to justify the measure in issue.

22. As regards Article 15 of the Convention and Türkiye's derogation, the Court notes at the outset that the applicant was detained a short time after the coup attempt – that is, the event that prompted the declaration of the state of emergency and the notice of derogation by Türkiye –, which is undoubtedly a contextual factor that should be fully taken into account in interpreting and applying Article 5 of the Convention (see *Alparslan Altan v. Turkey*, no. 12778/17, § 147, 16 April 2019). Nonetheless, Article 100 and 101 of the CCP, which specifically require the judicial authorities to provide "relevant and sufficient" reasons when deciding to place or maintain a suspect in pre-trial detention and to provide legal and factual reasons as to why alternative measures would be insufficient, were not amended during the state of emergency, unlike some other provisions of the CCP in relation to deprivations of liberty (see, for instance, *Alparslan Altan*, cited above, §§ 113 and 117, and *Baş*, cited above, § 81 for the restrictions introduced after the *coup* attempt on the procedural safeguards laid down in domestic law for those held in pre-trial detention, such as restrictions on access to case files and on the examination of objections against detention orders). The applicant's detention was therefore decided on the basis of the legislation in

force before the declaration of the state of emergency, legislation which is still applicable (see, *mutatis mutandis*, *Akgün v. Turkey*, no. 19699/18, § 183, 20 July 2021). While the Government requested that the applicant's complaints under Article 5 be examined from the perspective of Article 15 of the Convention, they have not submitted arguments to justify the derogation from the aforementioned requirements set out under Article 100 and 101 of the CCP. Therefore, the Court considers that it is not established that the failure to comply with the requirements described above could be justified by the derogation notified by the Government of Türkiye under Article 15 of the Convention and had not gone beyond the "extent strictly required by the exigencies of the situation" (see, *mutatis mutandis*, *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 140, 20 March 2018). This is particularly so having regard to the duration of the applicant's pre-trial detention which lasted more than one year and five months. The Court stresses in this regard that the considerations giving rise to the application of Article 15 of the Convention gradually become less forceful and relevant as the public emergency threatening the life of the nation, while still persisting, declines in intensity, at which point the "exigency" criterion must be applied more stringently (see *Baş*, cited above, § 224).

23. In the light of the foregoing, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

II. OTHER COMPLAINTS

24. As regards the remaining complaints of the applicant under Article 5 §§ 3 (length of the detention) and 4 (delay in examination of requests for release and delay in notification of the decisions extending detention) of the Convention, the Court decides not to examine the admissibility and merits of those complaints, in view of its findings under Article 5 § 3 above and its considerations in the case of *Turan and Others v. Turkey* (nos. 75805/16 and 426 others, § 98, 23 November 2021; in the same vein, see also *Kolay and Others*, cited-above, § 21).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 50,000 in respect of pecuniary damage.

26. The Government contested these claims as unsubstantiated.

27. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage on account of the violation found under Article 5 § 3 of the Convention, plus any tax that may be chargeable (see, in the same vein, *Kolay and Others*, cited above, § 25). The Court rejects the applicant's claim in respect of pecuniary damage as it is not substantiated.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 5 § 1 of the Convention inadmissible;

2. *Declares* the complaint concerning Article 5 § 3 of the Convention concerning the alleged lack of reasoning of the detention decisions admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the absence of sufficient grounds for ordering and maintaining the applicant in pre-trial detention;

4. *Holds* that there is no need to examine the admissibility and merits of the applicant's remaining complaints under Article 5 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant EUR 3,000 (three thousand euros) within three months, in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount, which is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President