JUSTICE SQUARE

THE JUDGEMENTS BY THE EUROPEAN COURT OF HUMAN RIGHTS ON TÜRKİYE SINCE 15 JULY 2016

2024

PREFACE

Thousands of people in Turkiye have been subjected to human rights violations due to unlawful practices and decisions that started as a reaction to the 17/25 December (2014) "bribery and corruption operations" and became state policy with the 15 July coup attempt. Especially serious violations of human rights have been experienced in detentions, arrests and trials within the scope of investigations initiated after the 15 July coup attempt. Due to these practices and decisions contrary to the Constitution and present lawsas well as universal legal principles, it has become impossible to protect fundamental rights and freedoms through domestic remedies or to compensate for violations of rights. In the current situation, there are no effective domestic remedies before the Constitutional Court, higher courts and local courts, and most importantly, the Turkish judiciary has been transformed into a judicial system under the control of the government with the structural changes made.

Throught this process, numerous applications were lodged to the European Court of Human Rights (ECtHR) due to unlawful practices and judgements. Although not at the desired speed and quality, the applications have started to be decided by the ECHR. In this context, important violation decisions and judgement have been made regarding arbitrary and unjustified interference with the right to liberty and security, freedom of expression, freedom of association, right to a fair trial and other fundamental rights and freedoms. Accordingly, as of April 2023, a total of **50** judgements involving **1,661** individuals were issued and a total of **EUR 7.491.138** in compensation were awarded.

In order to contribute to the legal struggle of individuals who have been suffered from the dark amosphere and unlawful practices in Turkiye, our Foundation has prepared this booklet which contains a summary of the decisions of the ECHR on human rights violations against Turkiye after the 15 July coup attempt.

In the light of these judgements, which contain the most fundamental determinations regarding universal law and constitutional guarantees, we hope that this study of **Justice Square** will be useful contribution to stop human rights violations in Turkiye.

Amsterdam-21 May 2024

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The applicant, a journalist, was arrested on charges of attempting to overthrow the government and FETÖ/PDY membership due to a statement he made on Can Erzincan TV; despite the violation judgement of the Constitutional Court, he had not been released by the Assize Court.

b. VOLATIONS

1. Unlawful detention (the Constitutional Court found a violation and the applicant's continued detention despite the Constitutional Court's judgement was not in accordance with legal procedures, Art. 5/1).

2. Violation of freedom of expression (the ECtHR agrees with the Constitutional Court's conclusion that the applicant's detention on account of his statements constituted a violation, Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

It is contrary to the principles of the rule of law and legal security for a court to question the powers of the Constitutional Courtwhich is empowered to issue final and binding judgements on individual applications (§ 139).

14 months and 3 days examination period of the Constitutional Court must be considered reasonable in the extraordinary circumstances of the case within the meaning of Article 5/4 of the Convention (§ 167). The existence of a "public danger threatening the life of the nation" should not be a pretext for restricting free political debate, which is at the heart of the concept of democratic society (§ 210).

Criticism of governments and the publication of information considered by the leaders and rulers of a country to be dangerous for the national interest must not lead to serious criminal charges, in particular criminal charges of belonging to or aiding a terrorist organisation, attempting to overthrow the government or the constitutional order, or making propaganda for a terrorist organisation (§ 211). The applicant's complaint that he had been detained for a

1 Mehmet Hasan Altan v. Turkey, Application No. 13237/17, 20 March 2018 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192019%22]}

purpose other than that provided for in the Convention (Art. 18) did not require further examination (§ 216).[2]

As just satisfaction, the applicant was awarded with 21,500 EUR in compensation for non-pecuniary damage and costs of the proceedings.

2. ŞAHİN ALPAY v TÜRKİYE[3]

a. Facts

In Şahin Alpay v. Turkiye, the applicant, a journalist, was arrested on the basis of his work as a writer for the Zaman newspaper.

b. Violations

1. The Constitutional Court found a violation due to unlawful detention and the applicant's continued detention despite the Constitutional Court's judgement was not in accordance with legal procedures, Art. 5/1).

2. Violation of freedom of expression (the ECtHR agrees with the Constitutional Court's conclusion that the applicant's detention on account of his statements constituted a violation, Art. 10).

c. Other Issues Related to the Decision

It is contrary to the fundamental principles of the rule of law and legal security for a court to question the powers of the Constitutional Court, which is empowered to issue final and binding judgements on individual applications (§ 118).

The Constitutional Court's examination period of 16 months and 3 days must be considered reasonable in the extraordinary circumstances of the case within the meaning of Article 5 § 4 of the Convention (§ 139). The existence of a "public danger threatening the life of the nation" should not be a pretext for restricting free political debate, which is at the heart of the concept of democratic society (§ 180).

Criticism of governments and the publication of information considered by the leaders and rulers of a country to be dangerous for the national interest must not lead to serious criminal

2 The State of the Judiciary Ignoring the Constitution (https://m.bianet.org/bianet/hukuk/238874-anayasayi-hice-sayan-yarginin-hal-i-pur-melali); European Court of Human Rights: Mehmet Hasan Altan v. Turkey and Şahin Alpay v. Turkey (https://merlin.obs.coe.int/article/8232); Resuscitating the Turkish Constitutional Court: the ECtHR's Alpay and Altan Judgments (https://strasbourgobservers.com/2018/04/03/resuscitating-the-turkish-constitutional-court-the-ecthrs-alpay-and-altan-judgments/)

3 Şahin Alpay v. Turkey, Application No. 16538/17, 20 March 2018, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193229%22]}

charges, in particular criminal charges of belonging to or aiding a terrorist organisation, attempting to overthrow the government or the constitutional order, or making propaganda for a terrorist organisation (§ 181). The applicant's complaint that he had been detained for a purpose other than that provided for in the Convention (Art. 18) did not require further examination (§ 186).[4]

As just satisfaction, the applicant was awarded with 21,500 EUR in compensation for non-pecuniary damage and costs of the proceedings.

II. THE ECHR JUDGEMENTS IN 2019

1. ALPARSLAN ALTAN v TÜRKİYE[5]

a. Facts

The applicant, who is a member of the Constitutional Court, was arrested on the charge of FETÖ/PDY membership, based on the procedures adopted in criminal proceedings.

b. Violations

1. Unlawful detention (failure to comply with judicial safeguards on detention on the grounds of being in flagrante delicto, Art. 5/1)

2. Detention without reasonable suspicion (absence of evidence to suspect the applicant of a criminal offence at the time of detention, Art. 5/1)

c. Other Issues Related to the Decision

The judicial protection afforded to judges is not for their personal benefit but for the independent performance of their duties (§ 113). The way in which the national courts have extended the scope of the notion of an offence and applied domestic law in the present case is both problematic in the context of the principle of legal certainty and manifestly unreasonable (§ 115).

An overly broad interpretation of the concept of "in the course of an offence" cannot be regarded as an appropriate response to the state of emergency. Such an interpretation not only

4 The State of the Judiciary Ignoring the Constitution (https://m.bianet.org/bianet/hukuk/238874-anayasayi-hice-sayan-yarginin-hal-i-pur-melali); European Court of Human Rights: Mehmet Hasan Altan v. Turkey and Şahin Alpay v. Turkey (https://merlin.obs.coe.int/article/8232); Resuscitating the Turkish Constitutional Court: the ECtHR's Alpay and Altan Judgments (https://strasbourgobservers.com/2018/04/03/resuscitating-the-turkish-constitutional-court-the-ecthrs-alpay-and-altan-judgments/)

5 Alpaslan Altan v. Turkey, Application No. 12778/17, 16 April 2019, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-195054%22]}

poses a problem for the principle of legal certainty, but also neutralises the procedural safeguards afforded to members of the judiciary against interference by the executive. Moreover, it leads to legal consequences which extend far beyond the legal framework of the state of emergency (§ 118).

It is not necessary to examine evidence obtained long after the applicant's initial detention order in order to determine whether the suspicion underlying the detention order was "reasonable" (§ 139).

The difficulties faced by Turkiye in the aftermath of the attempted coup d'état do not mean that the authorities have carte blanche to detain an individual during a state of emergency without any corroborating evidence or information or without a sufficient factual basis for the reasonableness of a suspicion to meet the minimum requirements of Article 5 § 1 (c) (§ 147). The detention order, although issued under judicial supervision, was based on a mere suspicion of membership of a criminal organisation. Such a level of suspicion cannot be sufficient to justify the detention of a person (§ 148)[6] .

