

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

SECOND SECTION

CASE OF İPEK v. TÜRKİYE

(Application no. 71299/16)

JUDGMENT

STRASBOURG

23 June 2026

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



In the case of İpek v. Türkiye,

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

Péter Paczolay*, President*,
Gediminas Sagatys,
Stéphane Pisani*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 71299/16) 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 November 2016 by a Turkish national, Mr Cafer Tekin İpek ("the applicant"), who was born in 1965, lives in Ankara, and was represented by Mr P. Doris, a lawyer practising in London;

the decision to give notice of the complaints under Article 5 of the Convention concerning the alleged lack of reasonable suspicion regarding the commission of an offence, the alleged lack of relevant and sufficient reasons for ordering and extending pre-trial detention, the length of the pre-trial detention, and the ineffectiveness of the judicial review of the lawfulness of the detention to the Turkish Government ("the Government"), represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare the remainder of the application inadmissible;

the parties' observations;

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

Having deliberated in private on 2 June 2026,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the pre-trial detention of the applicant, the former majority shareholder of eighteen companies brought together under the holding company Koza İpek A.Ş ("the applicant's company" or "the holding company").

2. On 4 August 2014 the Financial Crimes Investigation Board (*Mali Suçları Araştırma Kurulu* – "MASAK") issued a report finding that the applicant's company had made suspicious money transfers abroad which could be regarded as money laundering, that it had also kept its television companies and newspapers afloat through capital increases despite continuous losses, and that the applicant might have committed insider trading.

3. On 3 March 2015 the Anti-Smuggling and Organised Crime Department (*Kaçakçılık ve Organize Suçlarla Mücadele Bürosu* – "KOM") issued a report finding that there was strong suspicion that the directors of the holding company had committed the offences of abuse of trust in a service relationship (*hizmet nedeniyle güveni kötüye kullanma*), fraudulent book-keeping and abuse of office under the relevant provisions of the Criminal Code and the Code of Capital Markets, by transferring abroad the financial resources of the companies operating under the holding company and by performing fraudulent transactions through those companies.

4. On 1 September 2015 a search was conducted of the applicant's companies, in the course of which invoices, books, digital records and other evidence were seized.

5. On 16 October 2015 an expert report was drawn up concerning the evidence obtained as a result of that search. According to the expert report, there were many fraudulent monetary transactions, money flows involving undefined resources, donations made contrary to ordinary commercial practices, and undocumented consultancy expenses.

6. The public prosecutor transmitted all the evidence and the expert report dated 16 October 2015 to the Capital Markets Board (*Sermaye Piyasası Kurulu* – "SPK"), which on 3 February 2016 issued a report concerning the alleged irregularities in the companies' transactions.

7. On 9 February, 8 March and 21 April 2016 SPK lodged four criminal complaints against the applicant and the other shareholders of the holding company. The SPK report and the criminal complaints stated that (i) a number of high-value transfers of concealed profits had been made to company executives, including the applicant, contrary to the arm's length principle, market practices and ordinary commercial practices; (ii) a tender had been awarded to a related company contrary to those same principles; and (iii) repeated high-value donations had been made to a university and foundation related to the holding company, in breach of market practices.

8. On 2 March 2016 KOM issued another report entitled "FETÖ/PDY Media Report", indicating, *inter alia*, that television channels and newspapers owned by the holding company had adopted a broadcasting policy aligned with the objectives of the FETÖ/PDY, an organisation described by the Turkish authorities as the "Fetullahist Terrorist Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü/Paralel Devlet Yapılanması* – "the FETÖ/PDY"). It was found that those media outlets, which were suspected of being directed from a single centralised source, had broadcast manipulative and anti-government content alongside other FETÖ/PDY-affiliated television channels. It was also noted that the applicant's family had entered the media sector in accordance with instructions given by the FETÖ/PDY.

9. On 24 April 2016, following a police search conducted at his home, the applicant was taken into police custody.

10. On 25 April 2016 he was questioned by the Ankara public prosecutor, who transferred him to the Ankara 2nd Magistrate's Court with a request for pre-trial detention.

11. Relying on the above-mentioned reports and criminal complaints, the public prosecutor alleged that there was a reasonable suspicion that the applicant had committed the offences of abuse of trust in a service relationship under Article 155 § 2 of the Criminal Code, and of being a member of an armed terrorist organisation, the FETÖ/PDY.

12. On the same day, the Ankara 2nd Magistrate's Court ordered the applicant's pre-trial detention on the above-mentioned charges.

13. In its reasoning as to the existence of a reasonable suspicion against the applicant, the Ankara 2nd Magistrate's Court referred to the documents in the investigation file, the expert report and SPK's reports and criminal complaints.

14. As regards the grounds for detention, the Ankara 2nd Magistrate's Court referred, in a general manner, to the nature of the alleged offences and the state of the evidence. It also noted that the alleged offence was among the "catalogue offences" listed in Article 100 § 3 of the Code of Criminal Procedure (see for the wording of that provision *Tuncer Bakırhan v. Turkey*, no. 31417/19, § 23, 14 September 2021). It considered that pre-trial detention would be a proportionate measure given the severity of the potential sentence. It further considered that judicial supervision would be insufficient owing to the risk of the applicant's absconding.

