EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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The pre-trial detention of the singer and columnist Atilla Taş, on account of tweets and articles written by him, was unlawful and arbitrary

The case concerned the pre-trial detention of the singer and columnist Atilla Taş because of tweets he posted on his Twitter account and articles and columns he wrote in the daily newspaper *Meydan*, between 2011 and 2016, criticising government policies. Mr Taş was prosecuted for terrorism-related offences.

In today's **Chamber** judgment[1] in the case of Atilla Taş v. Turkey (application no. 72/17) 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, and

a violation of Article 10 (freedom of expression)

- by a majority (four votes to three), that there had been:

no violation of Article 5 § 4 (inability to consult the investigation file).

The Court found in particular that at the time of Mr Taş's placement in pre-trial detention there had been no facts or information that would satisfy an objective observer that he had committed the offences in question. Although it could be regarded as sharply critical of the policies of the government and the President of the Republic, the content of the applicant's articles and tweets was not capable of satisfying an objective observer of the plausibility of the accusations on which the order for his pre-trial detention had been based. Furthermore, through his articles and tweets Mr Taş had expressed his disagreement with the functioning of the political system in Turkey, at times in satirical fashion, and had mainly expressed views on matters of general interest. Accordingly, none of the decisions concerning his initial and continued pre-trial detention contained evidence capable of establishing a plausible link between his actions – namely, his articles and tweets of a political nature – and the terrorism-related offences of which he was accused. The interpretation and application of the legal provisions relied on by the domestic authorities had thus been unreasonable to the point of rendering Mr Taş's detention unlawful and arbitrary.

The Court also held that the applicant's detention had amounted to an interference with his right to freedom of expression that had not been prescribed by law.

The Court further found that, even though Mr Taş had not been allowed unlimited access to the evidence, he had been sufficiently acquainted with the content of those items of evidence that were essential in order to effectively challenge the lawfulness of his detention.

Lastly, the Court dismissed the applicant's complaint concerning the length of the proceedings before the Constitutional Court.

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.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Principal facts

The applicant, Atilla Taş, is a Turkish national who was born in 1971 and lives in Istanbul (Turkey).

Mr Taş, who is a well-known singer, was also a columnist for the daily newspaper *Meydan* prior to the attempted military coup of 15 July 2016. The newspaper was closed down following the enactment of Legislative Decree no. 668 on 27 July 2016.

During the years preceding the attempted coup of 15 July 2016 Mr Taş had become known for his critical stance towards the policies of the government of the day. In that context he had posted a number of tweets on his Twitter account.

On 30 August 2016, when he was in Bursa, he learned through the media that he was a suspect in a criminal investigation concerning alleged members of FETÖ/PDY ("Fethullahist Terror Organisation/Parallel State Structure"). The following day he was arrested and taken into police custody at the premises of the counter-terrorism branch of the Istanbul police, where he was questioned by police officers. He was then brought before the Istanbul public prosecutor.

On 3 September 2016 Mr Taş appeared before the Istanbul 1st Magistrate's Court on suspicion of knowingly and intentionally assisting a terrorist organisation. The magistrate remanded him in custody.

On 18 January 2017 the Istanbul public prosecutor's office charged 29 people, including Mr Taş, with belonging to a terrorist organisation. The applicant was accused of lending support to a television station which allegedly had links to FETÖ/PDY, of criticising the investigations into alleged members of that organisation with a view to discrediting the investigations, and of making accusations against the President of the Republic similar to those made by the members of that organisation.

On 31 March 2017, following a hearing before the 25th Assize Court, the public prosecutor sought the release of several of the defendants including Mr Taş. On the same day the Assize Court ordered the release of Mr Taş and some of his co-defendants.

A few hours after this decision the Istanbul public prosecutor's office commenced a fresh investigation concerning Mr Taş. The applicant was taken into police custody again, this time on suspicion of attempting to overthrow the constitutional order and the government by force and violence.

On 3 April 2017 the High Council of Judges and Prosecutors ordered the three-month suspension of the judges of the Istanbul 25th Assize Court who had ordered the release of Mr Taş and other defendants and the public prosecutor who had sought their release.

Several days later, on 14 April 2017, the Istanbul 2nd Magistrate's Court ordered that Mr Taş and 11 other defendants be returned to detention. On 5 June 2017 the Istanbul public prosecutor's office filed a fresh bill of indictment against Mr Taş for attempting to overthrow the constitutional order and the government by force and violence. The public prosecutor argued that Mr Taş had repeatedly attempted in the past to manipulate public opinion through the press and that he had taken part in operations designed to manipulate opinion under the orders of FETÖ/PDY.