As just satisfaction, the applicant was awarded with 10,000 EUR in compensation for non-pecuniary damage and costs of the proceedings.

2. KAVALA v TÜRKİYE[7]

a. FACTS

The applicant, a businessman and human rights defender, was arrested on the grounds that he had organised the Gezi protests and was one of the instigators of the 15 July coup attempt; his application to the Constitutional Court was concluded in 1 year, 5 months and 29 days, including the period until the publication of the judgment.

6 The ECtHR's Alparslan Altan Decision and its Impact on the Current Cases (https://www.freejudges.eu/tr/2019/05/25/aihmnin-alparslan-altan-karari-ve-mevcut-davalara-etkisi/); Initial Assessments on the ECtHR's Alparslan Altan v. Turkey (https://maziliguneyhukuk.com/aihmin-alparslan-altan-turkiye-karari-uzerine-ilk-degerlendirmeler/); The Discovery in Flagrante Delicto, the Kafkaesque fate of a Supreme Judge and the Turkish Constitutional Court: the Alparslan Altan Case in Strasbourg(https://strasbourgobservers.com/2019/05/06/the-discovery-in-flagrante-delicto-the-kafkaesque-fate-of-a-supreme-judge-and-the-turkish-constitutional-court-the-alparslan-altan-case-in-strasbourg/)

7 Kavala v. Turkiye, Application no. 28749/18, 10 December 2019, https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22kavala%22],%22languageisocode%22:[%22TUR%22],%22appno%22:[%2228749/18%22],%22itemid%22:[%22001-203644%22]}

b. VIOLATIONS

1. Detention without reasonable suspicion (there was no evidence of reasonable suspicion for both the Gezi protests and the attempted coup allegations, Art. 5/1)

2. Violation of the right to effective appeal against detention (the review period of the Constitutional Court does not meet the requirement of urgent review, Art. 5/4)

3. Restriction of rights for a purpose other than that provided for in the Convention (accusation of the applicant long after the relevant events, indictment shortly after the President's statement, Art. 18)

c. OTHER ISSUES RELATED TO THE DECISION

The time taken to examine an application which is the subject of a challenge to the lawfulness and proper conduct of detention is not in itself sufficient to draw a conclusion as to the effectiveness of the Constitutional Court (§ 99).

There can be no "reasonable doubt" if the acts charged did not constitute a criminal offence at the time they were committed (§ 128). Moreover, the charges must not relate to the exercise of a right under the Convention (§ 129). The fact that incidents which cannot reasonably be regarded as criminal behaviour under domestic law or which relate to the exercise of rights under the Convention are alleged as elements of the offence reduces the reasonableness of the suspicion of criminality (§ 157).

The heavy workload of the Constitutional Court cannot be used as a permanent excuse for excessively long periods, as in the present case. It is for the State to organise its judicial system so as to ensure that its courts comply with the requirements of Article 5 § 4 of the Convention (§ 188).

The Court considers that the Turkish Constitutional Court, which has the primary role at national level in safeguarding the right to liberty and security, failed to take due account of the importance of that right in the context of the proceedings concerned (§ 193).

It has been proved beyond reasonable doubt that the measures complained of pursued an ulterior purpose, namely to silence the applicant, contrary to Article 18 of the Convention. Moreover, the measures in question could have a chilling effect on the work of human rights defenders (§ 232).[8]

8 Proceedings under Article 46/4 in the Kavala v. TurkiyeCase (https://hudoc.echr.coe.int/eng?i=001-219512), Osman Kavala v. Turkiye: Unravelling the Matryoshka Dolls (https://strasbourgobservers.com/2019/12/12/osman-kavala-v-turkey-unravelling-the-matryoshka-dolls/)

III. THE ECHR JUDGEMENTS IN 2020

1. BAŞ v TÜRKİYE[9]

a. FACTS

The applicant, a judge, was arrested on charges of FETÖ/PDY membership; detention reviews were conducted on the basis of the file without a hearing for 1 year and 2 months.

b. VIOLATIONS

The following issues were alleged as violations:

1. Unlawful arrest (the state of being in flagrante delicto was interpreted in an overly broad manner and legal procedures were not followed, (Art. 5/1).

2. Arrest without reasonable suspicion (Art. 5/1).

3. Violation of the right to effective appeal against detention (examination on file, (Art. 5/4).

c. OTHER ISSUES RELATED TO THE DECISION

The mere fact that the Criminal Judge of Peace referred to the decision of the HSK was not sufficient for a reasonable suspicion to justify the applicant's detention (§ 190). Having regard to the constitutional and legal protections afforded to criminal judges of peace, and in the absence of any allegation in the applicant's case casting doubt on their independence and impartiality, the Court considers that the complaint concerning the lack of independence and impartiality of criminal judges of peace is manifestly ill-founded (§ 278).

There is no hierarchical or structural link between the criminal magistrate who examined the appeal and the judge whose decision is under review. Unless the magistrates in question have developed a personal friendship which goes beyond the strictly professional sphere, the existence of a professional relationship between them cannot in itself justify concerns about the independence and impartiality of the judge examining the appeal (§ 280).

As just satisfaction, the applicant was awarded with 6,000 EUR for pecuniary damages and 4,000 for non-pecuniary damages.

9 Baş v. Turkiye, Application no. 66448/17, 3 March 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-206632%22]}

2. PİŞKİN v TÜRKİYE[10]

a. FACTS

The applicant, who was working as an expert at the Ankara Development Agency, had his employment contract terminated on the basis of Article 4/1 (g) of the Decree Law No. 667; the lawsuit he filed against this was rejected by the labour court.

b. VIOLATIONS

According to the applicant;

1. Violation of the right to a reasoned judgement within the scope of the right to a fair trial (the allegations were not examined by the courts, the Constitutional Court did not evaluate the legal and factual issues, (Art. 6/1).

2. Violation of the right to respect for private life (judicial review of dismissals was inadequate and minimum safeguards against arbitrariness were not provided, (Art. 8).

c. OTHER ISSUES RELATED TO THE DECISION

The Court found that:

There is no reason to conclude that the proceedings concerning the applicant's termination of his employment concerned a decision on a criminal charge. Consequently, the criminal aspect of this Article is not applicable to the concrete case (§ 109).

In the light of Article 4 (2) of Executive Decree No. 667, weight must be given to the applicant's claim that he was labelled and therefore stigmatised as a "terrorist" in society. In this regard, the applicant stated that he had been unemployed since the termination of his contract and that employers did not dare to offer him a job because the termination was based on Decree Law No. 667. As a result, the termination had negative repercussions on the applicant's ability to establish and maintain relationships, including labour relations (§ 186).

A finding of association with an illegal organisation undoubtedly had serious consequences for the applicant's professional and social reputation (§ 187). The domestic courts failed to establish the real reasons for the termination of the applicant's employment and judicial review was inadequate (§ 228). The applicant did not benefit from the minimum level of protection against arbitrary interference (§ 229)[11] .

10 Pişkin v. Turkiye, Application No. 33399/18, 15 December 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-210243%22]}

11 Evaluation of the ECtHR's Hamit Pişkin Judgement (https://www.drgokhangunes.com/genel/aihmin-hamit-piskin-kararinin-degerlendirilmesi/); Pişkin v. Turkiye: Observations on the Failure of the Lawfulness Test and the Engel Criteria within the Context of the Turkish Purge

As just satisfaction, the applicant was awarded with 4,000 EUR for pecuniary damages and 4,000 for non-pecuniary damages.

IV. THE ECHR JUDGEMENTS IN 2021

1. ATİLLA TAŞ v TÜRKİYE[12]

a. FACTS

The applicant, who is also a columnist, was arrested on charges of FETÖ/PDY membership; a lawsuit was filed against him on the grounds of his tweets, his articles in Meydan Newspaper and his participation in the demonstration protesting the closure of Bugün Newspaper; on the day of his release, a new investigation was initiated and he was detained and arrested again; the judges who ordered his release and the prosecutor who requested it were suspended by the HSK; the Constitutional Court found a violation only in terms of the second detention.

b. VIOLATIONS

The applicant has stated the following reasons for the violation:

1. Detention without reasonable suspicion (absence of convincing grounds for suspicion of an offence, Art. 5/1).

2. Violation of freedom of expression (arrest for articles and tweets, Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

In its judgement, the Court emphasised the following points: There can be no "reasonable doubt" if the acts or events charged did not constitute a criminal offence at the time they occurred (§ 124). Moreover, the charges must not relate to the exercise of a right under the Convention (§ 125).

