

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

SECOND SECTION

CASE OF YILDIZ v. TÜRKİYE

(Application no. 15591/17)

JUDGMENT

STRASBOURG

18 November 2025

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Yıldız v. Türkiye,

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

Jovan Ilievski*, President*,
Oddný Mjöll Arnardóttir,
Stéphane Pisani*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 15591/17) 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 20 January 2017 by a Turkish national, Mr Mehmet Yıldız ("the applicant"), who was born in 1969, lives in Diyarbakır, and was represented by Mr M. Özdemir, a lawyer practising in Diyarbakır;

the decision to give notice of the complaints under Article 5 § 3 of the Convention 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 21 October 2025,

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 on suspicion of being a member of an armed terrorist organisation.

2. On 30 April 2011 the applicant was arrested on suspicion of being a member of an armed terrorist organisation, namely the PKK (Workers' Party of Kurdistan). On 3 May 2011 the Diyarbakır 5th Assize Court placed the applicant, along with several other individuals, in pre-trial detention on the grounds that judicial supervision measures would be insufficient owing to the existence of a strong suspicion that he had committed an offence, the nature of the offence, and the state of the evidence.

3. Objections lodged by the applicant against the decisions ordering and extending his pre-trial detention, as well as his requests for release from detention, were rejected by the competent domestic courts on account of the nature of the alleged offence, the strong suspicion that he had committed the offence in question, the severity of the potential sentence, the risk of the applicant's absconding and tampering with evidence – without the courts giving further details relating to the applicant's situation in these respects, as well as the seriousness of the offence, which was among those listed in

Article 100 § 3 of the Code of Criminal Procedure ("the CCP"), known as "catalogue offences".

4. On 17 June 2011 the Diyarbakır public prosecutor issued an indictment, accusing the applicant of aiding and abetting an illegal organisation.

5. On 29 January 2014 the applicant lodged an individual application with the Constitutional Court, complaining about his pre-trial detention.

6. On 23 May 2014 the applicant was released. On 27 May 2014 the Diyarbakır 2nd Assize Court found him guilty as charged and sentenced him to four years, eight months and seven days' imprisonment.

7. On 12 June 2016 the Constitutional Court examined the applicant's individual application on the merits and found no violation of Article 19 of the Constitution (provision corresponding to Article 5 of the Convention). It concluded, in particular, that:

- the state of the evidence relating to the strong suspicion that the applicant had committed the offence with which he had been charged, the fact that the offence in question was among the "catalogue offences", the lower and upper limits of the prescribed sentence, and the risk of the applicant's absconding were sufficient reasons for ordering and extending his pre-trial detention;

- in view of the number of defendants, the extent and nature of the offence with which the applicant had been charged, and the fact that no negligence was attributable to the courts, the length of his pre-trial detention, namely three years and twenty-three days, was not excessive.

8. On 28 June 2021 the Court of Cassation upheld the applicant's conviction.

9. Relying on Article 5 § 3 of the Convention, the applicant complained in particular that the courts had failed to give relevant and sufficient reasons to justify his continued pre-trial detention and that the length of his pre-trial detention had been excessive.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

10. The applicant alleged under Article 5 § 3 of the Convention that the domestic courts had failed to give relevant and sufficient reasons for ordering and extending his detention, and that the length of his pre-trial detention had been excessive.

11. The Government raised a preliminary objection, arguing that the applicant had failed to exhaust domestic remedies in so far as he had failed to use the compensatory remedy under Article 141 of the CCP.

12. The Court notes that the applicant's complaints under Article 5 § 3 of the Convention were raised in his application to the Constitutional Court, which declared those complaints admissible, examined them on the merits and found no violation. The Court considers that, regard being had to the rank

and authority of the Constitutional Court in the Turkish judicial system and to the conclusion reached by that court in respect of the above-mentioned complaints, a compensation claim under Article 141 of the CCP would have had, and indeed would still have, no prospects of success. It therefore dismisses the Government's objection in that regard (see *Baş v. Turkey*, no. 66448/17, §§ 118-21, 3 March 2020, and *Akgün v. Turkey*, no. 19699/18, §§ 113-17, 20 July 2021).

