



Violations of the Convention on account of the pre-trial detention of the journalist Ahmet Şık

The case concerned the initial and continued pre-trial detention of the journalist Ahmet Şık, who was suspected of disseminating propaganda in favour of organisations considered to be terrorist organisations or of assisting them through articles and interviews published in the Turkish daily newspaper *Cumhuriyet* and social media posts, all of which criticised government policy.

In today's **Chamber** judgment¹ in the case of [Şık v. Turkey](#) (no. 2) (application no. 36493/17) the European Court of Human Rights held:

- unanimously, that there had been a **violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights;
- by a majority, that there had been a **violation of Article 10 (freedom of expression)**;
- unanimously, that there had been **no violation of Article 5 § 4 (right to speedy review of the lawfulness of detention)**;
- by a majority, that there had been **no violation of Article 18 (limitation on use of restrictions on rights)**.

The Court held that Mr Şık could not be reasonably suspected, at the time of his placement in detention, of having committed the offences of disseminating propaganda in favour of terrorist organisations or assisting those organisations. In other words, the facts of the case did not support the conclusion that a reasonable suspicion had existed against him. Accordingly, although imposed under judicial supervision, the orders for Mr Şık's initial and continued detention had been based on mere suspicion.

In particular, the Court considered that the written material for which Mr Şık had been accused and placed in detention came within the scope of public debate on facts and events that were already known, that it amounted to the exercise of Convention freedoms, and that it did not support or advocate the use of violence in the political sphere or indicate any wish on the applicant's part to contribute to the illegal objectives of terrorist organisations, namely to use violence and terror for political ends.

The Court further found that the interference with Mr Şık's rights and freedoms, viewed in the light of the right to freedom of expression, had not been prescribed by law.

As to the length of the proceedings before the Turkish Constitutional Court, the Court considered, in the specific circumstances of this case, that there had been no violation of Mr Şık's right to "speedy review" of the lawfulness of his detention.

The Court also held that Mr Şık had not established beyond reasonable doubt that his pre-trial detention had been ordered for a purpose not prescribed by 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.

Principal facts

The applicant, Ahmet Şık, is a Turkish national who was born in 1970 and lives in Istanbul (Turkey). He is a journalist by profession. At the relevant time he worked for the daily newspaper *Cumhuriyet*.

Mr Şık was arrested at home and taken into police custody in December 2016 on suspicion of disseminating propaganda on behalf of organisations considered by the government as terrorist organisations, namely the PKK (the Kurdistan Workers' Party, an illegal armed organisation), FETÖ/PDY (Fethullahist Terror Organisation/Parallel State Structure), and the DHKP/C (People's Revolutionary Liberation Party/Front).

The following day he was questioned by the Istanbul public prosecutor, whose questions focused mainly on 11 tweets and five articles published on the *Cumhuriyet* website and in the newspaper's print edition. The same day Mr Şık appeared before the Istanbul 8th Magistrate's Court, which ordered his pre-trial detention.

The courts subsequently made several orders for Mr Şık's continued pre-trial detention, on the grounds that the offence of which he was accused was among the "catalogue offences" listed in Article 100 § 3 of the Code of Criminal Procedure. The courts took the view, in particular, that Mr Şık posed a flight risk.

In sum, Mr Şık was placed in pre-trial detention on 30 December 2016 and was released on 9 March 2018 by the Istanbul Assize Court, which tried him on a charge of assisting terrorist organisations without being a member of them, an offence under Article 220 § 7 of the Criminal Code.

On 25 April 2018 the Istanbul Assize Court sentenced Mr Şık to seven years and six months' imprisonment for assisting the terrorist organisations the PKK, the DHKP/C and FETÖ without being a member of those organisations. The applicant lodged an appeal which was dismissed.

Mr Şık subsequently appealed to the Court of Cassation, which on 18 September 2019 quashed the appellate judgment. The case was then remitted to the Istanbul Assize Court, which on 21 November 2019 departed from the Court of Cassation judgment of 18 September 2019. The case is currently pending before the plenary criminal divisions of the Court of Cassation.

Mr Şık lodged an individual application with the Constitutional Court which was dismissed on 2 May 2019 as being manifestly ill-founded.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 5 § 1 (right to liberty and security), Mr Şık contended that his initial and continued pre-trial detention had been arbitrary and had not been based on a reasonable suspicion. He argued that the facts on which the suspicions against him were based came within the scope of his activity as a journalist and of his freedom of expression.

Under Article 5 § 4 (right to speedy review of the lawfulness of detention), he complained about the length of the proceedings before the Turkish Constitutional Court.

Relying on Article 10 (freedom of expression), Mr Şık complained that his initial and continued pre-trial detention had been ordered on account of his work as a journalist, by means of which he had conveyed information to the public as part of a debate on matters of public interest, without ever supporting or condoning the use of violence.