In order to determine whether there was reasonable suspicion of a criminal offence, the Constitutional Court relied on elements of evidence not mentioned in the detention order. These elements of evidence were presented in the indictment issued more than four months after the applicant's initial detention. The Court therefore does not consider it necessary to examine these elements of evidence in order to determine the credibility of the suspicions justifying the detention order (§ 131).

(https://strasbourgobservers.com/2021/03/29/piskin-v-turkey-observations-on-the-failure-of-the-lawfulness-test-and-the-engel-criteria-within-the-context-of-the-turkish-purge/)

12 Atilla Taş v. Turkiye, Application No.72/17, 19 January 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-210062%22]}

The applicant's participation in a peaceful gathering organised to protest against the appointment of a trustee to a newspaper considered to be oppositional was not of a nature to convince an objective observer that he had committed a terrorist offence (§ 134). Mere reference to the indictment cannot be considered sufficient to justify the plausibility of the suspicions supposedly forming the basis for detention (§ 135).

Although the applicant's articles and tweets may be regarded as a harsh criticism of the Government's and the President's policies, they cannot convince an objective observer of the reality of the allegations giving rise to the detention, unless other grounds and elements of evidence justifying the deprivation of liberty are presented. The "plausibility" of suspicion cannot be extended so far as to infringe freedom of expression (§ 136).

The interpretation and application of the statutory provisions relied on by the national authorities were so unreasonable as to render the applicant's deprivation of liberty unlawful and arbitrary (§ 139). The applicant's deprivation of liberty constituted an interference with his rights under Article 10 of the Convention (§ 187).

The interference with the applicant's rights and freedoms was not prescribed by law and cannot be justified in terms of Article 10, since the interpretation and application by the national authorities was so unreasonable as to give the deprivation of liberty an irregular and arbitrary character (§ 191)[13] .

The judgement awards a total compensation of EUR 15.450, of which EUR is non-pecuniary and EUR.

As just satisfaction, the applicant was awarded with 12,275 EUR for non-pecuniary damages and 3,125 EUR for the costs of the proceedings.

2. AHMET HÜSREV ALTAN v TÜRKİYE[14]

a. FACTS

The applicant was arrested on charges of attempting to overthrow the government because he was the editor-in-chief of Taraf Newspaper, some articles he wrote and a speech he made on Can Erzincan TV on 14 July; access to the investigation file was restricted; the Constitutional Court ruled that there was no violation in his application.

13 The Aspects of the ECtHR's Atilla Taş Decision on Current Trials (https://www.drgokhangunes.com/genel/aihmin-atilla-tas-kararinin-guncel-yargilamalara-bakan-yonu/)

14 Ahmet Altan v. Turkiye, Application no. 13252/17, 13 April 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-211626%22]}

b. VIOLATIONS

The applicant's allegations of violation are as follows:

1. Detention without reasonable suspicion (detention of the applicant without reasonable grounds for suspecting him of having committed an offence, Art. 5/1).

2. Violation of the right to effective appeal against detention (restriction of access to the investigation file, Art. 5/4).

3. Absence of a remedy for compensation for detention (a case cannot be brought under Article 141 of the Criminal Procedure Code based on the absence of reasonable suspicion and the Constitutional Court rejected his application, (art. 5/5).

4. Violation of freedom of expression (arrest for journalistic activities, art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

The Court's findings in the judgment can be summarised as follows. The detention of the applicant as a suspect more than four years after the "Sledgehammer" trial cannot be regarded as a necessary measure (§ 141).

In his writings, the applicant had expressed concern about the political situation and strongly criticised the government. On the basis of these statements, the applicant cannot be regarded as supporting a campaign of violence or legitimising such violence; instead, as a dissident writer, he can reasonably be regarded as expressing criticism of the government. The concept of "reasonable suspicion" cannot be interpreted so broadly as to undermine the right to freedom of expression (§ 143).

As they cannot be interpreted as a call to violence, the Court finds no elements which lead to the conclusion that the remarks in the TV programme did not fall within the limits of freedom of expression. The fact that the applicant warned the public of a possible coup d'état or civil war cannot justify his detention (§ 145).

Article 100 of the Code of Criminal Procedure, which requires the existence of "concrete evidence indicating the existence of a strong suspicion of the commission of the [alleged] offence", was not amended during the state of emergency. The measures complained of in the present case were taken on the basis of the legislation in force before and after the declaration of the state of emergency (§ 149).

Even in the context of a state of emergency, the fundamental principle of the rule of law must prevail. The general decision to restrict access cannot be regarded as an appropriate

response to the state of emergency and such an interpretation would invalidate the guarantees offered by Article 5 of the Convention (§ 165).

Although the CC's examination period of 15 months and 8 days could not be regarded as "rapid" in ordinary circumstances, the Court concludes that, in the particular circumstances of the case, there has been no violation of Article 5 § 4 of the Convention (§ 183).

Article 141 of the Code of Criminal Procedure does not confer a right to compensation for the absence of reasonable suspicion that an offence has been committed (§ 190). An unlawful detention cannot, in principle, be regarded as a restriction provided for by national law in so far as it constitutes an interference with one of the freedoms guaranteed by the Convention (§ 225).

The facts relied on by the applicant in support of his allegation of a violation of Article 18 of the Convention do not form a sufficiently homogeneous whole for the Court to find that the applicant was detained for a purpose other than one not provided for in the Convention (§ 246).

The Court finds that it has not been proved beyond reasonable doubt that the applicant's detention pursued a purpose not foreseen within the meaning of Article 18 of the Convention (§ 247).

With the judgement, 16,000 EUR non-pecuniary damages were awarded and no other compensation was given.

3. MURAT AKSOY v TÜRKİYE[15]

a. FACTS

The applicant, a journalist, was arrested and prosecuted for his articles in Millet and Yeni Hayat Newspapers and social media posts; on the day of his release, a new investigation was launched and he was detained and arrested again; the judges who ordered his release and the prosecutor who requested it were suspended by the HSK; the Constitutional Court ruled that the right to liberty and security and freedom of expression were violated.

b. VIOLATIONS

The applicant's allegations of violation are as follows:

1. Detention without reasonable suspicion (ECtHR agrees with the conclusion of the Constitutional Court, Art. 5/1).

2. Violation of freedom of expression (detention for journalistic activities, Art. 10).

15 Murat Aksoy v. Turkiye, Application No. 80/17, 13 April 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-211625%22]}

c. Other Issues Related to the Decision

Having regard to its practice in similar cases, the Court considers that the sums awarded by the CC (approximately EUR 3,417) are manifestly inadequate in the circumstances of the case under review (§ 90).

The Court observes that the applicant, who was assisted by his lawyers, was questioned in detail about these elements of evidence, first by the investigating authorities and then by the Criminal Judge of Peace. Thus, even if the applicant did not benefit from an unrestricted right of access to the elements of evidence, he was sufficiently informed of the content of those elements of evidence which were of primary importance in order to effectively challenge the lawfulness of his detention (§ 128).

The fact that the Constitutional Court delivered its judgement almost two years and five months after the application was lodged with it is not taken into account for the calculation of the period to be taken into account, since the applicant was released before that date (§ 136). The detention of critical voices has many negative effects, both for the detained person and for society as a whole, since the application of a measure resulting in deprivation of liberty, as in the present case, inevitably has a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices (§ 165). In view of the conclusions reached in relation to Articles 5 § 1 and 10 of the Convention, it is not necessary to examine the complaint under Article 18 separately (§ 171).

The judgement awards a total of EUR 14,675 in compensation, consisting of EUR in non-pecuniary damages and EUR in legal costs. As just satisfaction, the applicant was awarded with 11,500 EUR for non-pecuniary damages and 3,175 EUR for the cost of the proceedings.