Mr Taş was released on 24 October 2017, and on 8 March 2018 was sentenced to three years, one month and 15 days' imprisonment for lending assistance to a terrorist organisation without being a member of it. However, the Court of Cassation overturned his conviction in March 2020 and the criminal proceedings are still pending.

Lastly, Mr Taş lodged three individual applications with the Constitutional Court, which examined them together from the standpoint of the lawfulness of his pre-trial detention in the light of Article 19 § 3 of the Constitution. On 29 May 2019 the Constitutional Court, finding that the applicant had been placed in pre-trial detention twice, held that there had been no breach of Article 19 § 3 of the Constitution with regard to his initial detention. The court went on to find that the

second period of detention (starting on 14 April 2017) had lacked any legal basis. It dismissed the applicant's remaining complaints and made an award in respect of non-pecuniary damage and costs and expenses.

Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 3 (right to liberty and security), Mr Taş complained about his pre-trial detention, arguing that there had been no evidence grounding a reasonable suspicion that he had committed a criminal offence. He further contended that the facts giving rise to his detention fell within the scope of his freedom of expression and that the reasons given for the decisions concerning his pre-trial detention had been insufficient.

Relying on Article 5 § 4 (complaint concerning the inability to consult the investigation file), Mr Taş complained of his inability to consult the investigation file in his case, preventing him from effectively challenging his placement in pre-trial detention.

Also under Article 5 § 4 (right to a speedy review of the lawfulness of detention), the applicant complained of the length of the proceedings before the Constitutional Court.

Relying on Article 10 (freedom of expression), he alleged a breach of his right to freedom of expression.

Under Article 18 (limitation on use of restrictions on rights), the applicant contended that he had been detained for expressing critical opinions.

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

The Commissioner for Human Rights of the Council of Europe exercised her right to intervene in the proceedings. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, as well as several non-governmental organisations, were given leave to intervene in the written procedure.

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 **Griţco** (the Republic of Moldova),
Carlo **Ranzoni** (Liechtenstein),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

The period to be taken into consideration in determining the length of the detention

According to the Government, two separate criminal investigations had been conducted against Mr Taş and he had undergone two distinct periods of detention. In their view, the present application related only to the period of detention ending on 31 March 2017.

However, the Court noted that Mr Taş had not been released on 31 March 2017 in spite of the ruling of the Istanbul 25th Assize Court, as on the same day, before Mr Taş could be released, the public prosecutor had initiated a fresh criminal investigation concerning the same facts, merely altering the legal classification of the alleged offences. Mr Taş had therefore continued to be deprived of his liberty without the possibility of actually being released.

In the Court's view, accepting that the applicant's pre-trial detention had ended on 31 March 2017, despite his having had no possibility of release, would be tantamount to permitting a circumvention of the law that would enable the judicial authorities to continue to detain persons simply by instituting a fresh criminal investigation concerning the same facts.

Accordingly, the Court found it established that Mr Taş had been taken into police custody again in order to prevent the Assize Court ruling of 31 March 2017 from being implemented. Consequently, the applicant's pre-trial detention had begun on 31 August 2016 (the date on which he had been taken into police custody) and had ended on 24 October 2017 (the date of his release). It had therefore lasted for one year, one month and 25 days.

Article 5 § 1 (right to liberty and security)

The lawfulness of the applicant's initial detention

Mr Taş had been taken into police custody on 31 August 2016. His pre-trial detention had been ordered on 3 September 2016 by the Istanbul 1st Magistrate's Court, whose decision had not mentioned any evidence. Thus, the magistrate had not justified the order for the applicant's detention by reference to any concrete item of evidence.

As to the Constitutional Court, it had considered that there had been a strong suspicion, based on concrete evidence, that Mr Taş had committed the offence of knowingly and intentionally assisting a terrorist organisation. The court had relied on items of evidence not mentioned in the detention order of 3 September 2016, which had not specified the facts and evidence giving rise to the suspicions. The evidence in question had been produced before the courts only after the lodging of the indictment, more than four months after Mr Taş had first been placed in pre-trial detention. Consequently, these items of evidence were not to be taken into account in determining the reasonableness of the suspicions grounding the initial pre-trial detention order, in so far as they had not been relevant to the issuing of that order. The evidence in question could be taken into consideration only in assessing whether a reasonable suspicion had persisted or arisen in the context of the applicant's continued detention during the criminal proceedings.

