



Violations of noted journalist's freedom of expression and right to liberty following attempted coup in 2016

In today's **Chamber judgment**¹ in the case of [Ahmet Hüsrev Altan v. Turkey](#) (application no. 13252/17) the European Court of Human Rights held that there had been:

by 6 votes to 1, a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights,

unanimously, a violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) concerning the lack of access to the investigation file,

unanimously, no violation of Article 5 § 4 concerning the speediness of the judicial review,

unanimously, a violation of Article 5 § 5 (right to liberty and security),

by 6 votes to 1, a violation of Article 10 (freedom of expression), and

by 6 votes to 1, no violation of Article 18 (limitation on the use of restrictions of rights)

The case concerned the pre-trial detention of the applicant, who is a well-known novelist and journalist, following his arrest on suspicion of membership of the Fetullahist Terrorist Organisation/Parallel State Structure. The events took place around the attempted coup d'état in July 2016 and the subsequent state of emergency.

The Court found in particular that there was no evidence that the actions of the applicant had been part of a plan to overthrow the Government. It therefore considered that the actions in question could not be regarded as capable of grounding a "reasonable suspicion" that the applicant had committed the alleged criminal offences. It noted that the measures complained of in the present case could not be said to have been strictly required by the exigencies of the attempted coup and its aftermath.

The Court found that as the applicant's detention had not been based on a reasonable suspicion that he had committed an offence, the interference with right to freedom of expression could not be justified in law.

The Court also found that, because of the applicant's lack of access to the case file, the applicant had become aware of some of the evidence against him only after his indictment. This had restricted the possibility for him to effectively challenge the allegations against him, in violation of his rights.

Principal facts

The applicant, Ahmet Hüsrev Altan, is a Turkish national who was born in 1950 and lives in Istanbul. He is a well-known journalist and author.

By the time of the events, the applicant had had an extensive journalistic career, including founding a newspaper, *Taraf*, and writing for a website, haberdar.com. In the early 2010s *Taraf* published

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.

articles about a planned military coup, leading prosecutors to investigate a criminal organisation called Balyoz (“Sledgehammer”), which allegedly had military officers as members. Ultimately, the officers in question were exonerated. As a result, criminal proceedings were brought against the applicant for falsification of evidence and divulging classified documents. Those proceedings were still pending when the application was lodged.

In 2016 the applicant wrote several articles which were to lead to his arrest and the pre-trial detention that became the subject of the complaints before the Court. The articles – entitled “Absolute fear” (*Mutlak Korku*), “Crushing through” (*Ezip Geçmek*) (both published on haberdar.com) and “Montezuma” (on p24blog.org) – were highly critical of the Government and the President of Turkey. The applicant described the latter as, among other things, not “abid[ing] by the Constitution”; of being behind arbitrary arrests and “armed assaults”; that he would “wreck both himself and Turkey with a civil war”; ultimately asking “Who [was] in control of whom inside the palace?”. He stated that “preparations [were] being made to imprison the leader of another opposition party”. He also stated that the governing AKP (Justice and Development Party) was being “turned into a group of ‘office boys’”, among other criticisms. He warned that “[t]he road [was] being paved for the military tutelage to seize back authority” and that there “was a serious disaster coming [Turkey’s] way ... the AKP should also take this seriously. In the event that a civil war erupt[ed] in this country, they too w[ould] encounter it ...”.

In July 2016 a group of Turkish military officers called the “Peace at Home Council” attempted to seize power. Several public buildings were attacked. At least 300 people were killed and more than 2,500 were injured. The Government blamed Fetullahist Terrorist Organisation/Parallel State Structure (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması – FETÖ/PDY*), led by Fetullah Gülen, a Turkish citizen living in Pennsylvania (United States of America). The Government declared a state of emergency and attempted to weed out the organisers of the coup and their allies within State bodies. Many people were arrested and placed in pre-trial detention as a result.