4. ÖĞRETEN AND KANAAT v TÜRKİYE[16]

a. Facts

The applicants, who are journalists, were arrested on charges of membership of an armed terrorist organisation in connection with the hacking of the e-mails of the Minister of Energy and Natural Resources and the discovery of the 17/25 December investigation proceedings on the computer of the second applicant; their access to the investigation file was restricted;

16 Öğreten and Kanaat v. Turkiye, Application No. 42201/17 and 42212/17, 18 May 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-211846%22]}

indictments were issued for the first applicant to be sentenced for committing crimes on behalf of organisations (DHKP/C and FETÖ/PDY) without being a member and for the second applicant to be sentenced for FETÖ/PDY membership; the Constitutional Court ruled that their rights were not violated and/or their complaints were inadmissible.

b. VIOLATIONS

The alleged violations are as follows:

1. Arrest without reasonable suspicion (there are no credible grounds for suspicion of having committed an offence, (Art. 5/1).

2. Violation of the right to effective appeal against detention (restriction of access to the file, Art. 5/4).

3. Violation of freedom of expression (arrest for journalistic activity, Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

The Court made the following observations. The Istanbul Criminal Judge of Peace relied on reports on the content of the computer data but did not specify the content of those reports. In the absence, on the one hand, of an individualised and concrete assessment of the elements in the file and, on the other hand, of information or other verifiable facts and circumstances capable of justifying the suspicions against the applicants concerned, such a vague and general reference to the documents in the file is not sufficient to justify the credibility of the suspicions supposedly forming the basis for the applicants' detention (§ 88).

The downloading of the hacked e-mails of the then Minister of Energy and Natural Resources and the publication of an article about them are protected by freedom of the press and are not sufficient to convince an impartial observer that the applicants may have committed the offence of membership of a terrorist organisation (§ 90).

The facts and circumstances alleged concerned the exercise of Convention rights, in particular Article 10. The concept of "reasonable suspicion" cannot be interpreted in such a way as to infringe the right to freedom of expression. The interpretation and application of the legal provisions invoked by the national authorities were so extreme as to give the applicants' deprivation of liberty an unlawful and arbitrary character (§ 92).

The applicants and their lawyers did not see the elements of evidence on which the arrest was based, in particular the reports on the contents of the computers, until the date of the indictment. The circumstances of the present proceedings differ from those in other cases in that

substantial evidence was available which could have enabled the applicants to challenge the lawfulness of their detention (§ 104).

As regards the foreseeability of the offence of membership of a terrorist organisation under Article 314 § 2 of the Turkish Criminal Code, such a broad interpretation of a provision of criminal law cannot be justified where the exercise of the right to freedom of expression is equated with membership of an armed organisation in the absence of concrete evidence of such a relationship (§ 136).

Thus, the interference with the applicants' rights and freedoms under Article 10 § 1 of the Convention was not justified in terms of Article 10 § 2 of the Convention as it was not prescribed by law (§ 137).

As just satisfaction, each applicant was awarded with 14,000 EUR for non-pecuniary damages; 5,750 EUR for non-pecuniary damages and 2,250 EUR for the cost of the proceedings.

5. TERCAN v TÜRKİYE[17]

a. FACTS

The applicant Erdal Tercan is the other member of the Constitutional Court who was arrested together with Alpaslan Altan for alleged membership of an illegal organisation. In this application, the house of the applicant, who is a member of the Constitutional Court, was searched and some digital materials were seized on the basis of a case of being caught red-handed and the applicant was arrested on charges of FETÖ/PDY membership.

b. VIOLATIONS

In the application, the following issues were put forward as the reasons for violation:

1. Unlawful detention (detention without observing judicial guarantees on the grounds of an offence, Art. 5/1).

2. Arrest without reasonable suspicion (suspicion has not reached the minimum level of credibility, (Art. 5/1).

3. Unjustified detention (no relevant and sufficient grounds provided, Art. 5/1).

4. Violation of the right to respect for the home (search of the home based on an unforeseeable interpretation of a legal provision, Art. 8).

17 Tercan v. Turkiye, Application No. 6158/18, 29 June 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-214477%22]}

c. Other Issues Related to the Decision

The Courts's findings were as follows. The legal protection provided for in Law No. 6216 is granted to the members of the Constitutional Court not for their personal benefit but to ensure that they fulfil their duties with complete independence. The purpose of this protection is to ensure that the judicial system in general and its members in particular, in the exercise of their judicial functions, are not subjected to unlawful restrictions from bodies other than the judicial organ, or even from judges hearing or reviewing the merits of the case (§ 132).

The present case and the Alparslan Altan judgment reveal a systemic lack of legal clarity and predictability in relation to the arrest and detention of high court judges in Turkiyeat the time of the events (§ 133).

An overly broad interpretation of the notion of "in flagrante delicto" overrides the procedural safeguards recognised to protect the judiciary from attacks by the executive and arbitrary or unjustified deprivations of liberty (§ 138).

This interpretation is also problematic from the point of view of the principle of legal security, since it not only overrides the procedural safeguards afforded to the judiciary, but also creates legal consequences which greatly exceed the legal framework of the state of emergency (§ 139).

An overly broad interpretation of the notion of impunity, which is not based on any statutory provision, affects not only the regime of legal immunity granted to members of the higher courts and elected members of the Council of Judges and Prosecutors, or even to other judges and prosecutors. Such an interpretation could also concern all those who benefit from statutory immunity, for example Members of Parliament (§ 140).

Such a finding is of the utmost importance for the judicial system in general, since the guarantees of the right to liberty and security would lose all meaning if it were accepted that, notwithstanding the protection afforded by national law, members of the judiciary, and members of the Constitutional Court in particular, could be detained in the absence of an actual criminal act and serious indications suggesting that they had committed or were about to commit the offence of membership of an armed organisation.

It may be illusory to believe that judges and prosecutors can ensure respect for the rule of law and realise the principle of the rule of law if they are deprived of the protection deriving from the right to liberty and security (§ 141).

Contrary to the Constitutional Court, the Court considers that it is not necessary to examine the elements of evidence obtained following the applicant's arrest in order to establish the "credibility" of the suspicions concerning the arrest and detention (§ 157).

The "grounds" for continued detention were entirely general and abstract; the vast majority of the decisions concerned more than a hundred suspects (§ 180). The applicant's exercise of his right to respect for his home was interfered with because his family home was searched and a number of items and documents found there were seized (§ 196).

Although the spirit and wording of Law no. 6216 were sufficiently clear, the national authorities engaged in a practice which was manifestly unreasonable and therefore not foreseeable within the meaning of Article 8 § 2 of the Convention (§ 201)[18] .

As just satisfaction, the applicant was awarded with 20,000 EUR for non-pecuniary damage.

6. AKGÜN v TÜRKİYE[19]

a. FACTS

The Akgün v Turkiye is very important judgement in terms of being the judgment that sets out the general approach of the ECtHR regarding the ”Bylock application”, which is accepted as evidence in the investigations and trials initiated after 15 July.

In this application, the applicant who is a police officer, was arrested on charges of FETÖ/PDY membership based on the findings that he used Bylock.

b. VIOLATIONS

In the application, the following issues were put forward as the reasons for violation:

1. Arrest without reasonable suspicion (Detection of Bylock user does not, by itself, constitute reasonable suspicion, Art. 5/1).

2. Unjustified detention (since there is no reasonable suspicion, there is no ground for detention, (Art. 5/3).

3. Violation of the right to effective appeal against detention (restriction of access to the file, Art. 5/4).

18 Evaluation of the ECtHR's Erdal Tercan Judgement (https://www.drgokhangunes.com/makale/aihmin-erdal-tercan-kararinin-degerlendirilmesi/)

19 Akgün v. Turkiye, Application No. 19699/18, 20.07.2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-213284%22]}

c. Other Issues Related to the Decision

The Court finds that None of the HSK's suspension decisions of 24 and 31 August 2016 demonstrates that the ByLock encrypted messaging application was used exclusively by FETÖ/PDY members for the purpose of secret communication within the organisation in question, as alleged by the Government. In principle, the mere fact of installing or using an encrypted communication tool or otherwise protecting the private nature of messages sent and received cannot, by itself, constitute an element capable of convincing an impartial observer that illegal or criminal activity is involved. The use of an encrypted means of communication can only constitute evidence if it is capable of convincing an impartial observer of the existence of reasonable grounds to suspect that the user is a member of a criminal organisation if it is corroborated by other elements relating to its use, such as the content of the messages sent and received or the context in which they were sent, or other relevant elements (§ 173).