As to the lawfulness of the applicant's initial detention, the Court considered that vague and general references to the wording of Article 100 of the Code of Criminal Procedure and to the evidence in the file could not be regarded as sufficient to demonstrate the reasonableness of the suspicion on which Mr Taş's detention was supposed to have been based, in the absence either of a specific assessment of the individual items of evidence in the file, or of any information that could have justified the suspicion against the applicant or of any other kinds of verifiable material or facts. Consequently, no specific facts or information giving rise to a suspicion justifying Mr Taş's placement in detention had been mentioned or produced during the initial proceedings, which had nevertheless culminated in a decision to detain the applicant. Hence, at the time of Mr Taş's placement in pre-trial detention, no facts or information had existed that could satisfy an objective observer that he had committed the offences of which he was accused.

The lawfulness of Mr Taş's continued detention and the evidence against him

In order to assess the lawfulness of the applicant's pre-trial detention the Constitutional Court had examined the articles and tweets written by him and found that three sets of evidence should be taken into account. These were (1) Mr Taş's participation in a demonstration to protest against the appointment of an *ad hoc* trustee to run the newspaper *Bugün*; (2) the existence of links between the applicant and a person known by the pseudonym "Fuatavni"; and (3) the articles and tweets in question. After examining each of these items of evidence in turn, the Court noted the following.

Firstly, regarding Mr Taş's participation in the above-mentioned gathering, the Government had not produced any specific evidence indicating that the demonstration in question had been unlawful or violent. In particular, at the relevant time no court had ruled that the newspaper in question had

been controlled by a terrorist organisation. Consequently, the mere fact that Mr Taş had taken part in a peaceful gathering to protest against the appointment, by the official authorities, of an administrator to run a newspaper – regarded at the time of the events as a dissident newspaper – was not apt to satisfy an objective observer that Mr Taş had committed a terrorist offence. In the Court's view, the act of which the applicant was accused was connected to the exercise of his rights under the Convention, and in particular under Articles 10 (freedom of expression) and 11 (freedom of assembly and association).

Secondly, with regard to the existence of links between the applicant and the owner of the Twitter account "Fuatavni", which was influential at the time and which allegedly disseminated propaganda on behalf of FETÖ/PDY, the Constitutional Court had failed to explain what tangible links there might have been between Mr Taş and "Fuatavni". In the Court's view, a mere reference to the indictment could by no means be regarded as sufficient to demonstrate the reasonableness of the suspicions on which the applicant's detention was supposed to have been based.

Thirdly, the Constitutional Court had held that Mr Taş's pre-trial detention had been justified on the basis of his articles and tweets. Referring in general terms to their content, it found that it was not arbitrary to consider that Mr Taş had praised FETÖ/PDY and had also sought to legitimise that organisation and discredit the investigations concerning its alleged members. However, the court had omitted to specify which articles and tweets written by the applicant had been apt to give rise to suspicions that he had committed a terrorist offence. The Government referred more specifically to certain articles and tweets, arguing that they had served as a basis for the attempted military coup and amounted to incitement to violence, and that by publishing them Mr Taş had furthered the cause of FETÖ/PDY. In that connection the Court considered that the content of the applicant's articles and tweets could in no sense be interpreted as a call to violence, and that his remarks clearly did not amount to terrorist indoctrination, praise for the perpetrator of a terrorist attack, denigration of the victims of an attack, a call to fund terrorist organisations, or any other similar form of conduct. In the Court's view, although it could be regarded as sharply critical of the policies of the government and the President of the Republic, the content of Mr Taş's articles and tweets was not capable of satisfying an objective observer of the plausibility of the accusations on which the order for his pre-trial detention had been based. Against that background, the Court considered that the reasonableness of the suspicions could not be stretched to the point where the applicant's right to freedom of expression under Article 10 of the Convention was impaired.

Furthermore, the Constitutional Court appeared to have lent particular weight to the fact that Mr Taş had published his articles and tweets at a time when the public authorities were taking action against FETÖ/PDY and that he had continued to publish the material in question until the attempted military coup of 15 July 2016. The Court noted that the material in question had been written over a very long period, between 2011 and 2016. During that time the applicant had expressed his views on political affairs and matters of general interest. Moreover, prior to the declaration of the state of emergency, no specific action had been taken against Mr Taş for his written remarks. It was only after the declaration of the state of emergency, several years after publication of most of the articles and tweets in question, that the judicial authorities had formed the view, without actually seeking to establish the applicant's intentions, that this material sufficed to justify a criminal investigation and the applicant's pre-trial detention. Through these articles and tweets, Mr Taş had expressed his disagreement with the functioning of the political system in Turkey, at times in satirical fashion, and had mainly expressed views on matters of general interest. In the absence of other reasons and evidence legitimising Mr Taş's pre-trial detention, the Court was therefore not satisfied that the articles and tweets referred to by the Government had been sufficient to justify that measure.

