



## Two violations of Convention on account of pre-trial detention of journalist Nazlı Ilıcak

In today's Chamber judgment<sup>1</sup> in the case of [Ilıcak v. Turkey \(no. 2\)](#) (application no. 1210/17) the European Court of Human Rights held, by a majority, that there had been two violations of the European Convention on Human Rights and, unanimously, that there had been no violation of the Convention in respect of one of the complaints.

The case concerned the arrest and pre-trial detention of Nazlı Ilıcak following the attempted coup of 15 July 2016 in Turkey. Ms Ilıcak is a famous journalist who is known for her critical views on the policies of the current government.

**The Court found, by six votes to one, that there had been a violation of Article 5 § 1 (right to liberty and security) of the Convention.** The Court took the view that there had been no plausible reason to suspect Ms Ilıcak of committing the offences of belonging to a terrorist organisation or of attempting to overthrow the government or of hindering its functioning. In particular, the Court noted that the writings on which the charges against the applicant and her detention had been based concerned matters of public interest relating to facts and events that were already known, fell within the scope of Convention freedoms and neither supported nor promoted the use of violence in the political domain. Nor had they reflected any possible intention on the applicant's part to contribute to the illegal aims of terrorist organisations, namely the use of violence and terror for political ends, or to overthrow the government or the constitutional order. It could not therefore be considered acceptable for the authorities in the present case to have based their accusations of terrorist activities merely on the applicant's work as a journalist in certain media outlets and in particular on her tweets<sup>2</sup> expressing doubts about the possible perpetrators of the attempted coup.

**The Court held, by six votes to one, that there had been a violation of Article 10 (freedom of expression).** The Court found that the pre-trial detention measure imposed on Ms Ilıcak – in the context of criminal proceedings against her for offences that were severely punished and were directly related to her work as a journalist – constituted an "interference" with her right to freedom of expression. In the Court's view that interference had not been prescribed by law.

**The Court held, unanimously, that there had been no violation of Article 5 § 4 (length of proceedings before the Turkish Constitutional Court).** The Court observed that the period to be taken into consideration had lasted 15 months and two days during the state of emergency. Its findings in [Mehmet Hasan Altan](#)<sup>3</sup>, [Şahin Alpay](#)<sup>4</sup> and [Sabuncu and Others](#)<sup>5</sup> were also valid in the present case and thus there had been no violation of Article 5 § 4 of the Convention.

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).

2. The content of those tweets is given in §§ 23 to 43 of the Court's judgment.

3. *Mehmet Hasan Altan v. Turkey*, no. 13237/17, 20 March 2018.

4. *Şahin Alpay v. Turkey*, no. 16538/17, 20 March 2018.

5. *Sabuncu and Others v. Turkey*, no. 23199/17, 10 November 2020.

## Principal facts

The applicant, Nazlı Ilıcak, is a Turkish national who was born in 1944 and lives in Bodrum and Istanbul (Turkey). She is a well-known journalist, columnist and editorial writer. She was also a member of parliament for Fazilet Partisi (the Virtue Party), a political party that was dissolved in 2001 by the Turkish Constitutional Court.

Following the attempted coup of 15 July 2016 the Turkish authorities suspected Ms Ilıcak of being a member of a terrorist organisation and/or of having participated in the attempted coup, on the grounds that she was working at that time in media outlets considered close to the Gülenist movement and had posted tweets on 15 and 16 July 2016 in which she had questioned who might have been behind the coup and had expressed doubts that it could be the Gülenist movement, which was later branded as a terrorist organisation (the FETÖ/PDY<sup>6</sup>).

Ms Ilıcak was arrested in Bodrum on 26 July 2016 and remanded in custody on 29 July 2016. Her pre-trial detention was extended several times.

On 11 April 2017 the Istanbul public prosecutor's office filed charges against Ms Ilıcak, accusing her of attempting, by force and violence, to overthrow the constitutional order, the Turkish Grand National Assembly and the government and to prevent those bodies from functioning, and of committing offences on behalf of a terrorist organisation without being a member of it.

