



Violation in how evidence of absent witnesses was used at terrorism trial

In today's **Chamber judgment**¹ in the case of [Faysal Pamuk v. Turkey](#) (application no. 430/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 (right to a fair trial) and 3 (d) (right to obtain attendance and examination of witnesses) of the European Convention on Human Rights.

The case concerned Mr Pamuk's trial on terrorism-related charges, in particular the use of evidence that had been given in other jurisdictions the absence of Mr Pamuk or his counsel following letters of request (*talimat*).

The Court found in particular that letters of request and examining witnesses in other jurisdictions could not be considered an adequate method of ensuring a fair trial in the circumstances of the present case. Firstly, it meant that domestic courts could simply refrain from examining whether there were good reasons for the non-attendance of witnesses at trial. Secondly, it effectively meant that the accused and/or defence lawyers would have to travel to different places with a view to attending the hearings where witnesses would be giving evidence in order to benefit from the right to examine them, placing a disproportionate burden on the defence. Thirdly, the relevant domestic law appeared to exclude a detainee's attendance at a hearing outside of the jurisdiction in which he or she was detained. Lastly, the approach was capable of jeopardising the principle of immediacy, as the trial court would not have the possibility to directly observe the demeanour and credibility of particular witnesses.

Accordingly, the absence of the four witnesses from the trial, the lack of a confrontation between them and the applicant, and the use by the court of their evidence as the cornerstone of his conviction and life sentence without the necessary procedural safeguards, had substantially hindered the defence in testing the reliability of their evidence and had, in the circumstances of the present case, tainted the overall fairness of the proceedings.

Principal facts

The applicant, Faysal Pamuk, is a Turkish national who was born in 1978 and was detained in Amasya E-type Prison at the time of application.

During police questioning in connection with a terrorist organisation, a "warrior" (or possibly more than one) from Diyarbakır codenamed, variously, "Avarej", "Avareş" or "Avreş" was mentioned by several suspects in connection with terrorism incidents.

On 5 November 2003 the courts ordered the detention *in absentia* of 13 individuals, including Mr Pamuk, for their alleged involvement in an armed attack on a police checkpoint in 1997, which had resulted in two deaths.

On 7 December 2009 Mr Pamuk went to the public prosecutor's office and voluntarily handed himself in, submitting that he had been a member of the PKK (Kurdistan Workers' Party; an illegal

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.

armed organisation) for 11 years, from 1994 to 2005. During questioning he revealed that his codename was “Avareş Tekoşin” and not “Avareş”.

In 2010 a bill of indictment against the applicant was filed with the special jurisdiction Second Division of the Erzurum Assize Court, charging him with carrying out activities aimed at bringing about the secession of part of the national territory, for the following specific acts for which “Avareş” had been implicated by witnesses:

(i) the armed attack on a police checkpoint in 1997; (ii) an armed assault on two police officers, the abduction of a prison guard and an armed attack on a block of flats allocated to police officers with a rocket launcher in 1995; and (iii) an armed conflict between PKK members and the armed forces in 1997 resulting in two gendarmes being injured.

At trial, Mr Pamuk’s council asked to have examined those who had stated that the applicant had taken part in the armed activities and for an in-person confrontation between them and his client. The confrontation did not take place. The court sent letters of request to other jurisdictions to ascertain the witnesses’ whereabouts along with other steps, failing to secure the witnesses’ attendance. One witness was examined in another city without Mr Pamuk or his representatives present.

In April 2011 Mr Pamuk was sentenced to life imprisonment. The trial court referred heavily to the statements made in PKK arrests at different times and places identifying him as the PKK “warrior” “Avareş”.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 (right to a fair trial) and 3 (d) (right to obtain attendance and examination of witnesses), the applicant complained that he had not had a fair trial as he had been prevented from confronting certain witnesses in person.

The application was lodged with the European Court of Human Rights on 5 October 2012.

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

Carlo **Ranzoni** (Liechtenstein), *President*,
Aleš **Pejchal** (the Czech Republic),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Marko **Bošnjak** (Slovenia),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

Concerning the non-attendance of witnesses at the trial, the Court found in particular that that had resulted from the trial court’s inflexibility alone. It also noted that three of them had been in prison and thus under the control of the State. The steps taken to locate the witnesses had been inadequate. Overall, no good reason was given by the authorities for their absence.

Although other evidence was available, the trial court’s reasoning appeared to give central importance to the statements of the four witnesses who had not been cross-examined in the trial. For the Court, the applicant’s conviction had overall been decisively dependent on that evidence.

The domestic authorities had a duty to counterbalance the evidence given by absent witnesses at trial. The Court determined that the trial court had not treated the evidence in question with particular caution or given it less weight than other evidence. It had ignored inconsistencies in that evidence, including the fact that there appeared to be more than one “Avareş” in the PKK.

The Court found in particular that letters of request and examining witnesses in other jurisdictions could not be considered an adequate method of ensuring a fair trial in the circumstances of the present case. Firstly, it meant that domestic courts could simply refrain from examining whether there were good reasons for the non-attendance of witnesses at trial. Secondly, it effectively meant that the accused and/or defence lawyers would have to travel to different places with a view to attending the hearings where witnesses would be giving evidence in order to benefit from the right to examine them, placing a disproportionate burden on the defence. Thirdly, the relevant domestic law appeared to exclude a detainee’s attendance at a hearing outside of the jurisdiction in which he or she was detained. Lastly, the approach was capable of jeopardising the principle of immediacy, as the trial court would not have the possibility to directly observe the demeanour and credibility of particular witnesses.

The Court concluded that the absence of the four witnesses from the trial, the lack of a confrontation between them and the applicant, and the use by the court of their evidence as the cornerstone of his conviction and life sentence without the necessary procedural safeguards, had substantially hindered the defence in testing the reliability of their evidence and had, in the circumstances of the present case, tainted the overall fairness of the proceedings.

There had thus been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

Just satisfaction (Article 41)

The Court made no award in respect of just satisfaction. However, it did note that the case could be reopened under Article 311 of the Code of Criminal Procedure.

The judgment is available only in English.

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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.