Consequently, none of the decisions concerning the applicant's initial and continued pre-trial detention contained evidence capable of establishing a plausible link between his actions – namely, his articles and tweets of a political nature – and the terrorism-related offences of which he was accused. Thus, the interpretation and application of the legal provisions relied on by the domestic

authorities had been unreasonable to the point of rendering Mr Taş's detention unlawful and arbitrary.

Derogation in time of emergency (Article 15 of the Convention)

Mr Taş had been placed in pre-trial detention under Article 100 of the Code of Criminal Procedure. That provision, which required the presence of factual evidence giving rise to strong suspicion that the person had committed an offence, had not been amended during the state of emergency. Hence, no derogating measure had been applicable to the applicant's situation.

In sum, there had been a violation of Article 5 § 1 of the Convention in view of the lack of a reasonable suspicion that Mr Taş had committed a criminal offence.

In view of that finding, the Court considered it unnecessary to examine separately whether the reasons given by the domestic courts for the applicant's detention had been based on relevant and sufficient grounds (Article 5 §§ 1 (c) and 3 of the Convention).

Article 5 § 4 (complaint of inability to consult the investigation file)

On 29 August 2016 the Istanbul 3rd Magistrate's Court had decided to restrict access to the investigation file by Mr Taş and his lawyers. They had thus been unable to view the evidence used to justify the applicant's placement in pre-trial detention until the bill of indictment was filed on 18 January 2017.

The Court noted that the order for Mr Taş's pre-trial detention had been based mainly on the remarks made by the applicant in his articles and social-media posts. This was confirmed by the bill of indictment filed by the Istanbul public prosecutor's office. The Court also observed that Mr Taş, assisted by his lawyers, had been asked detailed questions about this evidence by the competent authorities, first by the investigating authorities and then by the magistrate, and that the content of the questions had been reproduced in the relevant records. Accordingly, even though Mr Taş had not been allowed unlimited access to the evidence, he had been sufficiently acquainted with the content of those items of evidence that were essential in order to effectively challenge the lawfulness of his pre-trial detention.

There had therefore been no violation of Article 5 § 4 of the Convention.

Article 10 (freedom of expression)

The Court considered that Mr Taş's detention had amounted to interference with his rights under Article 10 of the Convention. It noted that, according to Article 100 of the Code of Criminal Procedure, a person could only be placed in pre-trial detention where there was factual evidence giving rise to strong suspicion that he or she had committed an offence. In that context it pointed to its finding that Mr Taş's detention had not been based on reasonable suspicion that he had committed an offence. It further observed that Article 5 § 1 of the Convention contained an exhaustive list of permissible grounds on which persons could be deprived of their liberty and that no deprivation of liberty would be lawful unless it fell within one of those grounds. Consequently, the interference with Mr Taş's rights and freedoms had not been prescribed by law.

There had therefore been a violation of Article 10 of the Convention.

Other articles

The Court considered that Mr Taş's complaint under Article 5 § 4 (right to a speedy review of the lawfulness of detention) was manifestly ill-founded. The period to be taken into consideration was approximately one year and had fallen during the state of emergency. In the Court's view, the fact that the Constitutional Court had not delivered its judgment until approximately two years and six months after the applicant had applied to it was not relevant in calculating the period to be taken into consideration, since the applicant had already been released by that time. The Court referred in

that regard to the findings made in its judgments in *Mehmet Hasan Altan v. Turkey* (no. 13237/17) and *Şahin Alpay v. Turkey* (no. 16538/17).

The Court held, unanimously, that there was no need to examine separately the complaint under Article 18 (limitation on use of restrictions on rights), in view of its findings under Articles 5 § 1 (right to liberty and security) and 10 (freedom of expression).

Just satisfaction (Article 41)

The Court held that Turkey was to pay Mr Taş 12,275 euros (EUR) in respect of non-pecuniary damage and EUR 3,175 in respect of costs and expenses.

Separate opinion

Judges Ranzoni, Koskelo and Bošnjak expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available only in French.

Press contacts
During the current public-health crisis, journalists can continue to contact the Press Unit via echrpress@echr.coe.int

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