



Three violations of the Convention as regards the pre-trial detention of the journalist İlker Deniz Yücel between 2017 and 2018

The case concerned the pre-trial detention of the journalist İlker Deniz Yücel, allegedly on account of his activities as a journalist. At the relevant time Mr Yücel had been the Turkish correspondent of the German daily newspaper *Die Welt*. He was detained from 14 February 2017 to 16 February 2018. He returned to Germany after his release.

In today's **Chamber judgment**¹ in this case **İlker Deniz Yücel v. Turkey** (application no. 27684/17) the European Court of Human Rights held that there had been three violations of the European Convention on Human Rights, together with one finding of no violation.

The Court observed first of all that in its judgment of 28 May 2019, the Turkish Constitutional Court had ruled that Mr Yücel had suffered a breach of his right to liberty and security and of his right to freedom of expression and of the press, and awarded him a sum in compensation for the non-pecuniary damage which he had sustained, as well as costs and expenses. However, the Court held that the award was manifestly insufficient and that Mr Yücel could still claim to be a victim within the meaning of Article 34 of the Convention.

The Court then held, by a majority (5 votes to 2), that there had been:

- a **violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights: the Court ruled that Mr Yücel had been placed and retained in pre-trial detention in the absence of plausible reasons to suspect him of committing a criminal offence;
- a **violation of Article 5 § 5 (right to compensation for unlawful detention)**: the Court considered that the applicant had not been awarded appropriate and sufficient compensation inasmuch as the sums awarded to Mr Yücel by the Constitutional Court had been manifestly inadequate. The Court held therefore that the individual remedy before the Constitutional Court could not, in the present case, amount to an effective remedy within the meaning of Article 5 § 5 of the Convention; **and**
- a **violation of Article 10 (freedom of expression)**: the Court held that Mr Yücel's detention amounted to an "interference" with his exercise of his right to freedom of expression. It further noted that that interference had not been prescribed by law because there had been no plausible reasons to suspect him of committing an offence. It also pointed out that holding persons expressing critical opinions in preventive detention had multiple negative effects on both the detainee and society as a whole, because imposing a measure resulting in deprivation of liberty as in this case, invariably had a chilling effect on freedom of expression by intimidating civil society and reducing dissident voices to silence.

Finally, the Court held, by a majority (4 votes to 3), that there had been **no violation of Article 5 § 4 (right of access to the investigation file)**. It considered that even though Mr Yücel had not benefited from a right of unlimited access to the evidence, he had had sufficient cognisance of the content of such evidence as had been essential for the effective contestation of the lawfulness of his pre-trial detention.

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, İlker Deniz Yücel, is a Turkish and German binational who was born in 1973 and lives in Istanbul (Turkey). He is a journalist, and at the material time was the Turkish correspondent of the German daily newspaper *Die Welt*. The events covered by Mr Yücel's application occurred following the failed military coup of 15 July 2016.

In May 2019 the Turkish Constitutional Court ruled that Mr Yücel had suffered a breach of his right to liberty and security and of his right to freedom of expression and of the press.

In July 2020 the Istanbul Assise Court sentenced him to two years, nine months and 22 days' imprisonment for disseminating propaganda for the terrorist organisation PKK (the Kurdistan Workers' Party, an armed terrorist organisation).

In 2016 an illegal group known as "RedHack", allegedly linked to various far-left terrorist organisations, announced that it had in its possession a number of personal emails from Mr Berat Albayrak, the then Turkish Energy Minister. In December 2016 the Wikileaks site published over 50,000 emails purported to have come from that Minister's email address.

On 20 December 2016 an anonymous letter was sent to the Istanbul police department alleging that the hacked emails had been sent to another email address. According to the anonymous source, the person responsible for that transfer had shared the email address in question with eighteen other persons, including Mr Yücel. A few days later the public prosecutor had ordered the suspects' placement in police custody, and the Istanbul 14th Magistrate's Court issued an arrest warrant for Mr Yücel.

On 14 February 2017 Mr Yücel learnt from the media that he was suspected of committing criminal offences. He attended the Istanbul police station to give evidence. He was questioned about the hacking of the emails from the Energy Minister and the sharing of them with a group of journalists. He stated that he would answer their questions before the public prosecutor. He was not, however, transferred to the public prosecutor's office and was placed in police custody the same day.

On 27 February 2017, under suspicion of disseminating propaganda in favour of a terrorist organisation and of inciting to hatred and hostility, Mr Yücel was questioned by the Istanbul public prosecutor's office. He then appeared before the Istanbul 9th Magistrate's Court, which ordered his transfer to pre-trial detention, relying on the articles which Mr Yücel had published concerning the Turkish government's domestic and international policies, particularly those relating to the Kurdish question.