On 9 September 2016 a warrant was issued for the applicant’s arrest for, among other things, membership of FETÖ/PDY and disseminating subliminal messages to the public that were evocative of a coup. He was arrested the next day and his home was searched. He was kept in police custody for 12 days. He was questioned by prosecutors about his activities, including about the three articles mentioned above, and his and *Taraf’s* connections to FETÖ/PDY, and manipulating public opinion in its favour.

On 22 September 2016 the Istanbul 10th Magistrate’s Court ordered the applicant’s release and placement under judicial supervision. However, the next day the Istanbul 1st Magistrate’s Court ordered his pre-trial detention, citing, in particular, his being in possession of classified documents and attempting to overthrow the Government. Applications by the applicant for release from pre-trial detention were dismissed by the courts in September, October and December (twice) 2016, decisions that were upheld on appeal. The courts held, among other things, that detention was proportionate given the suspicion of membership of FETÖ/PDY. The applicant’s detention was ordered on two occasions during this period before his indictment on 14 April 2017. He was charged, along with 16 other accused, with attempting to overthrow the constitutional order, the Turkish Grand National Assembly and the Government by force and violence, or to prevent them from discharging their duties, and of committing offences on behalf of a terrorist organisation without being a member of it. The indictment referred to, among many other things, the FETÖ/PDY media operation and the three articles written by the applicant mentioned above.

On 16 February 2018, the Istanbul 26th Assize Court sentenced the applicant to aggravated life imprisonment in accordance with Article 309 of the Criminal Code for attempting to overthrow the constitutional order. The judgment was upheld on appeal but quashed by the Court of Cassation.

The case was re-examined. The applicant was convicted of knowingly aiding and abetting a terrorist organisation without being a part of its hierarchical structure and sentenced to a total of ten years

and six months' imprisonment. The applicant was released on judicial supervision owing to time served, before being reimprisoned following a prosecutorial objection. The courts found that alternative measures would not be sufficient given the nature of the offences. The proceedings are ongoing.

On 8 November 2016 the applicant lodged an individual application with the Constitutional Court, complaining of infringements of his rights to liberty and security, freedom of expression and freedom of the press. Among other complaints, he argued that the reasons for his arrest had been unconstitutional and that his conditions of detention were inhuman and degrading. In a split decision, his complaints were rejected, many for being manifestly ill-founded or for failure to exhaust the appropriate remedies, or dismissed.

Complaints, procedure and composition of the Court

Relying on Articles 5 (right to liberty and security), 10 (freedom of expression), 17 (prohibition of abuse of rights) and 18 (limitation on use of restrictions on rights) of the European Convention on Human Rights, the applicant complained, in particular, that the ordering and extension of his pre-trial detention had been arbitrary and that he had not had prompt judicial review of those decisions, that he had not had access to the investigation file to prepare his defence, that his right to free expression had been breached by his detention, and that his detention had been a result of his criticism of the President of Turkey and the Government.

The application was lodged with the European Court of Human Rights on 12 January 2017.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Marko **Bošnjak** (Slovenia),
Valeriu **Grițco** (the Republic of Moldova),
Egidius **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Saadet **Yüksel** (Turkey),

and also Hasan Bakırcı, *Deputy Section Registrar*.

Decision of the Court

[Article 5 § 1](#)

The Court reiterated the importance of preventing arbitrary or unjustified deprivations of liberty under the Convention. Deprivation of liberty, in particular continued detention, must be based on reasonable suspicion.

The Court noted that the relevant period to be taken into consideration in the present case had begun on 23 September 2016 (the applicant's placement in pre-trial detention) and lasted until 16 February 2018 (his conviction by the Istanbul Assize Court). Although mindful of the applicant's pending appeal, this did not affect the Court's examination of the present complaint, whereby the Court was called upon to determine whether the applicant's initial and continued detention had been justified on the basis of the information and facts available to the authorities at that time.