On 16 February 2018 the Istanbul Assize Court sentenced Ms Ilıcak to the more stringent form of life imprisonment under Article 309 of the Criminal Code, finding that she had attempted, by force and violence, to overthrow the regime envisaged by the Constitution, or to replace it with another, or to prevent its effective operation. An appeal by the applicant was dismissed. She then appealed on points of law.

On 5 July 2019 the Court of Cassation quashed the appeal court judgment and referred the case back to the 26th Istanbul Assize Court.

On 4 November 2019 the Assize Court sentenced Ms Ilıcak to eight years and nine months in prison for voluntarily aiding and abetting a terrorist organisation without being part of its hierarchical structure. It also ordered her release under judicial supervision, taking into account the time she had spent in pre-trial detention.

On 14 April 2021 the Court of Cassation again overturned Ms Ilıcak's conviction. The criminal proceedings are still ongoing.

Meanwhile, in May 2017, the Turkish Constitutional Court rejected Ms Ilıcak's individual application relating in particular to her right to liberty and security and her freedom of expression. It considered that the social media messages, which had been used as a basis for the investigation against the applicant, had been published during the period when the attempted coup was underway and the authorities were trying to foil it. It found that there was no longer any doubt that the FETÖ/PDY organisation was behind the attempted coup and concluded that it was neither arbitrary nor unfounded for the authorities to have regarded the said messages as a strong indication that Ms Ilıcak had committed an offence linked to that organisation.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1, 3 and 4 (right to liberty and security / right to a speedy decision on the lawfulness of detention) together with Article 10 (freedom of expression), Ms Ilıcak complained of having been remanded in custody and held in pre-trial detention for an extended period.

The application was lodged with the European Court of Human Rights on 19 December 2016.

<sup>6</sup> "Fethullahist terrorist organisation / Parallel State structure".

The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression was given leave to intervene in the proceedings, as were several non-governmental organisations.

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

Jon Fridrik **Kjølbrot** (Denmark), *President*,  
Carlo **Ranzoni** (Liechtenstein),  
Aleš **Pejchal** (the Czech Republic),  
Valeriu **Grițco** (Republic of Moldova),  
Branko **Lubarda** (Serbia),  
Marko **Bošnjak** (Slovenia),  
Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 5 § 1 \(right to liberty and security\)](#)

**As regards the applicant's work as a journalist**, the Court took the view that the fact that she was working for a media outlet, which had been completely legal at the time, could not in itself, without taking into account the nature of her writings and activities, be equated with membership of a terrorist organisation. By publishing articles and interviews about the events of 17 to 25 December 2013 (relating to allegations of corruption against certain government officials), the applicant had been, like any other journalist, fulfilling her role of informing the public of the various points of view on a subject of public interest, including opinions contrary to the government's position. The Court further found that the authorities had not been able to rely on any fact or specific information suggesting that the illegal organisation FETÖ/PDY had asked or instructed the applicant, a journalist and columnist, to disseminate the publications in question with a view to contributing to the preparation and execution of a campaign of violence or to legitimising such a campaign. In the Court's view, it could not therefore be considered acceptable for the authorities in the present case to have based their accusations of terrorist activities merely on the applicant's work as a journalist in certain media outlets and on her articles and interviews on subjects of public interest.

**As regards the tweets posted by the applicant**, the Court noted that they had been contributions by the applicant, a political columnist, to various public debates concerning issues of general interest. They had reflected the applicant's views on current political events – in particular the attempted coup – expressing value judgments or criticisms of various government actions, as well as her position on the legality and legitimacy of administrative or judicial measures taken against alleged members or followers of illegal organisations. The topics on which she was commenting had been the subject of extensive public debate in Turkey and worldwide, involving political parties, the press, non-governmental organisations, representatives of civil society and public international organisations. Those writings had not contained any incitement to commit terrorist offences, any advocacy of the use of violence or any encouragement of an uprising against the lawful authorities. None of the messages could reasonably have been construed as acknowledging that the coup was legitimate. The doubts expressed by the applicant about the identity of the possible perpetrators of the attempted coup, and suggesting that the government might have created such a situation with a view to suppressing the opposition, remained within the limits of freedom of expression, as the public were entitled to be informed of alternative views on a situation of conflict or tension. Lastly, the Court noted that the messages at issue tended to express opposition to the policies of the government currently in power. They contained questions and positions corresponding to those

expressed by the opposition parties and by groups or individuals whose political choices differed from those of the government.