On 13 February 2018 the Istanbul public prosecutor's office discontinued investigations into the offences of hacking a data-processing system, damaging and destroying data stored in such system, and blocking access to those data. On the other hand, the public prosecutor's office filed a bill of indictment before the Istanbul Assise Court seeking Mr Yücel's conviction for spreading propaganda in favour of a terrorist organisation and incitement to hatred and hostility.

On 14 February 2018 the Assise Court admitted the public prosecutor's bill of indictment. On 16 February 2018 it ordered the release of Mr Yücel, who returned to Germany.

On 28 May 2019 the Turkish Constitutional Court ruled that Mr Yücel had suffered a violation of his right to liberty and security and of his right to freedom of expression and of the press on account of his pre-trial detention. It found, in particular, that there was no strong evidence of his having committed an offence. It awarded a sum of approximately 3,700 euros (EUR) in respect of non-pecuniary damage and EUR 400 in respect of costs and expenses.

In July 2020 the Istanbul Assise Court sentenced Mr Yücel to two years, nine months and 22 days' imprisonment for spreading propaganda for the terrorist organisation PKK (the Kurdistan Workers' Party, an armed terrorist organisation).

Complaints

Relying on Article 5 §§ 1 and 3 (right to liberty and security) of the Convention, Mr Yücel alleged that there had been no plausible reasons for suspecting him of having committed a criminal offence necessitating his pre-trial detention. He also complained that his pre-trial detention had been excessively long.

Relying on Article 5 § 4 (right to a speedy decision on the lawfulness of his detention), he complained that he had been denied access to the investigation file. He also considered that the proceedings before the Turkish Constitutional Court had not complied with the “speedy” requirement set out in the Convention.

Relying on Article 5 § 5 (right to compensation for unlawful detention), he considered that he had had no effective remedy to obtain compensation for the damage which he had sustained on account of his pre-trial detention.

Relying on Article 10 (freedom of expression), he submitted that his pre-trial detention had infringed his freedom of expression.

Relying on Article 18 (limitation on use of restrictions on rights), he argued that he had been detained for expressing critical opinions.

Procedure

The application was lodged with the European Court of Human Rights on 6 April 2017. The parties presented their observations before the Court.

The German Government submitted comments (under Article 36 § 1 of the Convention and Rule 44 § 2 of the Rules of Court). The Commissioner for Human Rights of the Council of Europe also took part in the proceedings (under Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and several non-governmental organisations submitted observations.

Composition of the Court

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Aleš **Pejchal** (the Czech Republic),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Marko **Bošnjak** (Slovenia),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

Mr Yücel’s victim status

The Government considered that following the judgment delivered by the Constitutional Court on 28 May 2019, Mr Yücel could no longer claim to be a victim of a breach of the Convention. Counsel for Mr Yücel did not express a view on those Government observations.

The Court observed that the Constitutional Court had awarded Mr Yücel a sum of approximately 3,700 euros (EUR) in respect of non-pecuniary damage and some EUR 400 in respect of costs and expenses. Having regard, in particular, to the length of the applicant's pre-trial detention, the Court held that those sums were manifestly insufficient in the light of the circumstances of the case. Accordingly, it concluded that Mr Yücel could still claim to be a "victim" within the meaning of Article 34 of the Convention.

Article 5 § 1: lack of plausible reasons for Mr Yücel's pre-trial detention

The Court noted that on 28 May 2019 the Constitutional Court had, after examining the content of the articles in question written by Mr Yücel, considered that there was no strong evidence that an offence had been committed. As regards the application of Article 15 of the Constitution (suspending the exercise of fundamental rights and freedoms in the event of war, general mobilisation, state of siege or state of emergency), the Constitutional Court concluded that the impugned detention had been disproportionate to the strict requirements of the situation.

The Court considered that the Constitutional Court had established that Mr Yücel had remained in pre-trial detention in breach of Article 19 § 3 of the Constitution. It took the view that the conclusion reached by the Constitutional Court came down, in substance, to acknowledging that the applicant's deprivation of liberty had infringed Article 5 § 1 of the Convention, and it subscribed to that finding. In connection with Article 15 of the Convention and the Turkish derogation, it noted that no derogating measure had been applicable in the present case.

There had therefore been a violation of Article 5 § 1 of the Convention having regard to the lack of plausible reasons to suspect Mr Yücel of having committed a criminal offence.