The only evidence on which the applicant was suspected of being a member of FETÖ/PDY was the Ankara Chief Public Prosecutor's Office's determination that the applicant was on the red list, indicating that he was an active user of this communication tool. The document in question does not contain the underlying data and does not provide any information as to how that data was generated. The national courts therefore relied on this one-page document, which was undated and of unknown authorship (§ 178).

As the document concerning the applicant's ByLock use does not specify the dates and frequency of the alleged activity and does not contain any other details about this activity; as such, it does not indicate or reveal any illegal activity of the applicant (§ 180).

The document in question, which merely states that the applicant is a ByLock user, does not, by itself, demonstrate the existence of reasonable suspicion that would convince an impartial observer that the person concerned actually used ByLock in a way that could constitute the offence charged against him (§ 181).

The existence of reasonable grounds for suspecting that the detained person has committed an offence is a sine qua non condition for the appropriateness of detention. In the absence of such grounds, the Court considers that there has been a violation of Article 5 § 3 of the Convention in respect of the allegedly unreasonable detention (§ 182).

The suspicions which led to the applicant's detention were based exclusively on the prosecutor's finding that the applicant was on the ByLock red list. According to the facts in the file, the applicant was not provided with any information or documents relating to this sole

element, which was deemed to indicate membership of an organisation, during his detention (§ 202)[20] .

As just satisfaction, the applicant was awarded with 12,000 EUR for non-pecuniary damages and 1,000 EUR for the cost of the proceedings.

7. TURAN AND OTHERS v TÜRKİYE

a. FACTS

Turan and Others v. Turkiye[21] The applicants, who were judges or prosecutors during the period subject to the Turan and Others v. Turkiyejudgement, were arrested on charges of FETÖ/PDY membership on the basis of a case of red-handedness.

b. VIOLATIONS

As grounds for violation, the court categorised all complaints under a single issue. Unlawful detention (detention without observing judicial guarantees on the grounds of an offence, (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

The Court's findings can be summarised as follows. The applicants challenged the lawfulness of their detention before various national courts, including the Constitutional Court, none of which recognised that their detention was unlawful (§ 59).

Moreover, the case-law examples submitted show that the applicants' detention under general provisions, as opposed to the special procedure provided for in the laws on the detention of judges and prosecutors, was found by the highest courts of Turkiyeto be in accordance with the relevant domestic law (§ 59). In the light of the above, a claim for compensation under Article 141 § 1 (a) of the Criminal Procedure Code would have no prospect of success in respect of the applicants' complaints concerning the unlawfulness of their detention (§ 60).

Where domestic law provides legal protection for members of the judiciary in order to guarantee their independent performance of their duties, it is important that such provisions are duly respected (§ 82). The legal protection provided under Law No. 2802 does not imply immunity. However, given the importance of the judiciary in a democratic State governed by the

20 Evaluation of the ECtHR's Akgün v. TurkiyeJudgement (https://www.drgokhangunes.com/makale/aihmin-akgun-turkiye-kararinin-degerlendirilmesi/)

21 Turan and Others v. Turkiye, Application no. 75805/16 and 426 other applications, 23 November 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-215088%22]}

rule of law and the fact that such legal protection is granted to judges not for their personal benefit but to ensure the independent performance of their duties, the requirements of legal certainty become even more paramount where a member of the judiciary is deprived of his or her liberty (§ 90).

The Court cannot conclude that the detention of the applicants subject to Law no. 2802 was carried out in accordance with a procedure prescribed by law (§ 91). Similarly, the applicants, members of the Court of Cassation and the Council of State, were not deprived of their liberty in accordance with the procedure prescribed by law (§ 95).

Given the significance and impact of this finding, which goes to the heart of the protection afforded under Article 5 and leads to a violation of one of the core rights protected by the Convention, and the backlog of thousands of similar applications concerning detentions following the attempted coup d'état, which has placed considerable strain on the Court's limited resources, the Court considers that, as a matter of judicial policy, it is reasonable in these compelling circumstances to forego a separate assessment of each complaint under Article 5. The individual examination of the remaining complaints would significantly delay the processing of the cases in question, without conferring any appropriate benefit on the applicants or contributing to the development of the case-law. Moreover, the legal issues raised by these complaints have, for the most part, already been dealt with. In this exceptional context, the Court has decided not to examine the other complaints under Article 5, guided by the overriding interest in ensuring the long-term effectiveness of the Convention system under threat from an increased flow of applications (§ 98)[22].

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damages and cost of the proceedings.

22 Evaluation of the ECtHR's Turan and Others judgement (https://www.drgokhangunes.com/makale/aihmin-turan-ve-digerleri-kararina-iliskin-degerlendirme/); Turan and Others v. Turkiye: Judge/Solicitor Arrests: Neither shish nor kebab! (https://www.colemerghaber.com/haber/hakimsavci-tutuklamalarina-iliskin-turan-ve-digerleri-turkiye-karari-ne-sis-ne-kebap-12212); Turan and Others v. Turkiye: Mass Arbitrary Detentions of the Purged Members of Judiciary and the White Flag of the Strasbourg (http://opiniojuris.org/2022/02/10/turan-and-others-v-turkey-mass-arbitrary-detentions-of-the-purged-members-of-judiciary-and-the-white-flag-of-the-strasbourg/); Turan and Others v. Turkiyeand the Limits of Judicial Policy to Address Judicial Overload (https://strasbourgobservers.com/2022/01/18/turan-and-others-v-turkey-and-the-limits-of-judicial-policy-to-address-judicial-overload/); No Rule of Law? (https://verfassungsblog.de/no-rule-of-law/); 6. Results of the 2021 Strasbourg Observers Best & Worst Poll (https://strasbourgobservers.com/2022/03/29/results-of-the-2021-strasbourg-observers-best-worst-poll/)

8. YASİN ÖZDEMİR v TÜRKİYE[23]

a. FACTS

The applicant, a teacher, was arrested on charges of making propaganda for FETÖ/PDY due to his Facebook posts in the past; he was convicted of the offence of praising the offence and the offender.

b. VIOLATIONS

Grounds of application: Violation of freedom of expression (conviction of the applicant on the basis of the posts was unforeseeable, Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

In the judgement, the ECtHR made the following observations. The expression of criticism of governments must not result in serious accusations of association with or support for organisations considered to be terrorist. A broad interpretation of the provisions of criminal law, whereby the exercise of the right to freedom of expression could be likened to membership of or support for an armed terrorist organisation, in the absence of any concrete evidence of such a link, could undermine, inter alia, the foreseeability of the law, which is an essential element of its character as law (§ 35).

The applicant's comments consisted in particular of his views on current political issues (§ 37). The Court observes that, at the time of their publication, they contained ideas and opinions expressed in the context of public debate on sensitive issues and that similar opinions had previously been expressed not only by members of the Fetullahist movement but also by legal opponents, in particular political opposition parties and national and international media. In particular, the Court notes that these views did not advocate the use of violence and did not call for rebellion. The Court considers that the fact that some members of the Fetullahist movement, using some of these views as a pretext, attempted a coup d'état some fifteen months later does not affect the above-mentioned findings concerning the freedom to express such views in public debate (§ 38).

The Court also notes that at the time of the events there were no final convictions of members of the Fetullahist movement for being leaders or members of an illegal or terrorist organisation (§ 40), even if they were regarded as a danger by some organs of the executive. The

23 Yasin Özdemir v. Turkiye, Application No. 14606/18, 7 December 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-216528%22]}

applicant could not reasonably have been expected to foresee that his comments in question, which were recorded as being against the Government but which constituted a peaceful participation in public debate and did not contain any call for rebellion, could, more than a year later, constitute a clear and imminent danger to public order, such as an attempted coup d'état. To base a conviction on an argument to the contrary, as the court concerned did, would be an overly broad interpretation of the law and an overstepping by that court of the barrier provided by the legislature against vague accusations preventing the expression of peaceful views in debates of public interest (§ 41).