Under Article 18 (limitation on use of restrictions on rights), Mr Şık alleged that his detention had been designed to punish him for his criticisms of the government or for information he had conveyed to the general public which displeased the political authorities. He also contended that the purpose of his initial and continued detention had been to subject him to judicial harassment on account of his journalistic activities.

The application was lodged with the European Court of Human Rights on 9 May 2017.

The Commissioner for Human Rights of the Council of Europe exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). The Section President also granted leave to the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and to several non-governmental organisations, to intervene under Article 36 § 2 of the Convention and Rule 44 § 3.

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

Jon Fridrik **Kjølbrot** (Denmark), *President*,
Marko **Bošnjak** (Slovenia),
Valeriu **Grițco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Arnfinn **Bårdsen** (Norway),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

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

In the Court's view, its task was to ascertain whether there were sufficient objective elements to satisfy an objective observer that Mr Şık could have committed the offences of which he was accused.

With regard to the factual aspect of the existence of "reasonable suspicion", the Court noted that, in accusing Mr Şık of assisting FETÖ/PDY, the authorities responsible for the detention orders had cited, in particular, three articles. These were the article of 8 July 2015 entitled "What we're doing is journalism; what you're doing is treason", the article of 9 July 2015 entitled "MIT had information on the Reyhanlı massacre but did not share that information with the police", and the article of 13 February 2015 entitled "The secret in the lorries revealed".

The Court observed that these three articles had contained material which made a significant contribution to the public debate on current affairs in Turkey at the relevant time. Furthermore, in the normal course of professional journalism, the rights and duties of an investigative journalist included conveying information to the public that was relevant to debates on matters of public interest, as Mr Şık had done. At the time of their publication the articles in question had had journalistic information value and had contributed to the public debate. Accordingly, they could not constitute grounds for charging the applicant with the criminal acts in question.

Furthermore, the authorities concerned had been unable to cite any specific facts or information capable of suggesting that the illegal organisations the PKK, FETÖ/PDY and the DHKP/C had issued requests or instructions to Mr Şık so that he would publish this particular material with the aim of helping to prepare and carry out a campaign of violence or legitimising such violence.

As to the aspect of the classification as criminal conduct of the facts grounding the "reasonable suspicions", the Court observed that the published material referred to by the judicial authorities in ordering and extending the applicant's pre-trial detention, as taken into consideration by the Constitutional Court in its judgment of 2 May 2019, could be divided into four groups:

(1) criticism of the political authorities' policies and of certain State institutions (in particular, the article of 13 February 2015 entitled "The secret in the lorries revealed", and articles of 8 and 9 July 2015 concerning the explosives attack in the town of Reyhanlı);

(2) interviews conveying the statements of alleged representatives of illegal organisations (in particular, an article of 14 March 2015 containing an interview with one of the PKK leaders, Cemil Bayık, on the conditions to be met in order for the PKK to lay down its weapons);

(3) Mr Şık's comments and criticisms concerning the measures taken by the administrative and judicial authorities to combat illegal organisations (among others, a social media post of 28 November 2015 concerning the death of Tahir Elçi, a post of 11 December 2016 concerning incidents in Cizre and Istanbul, and a post of 20 December 2016 concerning the possibility that the killer of the Russian ambassador in Ankara was a member of an organisation);

(4) delicate and sensitive information of public interest (in particular, an article published on 31 March and 1 April 2015 containing a telephone interview with one of the individuals who had taken a public prosecutor hostage).

The Court noted that these articles and posts had some characteristics in common.

Firstly, they constituted contributions by Mr Şık to various public debates on matters of general interest that had already been the subject of wide-ranging public debate in Turkey and beyond.

Secondly, the articles and posts in question did not contain any incitement to commit terrorist offences, did not condone the use of violence and did not encourage insurrection against the legitimate authorities. While some of the published material may have reported points of view voiced by members of prohibited organisations, it had remained within the bounds of freedom of expression. Among other points, the Court considered that the interview with one of the persons who had taken the prosecutor hostage, which had been conducted in the midst of a terrorist operation, had had news or information value. Taken overall, the interview, which had amounted to the broadcasting of statements made by a third party, could not objectively appear to have as its purpose the propagation of the ideas of left-wing extremists, but on the contrary had sought to expose to the public the violent attitudes of the young militants. Indeed, through his antagonistic questions suggesting that the militants' action was a counterproductive and harmful act in the pursuit of justice for a demonstrator who had allegedly died during a police operation, Mr Şık had distanced himself from the actions of the DHKP/C militants, had in no way presented them as legitimate and had complied with his duties and responsibilities as an investigative journalist.

Thirdly, the points of view expressed by Mr Şık himself in the articles and posts in question – considered, of course, separately from the remarks made by the militants of the illegal organisations who had been interviewed – had been broadly ones of opposition to the policies of the government of the day and corresponded largely to those voiced by the opposition political parties and by groups or individuals whose political views were at variance with those of the political authorities.

Hence Mr Şık's alleged acts had fallen within the exercise of his freedom of expression and freedom of the press, as guaranteed by domestic law and by the Convention.

