



## Violation of Convention on account of unjustified pre-trial detention of journalist Murat Aksoy

The case concerned the pre-trial detention of a journalist in connection with articles and publications he had written for newspapers or social media in which he had criticised the government. Mr Aksoy was taken into custody a few weeks after the attempted coup of 15 July 2016 and the subsequent declaration of a state of emergency. The authorities accused him of belonging to a terrorist organisation and of attempting, by force and violence, to overthrow the constitutional order and the government.

In today's **Chamber** judgment<sup>1</sup> in the case of [Murat Aksoy v. Turkey](#) (application no. 80/17) the European Court of Human Rights held, by a majority (six votes to one), that there had been a **violation of Article 5 § 1 (right to liberty and security) and of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The Court also held, by a majority (four votes to three), that there had been **no violation of Article 5 § 4 (inability to access investigation file)** of the Convention.

The Court found that there had been no plausible grounds to suspect Mr Aksoy of committing a criminal offence. Therefore the fact of remanding him in custody had breached his right to freedom and security and had constituted an interference with his right to freedom of expression which was not prescribed by law.

It also found that, even though Mr Aksoy had not enjoyed unlimited access to the evidence in the file, he had obtained sufficient knowledge of the content of those items which had been of crucial importance for the purpose of effectively challenging the lawfulness of his pre-trial detention when he had been questioned by the competent authorities, namely the investigators and Justice of the Peace, who had put questions to him on this subject.

### Principal facts

The applicant, Murat Aksoy, is a Turkish national who was born in 1968 and lives in Istanbul (Turkey).

Between 2005 and 2016 Mr Aksoy worked for several national newspapers, including *Taraf*, *Millet* and *Yeni Hayat*. He also wrote articles for the T24 website and had his own website, where he published his articles. In the years leading up to the attempted coup of 15 July 2016, Mr Aksoy had become known for his critical views on the policies of the current government. He was arrested and taken into police custody on 30 August 2016.

He was initially remanded in custody on 3 September 2016 for knowingly and intentionally assisting a terrorist organisation.

In January 2017 the Istanbul public prosecutor's office filed an indictment with the Istanbul Assize Court against 29 people, including Mr Aksoy, who were charged with belonging to a terrorist organisation.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In March 2017, after a hearing before the Assize Court (twenty-fifth division), the public prosecutor requested the release of several defendants, including Mr Aksoy. On the same day, the Assize Court ordered the release of Mr Aksoy and others. A few hours after this decision, the Istanbul public prosecutor's office opened a new investigation against the applicant, who was again taken into police custody and then placed in pre-trial detention, this time on suspicion of having attempted to overthrow both the constitutional order and the government by force and violence.

In April 2017 the High Council of Justice and Prosecutors suspended, for three months, the judges of the twenty-fifth division of the Assize Court who had ordered Mr Aksoy's release, and also the public prosecutor who had requested that release.

Mr Aksoy was ultimately released on 24 October 2017.

In March 2018 the Istanbul Assize Court (twenty-fifth division) sentenced him to a prison term of two years and one month for knowingly and intentionally assisting a terrorist organisation under Article 220 § 7 of the Turkish Criminal Code. This conviction was upheld by the Istanbul Court of Appeal and the Court of Cassation.

In November 2016 and May 2017 Mr Aksoy lodged two individual applications with the Constitutional Court, which awarded him compensation for non-pecuniary damage, finding several violations, including of his right to liberty and security and to freedom of expression and of the freedom of the press. In a judgment of 2 May 2019 the Constitutional Court found that there had been breaches of Article 19 § 3 and Articles 26 and 28 of the Turkish Constitution.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 3 (right to liberty and security) and Article 10 (freedom of expression) of the Convention, Mr Aksoy complained that his pre-trial detention had been arbitrary and that there had been no concrete evidence indicating the existence of plausible grounds to suspect him of having committed a criminal offence.

Mr Aksoy also relied on Article 5 § 4 (right to a speedy decision on the lawfulness of detention/inability to access investigation file), complaining of the length of the proceedings before the Constitutional Court and his inability to gain access to the case file. He also relied on Article 18 (limitation on the use of restrictions on rights) in conjunction with Articles 5 and 10.

The application was lodged with the European Court of Human Rights on 21 December 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Marko **Bošnjak** (Slovenia),  
Aleš **Pejchal** (the Czech Republic),  
Valeriu **Grițco** (the Republic of Moldova),  
Carlo **Ranzoni** (Liechtenstein),  
Pauliine **Koskelo** (Finland),  
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Mr Aksoy's victim status

The Court noted that the Constitutional Court had found that Mr Aksoy had been remanded in custody without it being sufficiently shown that there was any strong suspicion of an offence having

been committed, thus entailing a breach of Article 19 § 3 of the Constitution. That court had further found that the pre-trial detention imposed on Mr Aksoy for his remarks had also constituted a breach of the rights to freedom of expression and freedom of the press within the meaning of Articles 26 and 28 of the Constitution.

However, the Court found that the sums awarded to Mr Aksoy by the Constitutional Court by way of non-pecuniary damage and costs and expenses had been manifestly insufficient in view of the circumstances of the case. The Court took account of its practice in similar cases<sup>2</sup>. The Court thus noted that in spite of the payment by way of reparation for his complaints under Article 5 §§ 1 and 3 and Article 10, Mr Aksoy could still claim to be a victim within the meaning of Article 34 (right of individual application) of the Convention.