In the light of the foregoing, the Court considers that such a broad interpretation of the relevant criminal law provision (Article 215 of the Criminal Code) was not foreseeable for the applicant at the time of the events (§ 42).[24]

As just satisfaction, the applicant was awarded with 12,000 EUR for non-pecuniary damages and 1,000 EUR for the cost of the proceedings.

9. ILICAK v TÜRKİYE (No 2)[25]

a. Facts

The applicant Nazlı Ilıcak is one of the journalists who were arrested during this period solely due to their professional activities. The applicant, who is a journalist, was arrested together with some other journalists between 15 and 17 July on the grounds of her tweets and interviews with some members of the judiciary and security forces; the Constitutional Court ruled that the applicant's right to liberty and security and freedom of expression were not violated.

b. Violations

Reasons for the alleged breach:

1. Arrest without reasonable suspicion (Art. 5/1).

2. Violation of freedom of expression (detention for journalistic activity does not meet the requirement of being prescribed by law, Art. 10)

24 Evaluation on the ECtHR's Yasin Özdemir v. Turkiye(https://www.drgokhangunes.com/makale/aihmin-yasin-ozdemir-turkiye-kararina-iliskin-degerlendirme/)

25 Ilıcak v. Turkiye- 2, Application No. 1210/17, 14 December 2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-216673%22]}

c. Other Issues Related to the Decision

In its judgement, the Court stated the following points. The Court firstly considers that working for a mass media, which was perfectly legal at the time of the events, cannot, in itself, be equated with membership of an organisation, regardless of the nature of the writings and activities of the person concerned (§ 139).

In December 2013, the corruption allegations against certain members of the government, as well as the measures taken by the government in response - in particular, the suspension from office or the initiation of disciplinary or criminal proceedings against the judicial police and judges/prosecutors responsible for these allegations - caused considerable public debate (§ 140).

It is part of the work and rights of a political news journalist to inform the public on matters of public interest in relation to the debate. Moreover, the police officers and judges/prosecutors who brought charges against relatives of certain members of the government in December 2013 were not, at the time of the events, accused of being members of a terrorist organisation. Rather, they were known to be part of a group opposed to the government and public officials who were subsequently suspended (§ 141).

The relevant authorities were unable to adduce any concrete information or facts suggesting that the FETÖ/PDY organisation had requested or instructed the applicant to disseminate the publications in question in order to contribute to the preparation and carrying out of a campaign of violence or to legitimise it (§ 142).

The reasoning followed by the authorities who ordered the applicant's detention in order to liken articles and interviews in certain mass media on matters of journalistic duty and debate in the public interest to the activities of a terrorist organisation, standing alone, cannot be regarded as an acceptable assessment of the facts and circumstances (§ 143).

The applicant's tweets included his assessments of current political issues, in particular the attempted coup d'état, his value judgments or criticisms of various acts of the Government, and his perspectives on the legality and legitimacy of administrative or judicial measures taken against alleged members or sympathisers of illegal organisations (§ 148). None of these messages could reasonably be interpreted by the applicant as a recognition of the legitimacy of the coup d'état (§ 149). Rather, the disputed messages expressed opposition to the policies of the current Government (§ 150).

The applicant's telephone conversations with persons working in the press and subsequently the subject of criminal investigations, which did not contain any criminal elements,

were in the ordinary course of a journalist's professional life and cannot be regarded as credible grounds for suspecting the applicant of having committed the offences charged (§ 152).

The financial transactions relating to the payment of the applicant's salary, having regard to the normal and ordinary nature of their amounts, cannot prove the existence of a relationship other than that which binds a professional journalist to his or her employers (§ 153). The Court considers that the acts attributed to the applicant enjoy a presumption of conformity with national law and the Convention (§ 158).

Consequently, the suspicions against the applicant did not reach the required minimum level of credibility (§ 159). The interference with the applicant's freedom of expression cannot be justified within the meaning of Article 10 § 2 of the Convention, as it was not prescribed by law (§ 201)[26] .

As just satisfaction, the applicant was awarded with 16,000 EUR for non-pecuniary damages and for the cost of the proceedings.

V. THE ECHR JUDGEMENTS IN 2022

1. NUH UZUN AND OTHERS v TURKİYE[27]

a. Facts

The applicants, who were arrested on charges of FETÖ/PDY membership, were denied their request to delete their letters recorded in UYAP.

b. Violations

The applicants claimed a violation of the right to respect for communication due to the registration of letters in UYAP (Art. 8).

c. Other Issues Related to the Decision

The Court observes that none of the legislative or administrative provisions invoked by the national authorities and the Government as a basis for the measure in dispute refers to the scanning and recording of the correspondence of detainees and convicts in the UYAP IT system (§ 91). The Court notes that the recording of detainees' and convicts' correspondence in the UYAP system derives directly and specifically from the circulars issued by the Ministry of Justice on 10

26 Evaluation on the ECHR's Nazlı Ilıcak Decision https://www.drgokhangunes.com/makale/aihmin-nazli-ilicak-kararina-iliskin-degerlendirme/

27 Nuh Uzun and Others v. Turkiye, Application no. 49341/18 and 13 other applications, 29 March 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-218188%22]}

October 2016 and reiterated on 1 March 2017 (§ 92). These were unpublished internal documents containing instructions from the Ministry of Justice to penal institutions. As they were not communicated in any way to the detainees and convicts, it must be established that, in those circumstances, they were not, in principle, binding on citizens. A text of this nature, published outside the exercise of normative competence, cannot be regarded as a "law" of sufficient "quality" within the meaning of the Court's case-law, since it cannot offer the appropriate protection and legal security necessary to prevent arbitrary interferences by public power with the rights guaranteed by the Convention (§ 97).

Therefore, the interference in dispute cannot be considered to be "prescribed by law" within the meaning of Article 8 § 2 of the Convention (§ 98). The public prosecutors' opinions submitted to the Assize Court were limited to stating that the challenged decisions of the execution judgeships were in accordance with the procedure and the law. Moreover, the applicants did not show that they could present new and relevant facts for the examination of their case in response to these opinions. The Court finds that the complaint concerning the failure to provide the prosecutor's opinion is inadmissible for lack of substantial prejudice (§ 107).

As just satisfaction, each applicant was awarded with 500 EUR for the cost of the proceedings.

2. TANER KILIC v TÜRKİYE (2)[28]

a. FACTS

The applicant, who is the Chairman of the Board of Directors of Amnesty International Turkiye, was arrested on charges of FETÖ/PDY membership and a lawsuit was filed against him; subsequently a second lawsuit was filed against him; the release decision was revoked upon appeal; his application to the Constitutional Court was found inadmissible.

b. VIOLATIONS

The following issues were put forward as the reasons for violation in the application:

1. Detention without reasonable suspicion (absence of credible grounds for suspecting the commission of an offence, Art. 5/1).

2. Unjustified detention (Art. 5/3).

28 Taner Kılıç v. Turkiye (2), Application No. 60389/10, 31 May 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219912%22]}

3. Absence of compensation for wrongful detention (Art. 5/5).

4. Violation of freedom of expression (detention for human rights activities does not meet the requirement of being prescribed by law, Art. 10).

c. Other Issues Related to the Decision

It is not unreasonable to conclude that the following facts constitute evidence of the applicant's membership of an illegal organisation: her subscription to the Zaman newspaper, which was lawful at the time of the events; her sister's marriage to the head of such a publication; the enrolment of her children in schools which were lawfully run at the time of the events but which were subsequently closed by decree-law. The conclusions of the report on the applicant's Bank Asya account do not, prima facie, appear to refute the applicant's statements that the account was opened for the payment of his children's school fees, and no anomalies in the use of that account have been identified. In particular, there is no evidence that the applicant contributed to financing the criminal activities of an illegal organisation through his account at the bank in question, which was legal at the time of the events (§ 104). There can be no reasonable doubt as to the facts or acts alleged against a detainee if they did not constitute an offence at the time they occurred (§ 105).

In the present case, the decisions ordering the applicant's continued detention contained no evidential elements relating to the use of the messaging application in question, such as the content or context of the messages sent. The Court therefore sees no reason to depart from the conclusion reached in the above-mentioned Akgün judgment (§ 107).