13. The Court notes 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.

14. The general principles concerning the domestic courts' duty to give relevant and sufficient reasons in ordering and extending pre-trial detention and the length of pre-trial detention may be found in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91 and 102, 5 July 2016) and *Karaca v. Türkiye* (no. 25285/15, §§ 137-40, 20 June 2023).

15. In accordance with the Court's established case-law under Article 5 § 3, decisions ordering and extending pre-trial detention must contain relevant and sufficient reasons justifying the necessity of the detention. Those reasons may be a risk of absconding, 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*, cited above, §§ 87-88 and 101-02). 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).

16. In that connection, the Court observes that in Türkiye, as required by the Convention, domestic law provides that the competent judicial authorities must put forward "relevant and sufficient" reasons when considering the need to place and keep a suspect in pre-trial detention. This is a procedural obligation laid down in Articles 100 and 101 of the CCP, which provide that decisions to place or keep a suspect in pre-trial detention must include legal and factual reasons (see for the text of those provisions *Tuncer Bakırhan v. Turkey*, no. 31417/19, §§ 23-24, 14 September 2021).

17. The Court observes that in justifying the applicant's initial and continued pre-trial detention, the domestic courts took numerous grounds into account such as (i) the nature of the offence with which the applicant was charged; (ii) the fact that the offence of being a member of an armed terrorist organisation was among the "catalogue offences"; (iii) the upper and lower limits of the prescribed sentence; (iv) the state of the evidence; and (v) the risk of the applicant's absconding and tampering with evidence.

18. As for the first two grounds taken into account by the domestic courts, namely the nature of the offence and the fact that it was among the "catalogue offences", 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 (see *Tuncer Bakırhan*, cited above, §§ 46-49).

19. The Court therefore needs to examine whether the national courts carried out an individualised assessment as to the possible reasons justifying the necessity of the detention, such as the risk of the applicant's absconding or tampering with evidence.

20. The Court notes that the Diyarbakır 5th Assize Court placed the applicant in pre-trial detention without carrying out a substantiated individual assessment with regard to the applicant to justify that measure (see paragraph 17). In particular, in the absence of an individual examination the Diyarbakır 5th Assize Court failed to explain on what concrete elements exactly the finding that the applicant risked absconding or tampering with evidence was based. Furthermore, that lack of reasoning persisted in all the subsequent decisions extending his detention. The Court therefore considers, contrary to the Government's arguments, that none of the decisions of the domestic courts ordering and extending the applicant's detention, which lasted for three years and twenty-four days, contained reasons which could be regarded as "sufficient" within the meaning of Article 5 § 3 of the Convention.

21. In view of the above findings, there is no need to ascertain whether the judicial authorities displayed "special diligence" in conducting the proceedings (compare also *Karaca*, cited above, § 149).

22. There has accordingly been a violation of Article 5 § 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 250,000 Turkish liras (TRY – approximately 7,226 euros (EUR) on the basis of the exchange rate at the time) in respect of pecuniary damage, TRY 500,000 (approximately EUR 14,452 on the basis of the exchange rate at the time) in respect of non-pecuniary damage and TRY 144,000 (approximately EUR 4,162 on the basis of the exchange rate at the time) in respect of costs and expenses incurred before both the domestic courts and the Court. He referred to the Diyarbakır Bar Association's scale of fees and submitted, in his observations, a breakdown of expenses in which he indicated (i) postal, translation and stationery expenses; (ii) the number of hours spent by his representative on various tasks concerning the proceedings before the Court; and (iii) the hourly rate.

24. The Government contested the applicant's claims.

25. 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 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

26. As regards costs and expenses, in so far as they are substantiated by the documents in its possession (compare in this regard, for instance, *Gilanov v. the Republic of Moldova*, no. 44719/10, § 97, 13 September 2022), the Court considers it reasonable to award EUR 850 for the costs incurred before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred and fifty 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;

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

Done in English, and notified in writing on 18 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President