#### Article 5 §§ 1 and 3 (right to liberty and security)

The Constitutional Court had established, as stated above, that Mr Aksoy had been placed and held in pre-trial detention in breach of Article 19 § 3 of the Constitution. That finding had amounted in substance to an acknowledgement that the deprivation of liberty complained of by Mr Aksoy was in breach of Article 5 § 1 of the Convention. The Court therefore endorsed the conclusions that had been reached by the Constitutional Court following a thorough examination.

As regards Article 15 of the Convention and Turkey's derogation from it, the Court noted that Mr Aksoy had been remanded in custody under Article 100 of the Code of Criminal Procedure. This provision, which required the presence of factual elements demonstrating the existence of strong suspicions that an offence had been committed, had not been modified during the state of emergency. No derogation could therefore have applied to Mr Aksoy's situation on the basis of Article 15 (derogation during a state of emergency) of the Convention.

Consequently, there had been a violation of Article 5 § 1 of the Convention in the present case in view of the absence of plausible grounds for suspecting Mr Aksoy of having committed a criminal offence.

Having regard to its finding under Article 5 § 1 of the Convention, the Court considered that it was not necessary to examine whether the authorities had kept the applicant in pre-trial detention on grounds that could be regarded as "relevant" and "sufficient" in order to justify his detention within the meaning of Article 5 § 3 of the Convention.

#### Article 10 (freedom of expression)

The Court emphasised that the deprivation of liberty sustained by Mr Aksoy had constituted an interference with his rights under Article 10 of the Convention. Under Article 100 of the Code of Criminal Procedure, a person could be remanded in custody only where there were factual grounds for a strong suspicion that he or she had committed an offence. In this context, the Court had already found that Mr Aksoy's detention was not based on reasonable grounds for such a suspicion, in breach of Article 5 § 1 (c) of the Convention, and that there had therefore been a violation of his right to liberty and security.

The Court further observed that Article 5 § 1 of the Convention contained an exhaustive list of cases where a person could be deprived of his or her liberty. Such a measure would not be lawful if it did not fall within one of those cases. It followed that the interference with Mr Aksoy's rights and freedoms under Article 10 of the Convention could not be justified since it was not prescribed by law.

<sup>2</sup> See the judgments in *Sabuncu and Others v. Turkey*, no. 23199/17, § 260, 10 November 2020, and *Şık v. Turkey* (no. 2), no. 36493/17, § 223, 24 November 2020.

Furthermore, the Court observed that the Constitutional Court had concluded that Mr Aksoy's pre-trial detention in connection with his articles and publications could not be regarded as a necessary and proportionate interference in a democratic society. The Constitutional Court had noted that the content of the offending writings was similar to the views held by a section of public opinion and by leaders of the political opposition. Considering that the competent judicial authorities had not demonstrated that his deprivation of liberty met a pressing social need, it had ruled that the detention, not being based on any concrete element other than his articles and speeches, could have had a chilling effect on freedom of expression and freedom of the press. It had therefore found a breach of Articles 26 and 28 of the Constitution.

In the light of this reasoning, the Court considered that there was no reason to reach a different conclusion from that of the Constitutional Court as to the necessity of the interference in a democratic society.

The Court further noted that the pre-trial detention of critics created numerous negative effects, both for the person detained and for society as a whole, since to impose a measure resulting in deprivation of liberty, as was the case here, inevitably had a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices.

In the absence of any serious reason to depart from its assessment of the application of Article 15 (derogation during a state of emergency) of the Convention in relation to Article 5 § 1 of the Convention, the Court considered that its findings also applied in the context of Article 10.

Accordingly there had been a violation of Article 10 of the Convention.

#### [Article 5 § 4 \(inability to access investigation file\)](#)

The Court observed that on 20 August 2016, the Justice of the Peace of Istanbul had decided to limit the access of the applicant and his lawyers to the investigation file. Consequently, they had not been able to see the evidence used to justify Mr Aksoy's placement in detention until 18 January 2017, date of the filing of the indictment.

However, the Court noted that Mr Aksoy, assisted by his lawyers, had been questioned in detail on the evidence by the competent authorities, first by the investigators and then by the Justice of the Peace, who had put questions to him on this subject. Therefore, even though Mr Aksoy had not enjoyed unlimited access to the evidence in the file, he had obtained sufficient knowledge of the content of those items which had been of crucial importance for the purpose of effectively challenging the lawfulness of his pre-trial detention. Consequently, the Court took the view that there had been no violation of Article 5 § 4 of the Convention.

#### [Other Articles](#)

The Court found that Mr Aksoy's complaint under Article 5 § 4 (right to a speedy decision on the lawfulness of detention) and in particular on the duration of the proceedings in the Constitutional Court was manifestly ill-founded. It referred in this connection to the conclusions it had reached in its judgments in *Mehmet Hasan Altan v. Turkey*<sup>3</sup> and *Şahin Alpay v. Turkey*<sup>4</sup>.

The Court further found that, having regard to its findings under Article 5 § 1 and Article 10 of the Convention, it was not necessary to examine separately his complaint under Article 18 (limitation on use of restrictions on rights) of the Convention.

<sup>3</sup> *Mehmet Hasan Altan c. Turquie*, n° 13237/17, 20 mars 2018.

<sup>4</sup> *Şahin Alpay c. Turquie*, n° 16538/17, 20 mars 2018.

### Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Aksoy 11,500 euros (EUR) in respect of non-pecuniary damage and EUR 3,175 in respect of costs and expenses.

### Separate opinions

Judges Bošnjak, Ranzoni and Koskelo expressed a joint partly dissenting opinion. Judge Yüksel expressed a partly dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.