Article 5 § 3: length of pre-trial detention

Having regard to the finding concerning Article 5 § 1 of the Convention, the Court held that there was no need to consider whether the authorities had continued Mr Yücel's pre-trial detention for an excessive length of time or for reasons that could be deemed "relevant" and "sufficient" in order to justify the applicant's placement and retention in pre-trial detention for the purposes of Article 5 § 3 of the Convention.

Article 5 § 4: right of access to the investigation file

The Court observed that Mr Yücel, assisted by his lawyers, had been questioned in detail by the competent authorities on the evidence on file, first of all by the investigating agencies and later by the magistrate, who put questions to him on that matter. Therefore, even though the applicant had not benefited from a right of unlimited access to the evidence, he had had sufficient cognisance of the content of such evidence as had been essential for the effective contestation of the lawfulness of his pre-trial detention. **There had therefore been no violation of Article 5 § 4 of the Convention.**

Article 5 § 4: length of proceedings before the Constitutional Court

The Court noted that the period to be taken into consideration had lasted 10 months and 20 days, during the state of emergency. It held that the fact that the Constitutional Court had not delivered judgment until 28 May 2019, some two years and two months after the applicant had lodged his appeal, was immaterial to the calculation of the relevant period under Article 5 § 4 of the Convention because he had already been released before that date. The Court therefore considered that its findings in the judgments *Mehmet Hasan Altan*², *Sahin Alpay*³ et *Selahattin Demirtaş (no 2)*⁴ also applied to the present application. **This complaint was therefore manifestly ill-founded.**

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

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

4. *Selahattin Demirtaş v. Turkey (no. 2)*, [GC] (no. 14305/17, 22 December 2020).

Article 5 § 5: right to compensation for unlawful detention

The Court observed that Mr Yücel had had a remedy enabling him to obtain compensation and that the Constitutional Court had awarded him some EUR 3,700 in respect of the violations as found. However, it found that the applicant had failed to obtain appropriate and sufficient compensation, inasmuch as the sums awarded by the Constitutional Court had been manifestly inadequate having regard to the circumstances of the case. Consequently, it held that the right to individual petition before the Constitutional Court could not have been an effective remedy in the present case. **There had therefore been a violation of Article 5 § 5 of the Convention.**

Article 10: freedom of expression

The Court noted that Mr Yücel had been prosecuted on the grounds of being suspected of spreading propaganda for a terrorist organisation and inciting people to hatred and hostility, primarily by means of his activities as a journalist. In the framework of the criminal proceedings the applicant had been detained from 14 February 2017, when he had been taken into police custody, to 16 February 2018.

The Court considered that that period of detention amounted to an “interference” with the exercise of his right to freedom of expression as secured under Article 10 of the Convention. As regards whether that interference was prescribed by law, the Court noted that under Article 100 of the Code of Criminal Procedure an individual may be placed in pre-trial detention only in the presence of factual evidence strongly suggesting that he has committed a criminal offence. The Court observed that it had already concluded that Mr Yücel’s detention had not been based on plausible reasons for suspecting him of having committed an offence and that there had therefore been a violation of his right to liberty and security under Article 5 § 1. It followed that the interference with the applicant’s rights and freedoms could not be justified under Article 10 (freedom of expression) given that it had not been prescribed by law.

The Court further observed that the Constitutional Court, with reference to its findings concerning the lawfulness of the pre-trial detention, had held that in a democratic society such a severe measure could not be considered as a necessary and proportionate interference. The Constitutional Court had therefore found a violation of Articles 26 and 28 of the Constitution. In the light of that reasoning, the Court considered that there was no reason to reach any conclusion on the necessity of the interference in a democratic society different from that reached by the Constitutional Court.

The Court pointed out that holding persons expressing critical opinions in preventive detention had multiple negative effects on both the detainee and society as a whole, because imposing a measure resulting in deprivation of liberty, as in this case, invariably had a chilling effect on freedom of expression by intimidating civil society and reducing dissident voices to silence.

As regards the Turkish derogation, the Court considered that it was inapplicable in the present case.

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

Article 18 : limitation on use of restrictions on rights

Having regard to its findings under Article 5 § 1 and Article 10, the Court considered it unnecessary to consider this complaint separately.

Just satisfaction (Article 41)

The Court held, by a majority (5 votes to 2), that Turkey was to pay the Mr Yücel EUR 12,300 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

Separate opinions

Judge Bošnjak expressed a partly concurring opinion. Judge Koskelo expressed a partly dissenting opinion, joined by Judge Kūris. Judge Koskelo expressed a partly dissenting opinion, joined by Judges Kūris and Lubarda. Judges Pejchal and Yüksel expressed a joint partly dissenting opinion.

These opinions are annexed to the judgment.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel : + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

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.