The Court noted that "reasonableness" of suspicion was different for terrorism-related offences, such as in the present case, compared to that for ordinary crimes. However, the Court found that the applicant's criticisms of the President's political approach could not be seen as an indication that he had had prior knowledge of the attempted coup. Therefore the logic applied in the present case

by the authorities – equating those activities to the offences with which the applicant had been charged – could not be regarded as an acceptable assessment of the facts.

Furthermore, the Court noted that the applicant’s pre-trial detention had been ordered four years after the *Balyoz* case. It had thus not been a necessary measure. There had also been no evidence that *Taraf* had taken instructions from an illegal organisation. Concerning the applicant’s articles, the Court stated that taken as a whole they would not have convinced an objective observer that he might have committed the offences for which he had been placed in pre-trial detention. Ultimately, the fact that the applicant had warned the public about a potential coup or civil war could not justify his pre-trial detention.

The Court found no evidence in the case file allowing it to conclude that the actions of the applicant had been part of a plan pursuing an aim in breach of the legitimate restrictions imposed on rights. It therefore considered that the actions in question could not be regarded as capable of grounding a “reasonable suspicion” that the applicant had committed the alleged criminal offences.

With respect to Turkey’s derogation under Article 15 of the European Convention, the Court stated that the measures complained of in the present case could not be said to have been strictly required by the exigencies of the situation.

The Court concluded that there had been a violation of Article 5 § 1 in the present case on account of the lack of reasonable suspicion that the applicant had committed a criminal offence.

The Court noted that the applicant’s detention was now covered by Article 5 § 1 (a) of the Convention, and thus considered that there was no basis for indicating an individual measure to ensure the termination of the applicant’s pre-trial detention at the earliest possible date.

Article 5 § 4

The Court noted that the domestic courts had restricted the applicant’s access to the case file. It also observed that at the time the authorities had judged that there had been an urgent national security risk, which had to be balanced against the applicant’s right to procedural fairness. The Court found that as the applicant had become aware of some of the evidence against him only after his indictment, this had restricted the possibility for the applicant to effectively challenge the allegations against him.

The Court concluded that there had been a violation of this Article in respect of the access to the investigation file.

The Court noted that the total length to be taken into account had been 15 months and eight days. Although that could not be regarded as “speedy” in an ordinary context, the Court concluded that in the specific circumstances of the case – the complexity and number of cases before the courts after the attempted coup, and the state of emergency – that delay had been acceptable.

The Court concluded that there had been no violation of this Article in respect of the speed of the judicial review of the applicant’s detention.

Article 5 § 5

The applicant also complained that he had not had access to an effective remedy by which he could have obtained compensation.

The Court noted that it had found a violation of Article 5 §§ 1 and 4 in the present case. The applicant had not received compensation from the domestic courts. The relevant domestic provisions (Article 141 of the Code of Criminal Procedure) did not provide for compensation in circumstances such as the applicant’s and the Government had not provided any evidence to the contrary.

There had been a violation of Article 5 § 5 taken in conjunction with Article 5 §§ 1 and 4.

Article 10

The Court reiterated that freedom of expression, including freedom of the press, constituted one of the essential foundations of a democratic society.

The Court observed that the applicant had been convicted of knowingly aiding and abetting a terrorist organisation and given a substantial prison sentence, constituting an interference with his freedom of expression

The Court had already found that the applicant's detention had not been based on a reasonable suspicion that he had committed an offence. The interference with the applicant's rights could not thus be justified in law.

There had, accordingly, been a violation of the applicant's rights under this Article.

Other articles

The Court found no violation of Article 18 in conjunction with Article 5, as it had not been established beyond doubt that the applicant's pre-trial detention had been ordered for a purpose not prescribed by the Convention.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 16,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Kuris expressed a partly dissenting opinion and Judge Yüksel expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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Neil Connolly
Tracey Turner-Tretz
Denis Lambert
Inci Ertekin
Jane Swift

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.