The document issued by the Security Directorate did not contain the underlying data on which it was based, nor did it provide any information as to how that data had been generated. Moreover, although numerous subsequent expert reports stated that the person concerned had never installed or used the messaging system in question on his mobile phone, the domestic courts took no account of this development (§ 108).

As regards the new acts attributed to the applicant in the framework of the second criminal proceedings, the Court notes that, prima facie, they were ordinary peaceful and lawful acts of a human rights defender. The Court does not see how such acts alone could justify the suspicions in question, in the absence of other elements establishing the criminal nature of the conduct in question (§ 112).

The maintenance of credible grounds for suspecting that a person has committed an offence is a sine qua non condition for the lawfulness of continued detention. The Court

considers that, in the absence of such grounds, there has been a violation of Article 5 § 3 of the Convention (§ 119).

The remedy of compensation provided for in Article 141 of the Code of Criminal Procedure cannot constitute a remedy within the meaning of Article 5 § 5 of the Convention in respect of complaints that there are no credible grounds for suspecting that a person has committed an offence and that there are no proper and sufficient grounds to justify detention (§ 125). An unlawful detention measure cannot, in principle, be regarded as a restriction prescribed by national law, provided that it constitutes an interference with one of the freedoms protected by the Convention (§ 156).

It follows that the interference cannot be justified within the meaning of Article 10 § 2 of the Convention because it is not prescribed by law (§ 157). In the present case, the allegations under Article 18 of the Convention are essentially the same as those under Articles 5 and 10. Having regard to the foregoing, the Court concludes that it is not necessary to examine the complaint in question (§ 168)[29] .

As just satisfaction, the applicant was awarded with 16,000 EUR for non-pecuniary damages; 8,500 EUR for pecuniary damages and 10,000 EUR for the cost of the proceedings.

3. ACAR AND OTHERS v TÜRKİYE[30]

a. FACTS

The applicants, who were judges or prosecutors, were arrested on charges of FETÖ/PDY membership.

b. VIOLATIONS

Detention without reasonable suspicion (Art. 5/1) was alleged as a ground for violation.

c. OTHER ISSUES RELATED TO THE DECISION

The first arrest warrants against the applicants were based solely on the decisions of the HSK or the First Presidency Board of the Court of Cassation to suspend or revoke their authorisations or on the information that the applicants had used the ByLock messaging system. The Court has previously found that none of these grounds were of such a nature as to constitute

29 Evaluation of the ECtHR's Taner Kılıç v. Turkiye (https://www.drgokhangunes.com/makale/aihmin-taner-kilic-turkiye-kararinin-degerlendirilmesi/); Taner Kılıç v. Turkiye - 2: Court, Don't Disregard Article 18 All too Easily! (https://strasbourgobservers.com/2022/08/16/taner-kilic-v-turkey-no-2-court-dont-disregard-article-18-all-too-easily/),

30 Acar and Others v. Turkiye, Application no. 64251/16 and 49 other applications, 28 June 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219054%22]}

"reasonable suspicion" of the offence charged. Furthermore, as regards the disciplinary proceedings against the four applicants named in the HSK decision, the Government did not provide arguments to support the conclusion that the conduct underlying the proceedings could suggest membership of FETÖ/PDY and thus form the basis of a suspicion justifying a detention order (§ 10). The Court sees no reason to depart from the conclusions of its previous judgments, since at the time of the first arrest warrants there were no other facts or elements of evidence which could have convinced an impartial observer that the applicants had committed the alleged offence (§ 11).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

4. ULUSOY AND OTHERS v TÜRKİYE[31]

a. Facts

The applicants, who were judges or prosecutors, had been arrested on charges of FETÖ/PDY membership.

b. Violations

Detention without reasonable suspicion (Art. 5/1) was alleged as a ground for violation.

c. Other Issues Related to the Decision

The Court notes that the applicants' initial detention was based solely on the HSK's suspension decisions and/or information that they had used the ByLock messaging system. The Court has previously found that none of these grounds were of such a nature as to constitute "reasonable suspicion" of the offence attributed to them (§ 9).

The Court sees no reason to depart from the conclusions reached in its previous judgments in the absence of any other information or elements of evidence which could have convinced an impartial observer that the applicants had committed the alleged offence at the time of the first detention orders (§ 10).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

31 Ulusoy and Others v. Turkiye, Application no. 73062/16 and 20 other applications, 6 September 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219048%22]}

5. BAYRAM AND OTHERS v TÜRKİYE[32]

a. FACTS

In Bayram and Others v. Turkiye, the applicants, who were judges or prosecutors, were arrested on charges of FETÖ/PDY membership on the basis of a suspicion of an offence.

b. VIOLATIONS

Unlawful arrest on the grounds of being caught red-handed without observing judicial safeguards (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

Having regard to its findings in the cases of Baş and Turan and Others, the Court held that the applicants' detention was not in accordance with the procedure prescribed by law and that their detention was therefore unlawful and in violation of Article 5 § 1 (§ 9).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

6. ATAMAN AND OTHERS v TÜRKİYE[33]

a. FACTS

The applicants, who were judges or prosecutors, were arrested on charges of FETÖ/PDY membership on the basis of a case of being caught red-handed.

b. VIOLATIONS

Unlawful arrest on the grounds of being caught red-handed without observing judicial safeguards (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

Having regard to its findings in the cases of Baş and Turan and Others, the Court held that the applicants' detention was not in accordance with the procedure prescribed by law and that their detention was therefore unlawful and in violation of Article 5 § 1 (§ 9).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

32 Bayram and Others v. Turkiye, Application no. 20061/17 and 107 other applications, 6 September 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221014%22]}

33 Ataman and Others v. Turkiye, Application no. 14676/17 and 30 other applications, 6 September 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221013%22]}

7. GELEŞ AND OTHERS v TÜRKİYE[34]

a. FACTS

The applicants, who were judges or prosecutors, were arrested on the charge of FETÖ/PDY membership on the basis of a suspicion of criminal offence.

b. VIOLATIONS

Unlawful arrest on the grounds of being caught red-handed without observing judicial safeguards (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

Having regard to its findings in the cases of Baş and Turan and Others, the Court held that the applicants' detention was not in accordance with the procedure prescribed by law and that their detention was therefore unlawful and in violation of Article 5 § 1 (§ 9).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

8. BAŞER AND ÖZCELİK v TÜRKİYE[35]

a. FACTS

The applicants, judges of the Criminal Court of First Instance, were suspended in an investigation initiated by the HSK without the permission procedure following their decision to release the police officers who carried out the operations known as “17/25 December”; they were arrested on charges of attempting to overthrow the government and membership of an armed terrorist organisation and their applications to the Constitutional Court were found inadmissible.

b. VIOLATIONS

The following issues were put forward as the reasons for violation in the application:

1. Unlawful detention (detention without observing judicial guarantees, Art. 5/1).

2. Arrest without reasonable suspicion (failure to state or show specific facts and information that would give rise to the suspicion justifying the arrest, Art. 5/1).

34 Geleş and Others v. Turkiye, Application no. 75881/16 and 69 other applications, 6 September 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221004%22]}

35 Başer and Özçelik v. Turkiye, Application no. 30694/15 and 30803/15, 13 September 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221902%22]}

c. Other Issues Related to the Decision

The Court's grounds of violation can be summarised as follows. The Third Chamber of the HSK decided not to apply the provision set out in Article 82 of Law No 2802 but the exception provided for in Article 83 of the same Law (§ 150). In order to apply the exception provided for in Article 83 of Law no. 2802, two conditions must be met: a) the existence of facts of which the justice inspectors have knowledge during the inspection and investigation and b) the inconvenience of delay in initiating an investigation (§ 153).

Since the inspection and ex officio investigation were initiated after the publication of certain articles concerning irregularities attributed to the applicants, there is a serious suspicion that the case concerned irregularities of which the authorities "had knowledge during the inspection", as required by the above provision.

The Court considers that the Third Chamber's judgment fails to establish that the case concerned matters of which the authorities "had knowledge during the inspection" (§ 154). The Court also has very serious doubts as to whether the first condition under Article 83, concerning the lack of prior authorisation for the investigation and the applicants' pre-trial detention, was satisfied (§ 156).