In its overall conclusion the Court held that Mr Şık could not be reasonably suspected, at the time of his placement in detention, of having committed the offences of disseminating propaganda in favour of terrorist organisations or assisting those organisations. In other words, the facts of the case did not support the conclusion that a reasonable suspicion had existed against him. Accordingly, the suspicions against him had not reached the required minimum level of reasonableness. Although imposed under judicial supervision, the contested measures had thus been based on mere suspicion.

In particular, the Court noted that the written material for which the applicant had been accused and placed in pre-trial detention came within the scope of public debate on facts and events that were already known, that it amounted to the exercise of Convention freedoms, and that it did not

support or advocate the use of violence in the political sphere or indicate any wish on Mr Şık's part to contribute to the illegal objectives of terrorist organisations, namely to use violence and terror for political ends.

With regard to Article 15 of the Convention (derogation in time of emergency), the Court noted that no derogating measure had been applicable to Mr Şık's situation during the period of the state of emergency in Turkey.

There had therefore been a violation of Article 5 § 1 of the Convention on account of the lack of reasonable suspicion that Mr Şık had committed a criminal offence.

Article 5 § 4 (right to speedy review of the lawfulness of detention)

The Court noted that the period to be taken into consideration had lasted for thirteen months and seven days and that it fell within the period of the state of emergency, which had not been lifted until 18 July 2018. In the Court's view, the fact that the Constitutional Court had not delivered its judgment on Mr Şık's application until some two years and three months later was not relevant in calculating the period of time to be taken into account, since Mr Şık had already been released by that date. The Court therefore held that its findings in the cases of *Mehmet Hasan Altan v. Turkey*² and *Şahin Alpay v. Turkey*³ were also applicable in the present case.

The Court further stressed that Mr Şık's application to the Constitutional Court had been quite complex. It also took into account the exceptional caseload of the Constitutional Court during the state of emergency in force from July 2016 to July 2018, and the measures taken by the national authorities to tackle the problem of that court's backlog.

The Court considered in that connection that the present case was to be distinguished from the case of *Kavala v. Turkey*⁴ in which the applicant had remained in pre-trial detention for the 11 months elapsing between the lifting of the state of emergency on 18 July 2018 and the delivery of the Constitutional Court's judgment on 28 June 2019.

Consequently, although the review by the Constitutional Court in the present case could not be described as "speedy" in an ordinary context, in the specific circumstances of the present case **there had been no violation of Article 5 § 4 of the Convention**.

Article 10 (freedom of expression)

The Court considered that Mr Şık's pre-trial detention, in the context of the criminal proceedings against him for offences carrying a heavy penalty and directly linked to his work as a journalist, had amounted to an actual and effective constraint and thus constituted interference with the exercise of his right to freedom of expression.

The Court had already found that the applicant's detention was not based on reasonable suspicion that he had committed an offence. It further noted that according to Article 100 of the Turkish Code of Criminal Procedure, a person could be placed in pre-trial detention only where there was factual evidence giving rise to strong suspicion that he or she had committed an offence. In the present case the absence of reasonable suspicion should, *a fortiori*, have implied an absence of strong suspicion when the national authorities were called upon to assess the lawfulness of Mr Şık's detention.

The Court further observed that the requirements of lawfulness under Article 5 (right to liberty and security) and Article 10 (freedom of expression) of the Convention were aimed in both cases at protecting the individual from arbitrariness. It followed that a detention measure that was not lawful, as long as it constituted interference with one of the freedoms guaranteed by the

² *Mehmet Hasan Altan v. Turkey*, no. 13237/17, 20 March 2018.

³ *Şahin Alpay v. Turkey*, no. 16538/17, 20 March 2018.

⁴ *Kavala v. Turkey*, no. 28749/18, § 195, 10 December 2019.

Convention, could not be regarded in principle as a restriction of that freedom prescribed by national law.

Accordingly, the interference with Mr Şık's rights and freedoms, viewed in the light of the right to freedom of expression, had not been prescribed by law. **There had therefore been a violation of Article 10 of the Convention.**

[Article 18 \(limitation on use of restrictions on rights\)](#)

In the Court's view, the elements relied on by Mr Şık in support of a violation of Article 18 of the Convention, taken separately or in combination with each other, did not form a sufficiently homogeneous whole for it to find that his detention had pursued a purpose not prescribed by the Convention and representing a fundamental aspect of the case.

It found that it had not been established beyond reasonable doubt that Mr Şık's pre-trial detention had been ordered for a purpose not prescribed by the Convention. **There had therefore been no violation of Article 18 of the Convention in conjunction with Articles 5 and 10.**

[Just satisfaction \(Article 41\)](#)

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

Separate opinions

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

The judgment is available in English and French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

During the new lockdown, journalists can continue to contact the Press Unit via echrpess@echr.coe.int

Inci Ertekin

Tracey Turner-Tretz

Denis Lambert

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.