***As regards the suspicions based on other material*** (in particular, the applicant's telephone calls to figures who were subsequently prosecuted, financial documents corresponding to the payment of the applicant's salaries, the fact that she was identified in an exchange between third parties on ByLock, an encrypted messaging tool, as a person of influence capable of transmitting to public opinion a message falling within the scope of the freedom of the press), the Court considered that these facts could not be regarded as relevant to a finding that there were plausible grounds for suspecting the applicant of belonging to a terrorist organisation or of attempting to overthrow the constitutional order. On the face of it, these facts could not be distinguished from the legitimate activities of an investigative journalist or a political opponent. They fell within the scope of the applicant's freedom of expression and freedom of the press, as guaranteed by national law and the Convention. The material in question, taken together, did not show that the applicant was pursuing an aim which might have breached the legitimate restrictions imposed on those freedoms. Her acts, as revealed by the material, could therefore be presumed to have been in conformity with national law and with the Convention.

***In conclusion***, the Court considered that, at the time of the applicant's detention, there had been no plausible grounds for suspecting her of committing the offences of belonging to a terrorist organisation or of attempting to overthrow the government or to hinder its functioning. The suspicions against her had not reached the minimum level of plausibility required. While imposed under the judicial system, the measures at issue had therefore been based on mere suspicion.

Nor had it been shown that the material admitted in evidence after the applicant's arrest, in particular when she was charged, and during the period in which she was detained, had amounted to facts or information capable of giving rise to further suspicions which might have justified prolonging her detention. In particular, the Court noted that the writings on which the charges against the applicant and her pre-trial detention had been based concerned debates in the public interest relating to facts and events that were already known and which fell within the scope of the use of the Convention freedom. They had not supported or promoted the use of violence in the political sphere, nor had they contained any indication that the applicant might be seeking to contribute to the unlawful aims of terrorist organisations, namely the use of violence and terror for political purposes or the overthrow of the government or the constitutional order.

As to Article 15 of the Convention and Turkey's derogation, the Court noted that Article 100 of the Code of Criminal Procedure – under which the applicant had been placed and kept in pre-trial detention – had not been amended during the state of emergency and that no derogation could apply to the situation.

There had therefore been a violation of Article 5 § 1 of the Convention on account of a lack of plausible reasons to suspect the applicant of committing a criminal offence.

#### [Article 5 § 3 \(right to liberty and security\)](#)

In view of its finding under Article 5 § 1, the Court held, by a unanimous vote, that there was no need for a separate examination of the question whether the reasons given by the domestic courts to justify extending the applicant's detention had been based on relevant and sufficient grounds.

#### [Article 5 § 4 \(right to a speedy decision on the lawfulness of detention\)](#)

The applicant alleged that the requirement of promptness had not been complied with when she had lodged an individual application with the Turkish Constitutional Court on 14 November 2016.

The Court noted that the applicant had been convicted by the Assize Court on 16 February 2018. Her conviction had put an end to the situation that it had found to constitute a violation of Article 5 § 4

of the Convention. The period to be taken into consideration in the present case had lasted 15 months and two days, and had taken place during the state of emergency, which had not been lifted until 18 July 2018. The Court thus considered that its findings in the cases of *Mehmet Hasan Altan*, *Şahin Alpay* and *Sabuncu and Others* were also valid in relation to the present application. Thus, even though the time taken by the Constitutional Court could not be regarded as “speedy” in ordinary circumstances, in the present case there had been no violation of Article 5 § 4 of the Convention.

#### Article 10 (freedom of expression)

In the Court’s view, the pre-trial detention measure imposed on Ms Ilıcak – in the context of criminal proceedings against her for offences that were severely punished and were directly related to her work as a journalist – had constituted an “interference” with her right to freedom of expression. Referring back to its finding that the applicant’s detention had not been based on plausible reasons to have suspected her of committing an offence, the Court held that the interference with her Article 10 rights had not been prescribed by law. There had thus been a violation of Article 10 of the Convention.

#### Article 41 (just satisfaction)

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

#### Separate opinion

Judge Saadet Yüksel expressed a partly dissenting opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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