15. The applicant's pre-trial detention was reviewed and extended on several occasions by the magistrates' courts on grounds including, in addition to those set out in the initial detention order, the state of the investigation and the risks of the applicant's absconding and tampering with evidence.

16. On 6 December 2016, at the request of the public prosecutor, the Ankara Chief Public Prosecutor's Office added a letter to the investigation file, on the basis of a report prepared by KOM, stating that the applicant had used ByLock, an encrypted messaging application, on his mobile phone.

17. In June 2017 the public prosecutor lodged an indictment with the Ankara 24th Assize Court, charging the applicant with the above-mentioned offences.

18. On 30 July 2019 an expert report was drawn up, indicating that the ByLock application had in fact been used by the applicant's co-accused H.B.S., and not by the applicant.

19. On 30 May 2016 the applicant lodged an individual application with the Constitutional Court, principally complaining of a breach of his rights under Article 5 of the Convention. On 1 July 2016 the applicant lodged a new application with the Constitutional Court, again challenging his pre-trial detention. Both applications were joined. On 20 September 2018 the Constitutional Court declared the applicant's individual application inadmissible for being manifestly ill-founded. In dismissing the applicant's

complaint concerning the lack of a reasonable suspicion, the Constitutional Court referred to evidence of his use of the ByLock application. From 30 July 2019 onwards, that evidence was no longer relied on by the domestic courts.

20. On 9 January 2020 the applicant was convicted as charged and sentenced to imprisonment

21. According to the information in the case file, the criminal proceedings against the applicant in respect of the charge of membership of the FETÖ/PDY are still pending before the Court of Cassation. The applicant's conviction for abuse of trust in a service relationship became final on 27 April 2021.

THE COURT'S ASSESSMENT

I. PRELIMINARY QUESTION CONCERNING THE DEROGATION BY TÜRKIYE

22. The Government emphasised at the outset that the applicant's complaints should be examined with due regard to the derogation of which the Secretary General of the Council of Europe had been notified on 21 July 2016 under Article 15 of the Convention.

23. The Court observes that, although the applicant's initial detention did not fall within the period covered by the notice of derogation, a relevant part of his continued detention did. It will therefore take the derogation into account when examining the merits of the applicant's complaint under Article 5 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

24. The applicant complained that he had been placed in pre-trial detention in the absence of a reasonable suspicion that he had committed a criminal offence. He submitted that, at the time of his pre-trial detention, there had been no information capable of satisfying an objective observer that he might have committed the alleged offences.

25. The Government contested these arguments. They argued that there were several pieces of relevant evidence including the official reports issued by SPK, MASAK and KOM in respect of the applicant's company.

26. The Court notes that the applicant's complaint concerns his initial pre-trial detention. In that regard, it will confine its examination to the evidence available in the investigation file at the time of his placement in pre-trial detention.

27. The general principles concerning the requirement of "reasonable suspicion" under Article 5 § 1 (c) have been summarised in *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 311-21, 22 December 2020).

28. As noted above, the Court confines its examination to the evidence available at the time when the judicial authorities ordered the applicant's pre-trial detention. Although the Constitutional Court, in examining the applicant's complaint under Article 5 § 1 (c) of the Convention, took into account the ByLock evidence, that material was added to the case file after the applicant's initial detention and had no influence on the detention order of 25 April 2016. The Court therefore finds that it is unnecessary to examine the ByLock evidence for the purposes of assessing whether the suspicion justifying the initial detention was reasonable (see, *mutatis mutandis*, *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 134, 13 April 2021, and *Abdullah Kılıç v. Türkiye*, no. 43979/17, § 80, 31 January 2023).

29. As regards the evidence available at the time of the applicant's placement in pre-trial detention, the Court notes that the reasonable suspicion concerning the applicant was based on reports issued by SPK, MASAK and KOM (see, in particular, paragraphs 2, 3 and 6-7 above). Those reports contained detailed technical analyses and findings concerning the alleged unlawful distribution of profits, high-value donations and unregistered money flows. Having regard to the Court's established case-law, according to which the facts raising a suspicion need not be of the same level as those necessary to justify a conviction (*O'Hara v. the United Kingdom*, no. 37555/97, § 36, ECHR 2001-X), the Court considers that the conclusions reached in those reports were capable of providing a factual basis for a reasonable suspicion sufficient to satisfy an objective observer that the applicant might have committed an offence, in particular abuse of trust in a service relationship.

30. In the light of the foregoing, the Court finds that, at the time of the applicant's initial pre-trial detention, there was sufficient evidence in the investigation file to establish a reasonable suspicion, within the meaning of Article 5 § 1 (c) of the Convention, that the applicant might have committed an offence.

31. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

32. The applicant complained, under Article 5 § 3 of the Convention, about the lack of relevant and sufficient reasons in the decisions ordering and extending his pre-trial detention and about the length of that detention. He also complained, under Article 5 § 4 of the Convention, that the judges who had reviewed his pre-trial detention should have undertaken an individual assessment of his situation, taking due account of his arguments and giving adequate reasoning in their decisions.

33. Being the master of the characterisation to be given in law to the facts of the case, the Court will consider these complaints under Article 5 § 3 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018).

34. The Government raised a plea of non-exhaustion of domestic remedies, arguing that the applicant had failed to make use of the compensatory remedy under Article 141 of the Code of Criminal Procedure. The Court notes that similar objections raised by the Government have already been dismissed in other cases against Türkiye (see, for instance, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 212-14, 22 December 2020, and *Baş v. Turkey*, no. 66448/17, §§ 118-24, 3 March 2020), and sees no reason to depart from those findings in the present case.

35. The Court considers that the applicant's complaints under Article 5 § 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

36. The Court refers to the general principles under Article 5 § 3 of the Convention concerning the justification of detention, as set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 87-91, 5 July 2016) and *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222-25, 28 November 2017).

37. The Court reiterates that 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 (see *Merabishvili*, cited above, § 222, with further references). In the present case, the Court is prepared to accept that a reasonable suspicion persisted throughout the applicant's detention, at least in respect of the charge of abuse of trust in a service relationship.

38. The Court notes that, in ordering the applicant's pre-trial detention, the magistrate relied, in addition to the existence of a reasonable suspicion, on the nature of the alleged offences, the state of the evidence and the fact that the offences in question were among the "catalogue offences" listed in Article 100 § 3 of the Code of Criminal Procedure. The magistrate further considered that judicial supervision would be insufficient on account of the risk of the applicant's absconding. The applicant's detention was subsequently extended on similar grounds, with the additional reliance on the risk of tampering with evidence (see paragraphs 14 and 15 above).

39. In so far as the applicant's detention was justified by the nature of the offence, the Court notes that the domestic courts relied on the fact that the charges fell within the scope of the "catalogue offences" listed in Article 100 § 3 of the Code of Criminal Procedure. While that provision establishes a statutory presumption as to the existence of grounds for detention, the Court reiterates that such a presumption cannot dispense with the need to demonstrate, on the basis of concrete facts, that detention was justified in the

applicant's individual circumstances, a requirement which applies equally where reliance is placed on the nature of the offence or the severity of the potential sentence (compare *Tuncer Bakırhan v. Turkey*, no. 31417/19, §§ 46-49, 14 September 2021).

40. As regards the other grounds relied on by the domestic courts, the Court observes that they were limited to a stereotyped and abstract enumeration of the statutory criteria for detention, such as the state of the evidence and the risks of absconding or tampering with evidence, without any individualised assessment. While such risks may, in principle, justify detention, notably at the initial stage of the proceedings, the continued reliance in formulaic terms on these grounds cannot suffice to justify, in particular, a prolonged period of pre-trial detention (compare also *Şık v. Turkey*, no. 53413/11, § 62, 8 July 2014), which in the present case lasted three years, eight months and fifteen days.

41. In the light of the foregoing, and having regard to its established case-law concerning similar detention practices in Türkiye (see *Tuncer Bakırhan*, cited above, §§ 40-58, with further references), the Court considers that the grounds relied on by the domestic courts, taken as a whole, cannot be regarded as sufficient to justify the applicant's placement and continued detention pending trial.

42. As regards Article 15 of the Convention and Türkiye's derogation, the Court has already held in similar cases that this provision cannot justify the measures complained of, having regard also to the duration of the applicant's pre-trial detention (see, for example, *Baş v. Turkey*, no. 66448/17, § 224, 3 March 2020, and the references relied on in *Kolay and Others v. Türkiye* [Committee], nos. 15231/17 and 283 others, § 18, 12 December 2023). The Court sees no reason to depart from that conclusion in the present case.

43. There has accordingly been a violation of Article 5 § 3 of the Convention on account of the lack of "sufficient" reasons to justify the applicant's pre-trial detention.

44. In view of this finding, it is not necessary to examine whether the duration of the applicant's detention has complied with the requirements of Article 5 § 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage, EUR 50,000 in respect of non-pecuniary damage and EUR 16,637.50 in respect of costs and expenses incurred before the Court. In support of his claims for costs and expenses, the applicant submitted a pro forma invoice indicating the hourly rate and number of hours spent by his legal representative on the proceedings before the Court.

46. The Government submitted that the amounts claimed were excessive and incompatible with the Court's case-law.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

48. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, having regard to the documents in its possession, the Court considers it reasonable to award EUR 500 in respect of the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 3 of the Convention admissible and the remainder of the application inadmissible;

2. *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 keeping the applicant in pre-trial detention;

3. *Holds* that there is no need to examine separately the merits of the remaining complaint under Article 5 § 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Péter Paczolay President