As regards the second condition required by Article 83, namely the risk that a late opening of the investigation would be inconvenient, the Third Chamber, without explaining why a late opening of the investigation would be inconvenient, decided to apply the exception set out in that provision. Article 37 of the Regulation on the Inspection Board stipulates that if an investigation is initiated without prior notification, the President of the HCJP must be notified of the relevant information and documents forming the basis of the opinion that the late opening of the investigation would be inconvenient, as well as the justification. Similarly, judges and prosecutors deprived of procedural safeguards must be informed in detail of the grounds on which the derogation applies (§ 157).

The Court considers that the Third Chamber's short judgment, which refers only to the statutory provision in question, lacks sufficient reasons and fails to provide protection against arbitrariness in the context of the detention of judges for offences allegedly committed in the exercise of their functions (§ 158). In the light of the above, the Court concludes that the applicants' detention in circumstances which deprived them of the procedural safeguards afforded to judges in relation to offences allegedly committed in the exercise of their functions was not in accordance with a procedure provided for by law (§ 159).

The establishment of a special criminal court to deal with terrorist offences is compatible with Article 6 § 1 of the Convention and the specialisation of an existing court is a matter of internal administration and cannot be interpreted as the establishment of a special court (§ 166).

The irregularities attributed to the applicants in the process resulting from the contested decisions cannot be regarded as objective and sufficient to satisfy an impartial observer that the applicants could have committed the offences of overthrowing the government and membership of a terrorist organisation during their initial detention. The evidence in question is not sufficient to establish a firm link between the applicants' conduct and these offences and to conclude that they acted on the instructions of the organisation of which they are alleged to have been members (§ 198).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

9. MORAL AND OTHERS v TÜRKİYE[36]

a. FACTS

The applicants, who were judges or prosecutors, were arrested on charges of FETÖ/PDY membership.

b. VIOLATIONS

Detention without reasonable suspicion (Art. 5/1) was alleged as a ground for violation.

c. OTHER ISSUES RELATED TO THE DECISION

The initial detention orders against the applicants were based solely on the HSK's suspension decisions or information that they had used the ByLock messaging system. The Court has previously found that none of these grounds relied on by the national courts were of such a nature as to constitute "reasonable suspicion" of the offence charged. Furthermore, as regards the disciplinary proceedings against the applicants named in the HSK decision, the Government did not provide arguments to support the conclusion that the conduct underlying the proceedings could suggest membership of FETÖ/PDY and thus form the basis of a suspicion justifying a detention order (§ 9). The Court sees no reason to depart from the conclusions reached in its previous judgments, since at the time of the first arrest warrants there were no other facts or elements of evidence which could have convinced an impartial observer that the applicants had committed the alleged offence (§ 10).

36 Moral and Others v. Turkiye, Application no. 49867/17 and 31 other applications, 18 October 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-220006%22]}

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

10. SEVİNÇ AND OTHERS v TÜRKİYE[37]

a. FACTS

In Sevinç and Others v. Turkiye, the applicants, who were judges or prosecutors, were arrested on the charge of FETÖ/PDY membership on the basis of a suspicion of being caught red-handed.

b. VIOLATIONS

Unlawful arrest on the grounds of being caught red-handed without observing judicial safeguards (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

Having regard to its findings in the cases of Baş and Turan and Others, the Court held that the applicants' detention was not in accordance with the procedure prescribed by law and that their detention was therefore unlawful and in violation of Article 5 § 1 (§ 9).

The judgement awards non-pecuniary damages of EUR 5000 per applicant.

11. SUBAŞI AND OTHERS v TÜRKİYE[38]

a. FACTS

The applicants, who were imprisoned on charges of FETÖ/PDY membership, were denied their request for weekend visits or telephone calls.

b. VIOLATIONS

The following issues were put forward as the reasons for violation in the application:

1. Violation of the right to respect for family life in respect of all applicants due to the denial of weekend visits in prison (Art. 8).

2. Violation of the right to respect for family life and correspondence in respect of two applicants due to denial of weekend phone calls in prison (Art. 8).

37 Sevinç and Others v. Turkiye, Application no. 63634/16 and 134 other applications, 18 October 2022, https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22TUR%22],%22appno%22:[%2263634/16%22],%22itemid%22:[%22001-224297%22]}

38 Subaşı and Others v. Turkiye, Application no. 3468/20 and 18 other applications, 6 December 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221258%22]}

c. Other Issues Related to the Decision

The Court does not agree that the applicants' inability to see their school-age children on a weekly basis constituted "insignificant harm". Nor does it agree that it is insignificant prejudice for the applicants to maintain contact with their children less frequently than would have been the case if weekend visits had been open (§ 63). In exercising their discretion to fix the days of the weekly visits, the prison administrations made decisions based solely on their assessment of the capacity of the prisons rather than on their relationship with the detainees and their children. The restriction of visits to weekdays and working hours appears to have been intended to reduce the number of visitors so that visits would be easier to manage (§ 90). It does not appear from the decisions of the first-instance courts that they balanced the competing interests or carefully considered the applicants' claims (§ 91).

The Constitutional Court also rejected the applications in a short judgement referring to the measures introduced during the state of emergency. However, the applicants' complaints concerned a period after the state of emergency and required a fresh examination (§ 92). The Court therefore held that the national legal framework as applied in the present case did not offer adequate protection against arbitrary interference with family life (§ 93).

The decision of the prison authorities to ban weekend telephone calls was drafted in very general terms, without any concrete assessment of the detainees' needs or any regard to the State's obligation to facilitate the detainees' contact with their children. The Court notes that the national authorities dealt superficially with the applicants' Convention complaints and deprived them of procedural guarantees in respect of their right to respect for family life and correspondence (§ 108).

As just satisfaction, each applicant was awarded with 1,500 EUR for non-pecuniary damage and 500 EUR for the cost of the proceedings.

12. GÜNGÖR AND OTHERS v TÜRKİYE[39]

a. Facts

The applicants, who were judges or prosecutors, were arrested on the grounds of FETÖ/PDY membership.

39 Güngör and Others v. Turkiye, Application no. 59639/17 and 81 other applications, 13 December 2022, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-221477%22]}

b. VIOLATIONS

Detention without reasonable suspicion (Art. 5/1) was alleged as a ground for violation.

c. OTHER ISSUES RELATED TO THE DECISION

The Court observes that, in ordering the applicants' initial detention, the criminal judges of peace attempted to justify their decision by making a general reference to Article 100 of the Criminal Procedure Code, the possible sentence and the evidence in the file. Without an individual assessment of the elements of evidence in the file, or any information or other corroborating document or fact justifying the suspicion against the applicants, such a general reference is not sufficient to justify the reasonableness of the suspicion. To the extent that the arrest warrants took into account the applicants' suspension or the alleged use of the Bylock messaging system, the Court has previously held that neither of these grounds was of such a nature as to constitute "reasonable suspicion" in respect of the offences attributed to the applicants. The Court also notes that at that time there were no witness statements in the case files indicating concrete and specific facts that could give rise to reasonable suspicion against the applicants (§ 8).

The Court finds that the requirement of the reasonableness of the suspicion justifying the detention was not satisfied, since at the time of the first arrest warrants no other indications, facts or information were presented which could have convinced an impartial observer that the applicants had committed the offence charged (§ 9).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage.

VI. THE ECHR JUDGEMENTS IN 2023

1. ABDULLAH KILIC v TÜRKİYE[40]

a. FACTS

The applicant, a journalist, was arrested on charges of FETÖ/PDY membership; a lawsuit was filed against him for the articles he wrote in Meydan Newspaper and the tweets he tweeted; on the day he was released in this case, a new investigation was opened and he was detained and arrested again on charges of attempting to overthrow the constitutional order and praising

40 Abdullah Kılıç v. Turkiye, Application no. 43979/17, 31 January 2023, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-222778%22]}

the crime and the offender; The HYSK suspended the judges who ordered his release and the public prosecutor who requested it; the Constitutional Court decided on his individual application in a period of 1 year, 5 months and 9 days; his complaints regarding his first detention were found inadmissible.

b. VIOLATIONS

The following issues were put forward as the reasons for violation in the application

1. Arrest without reasonable suspicion (Art. 5/1).

2. Lack of grounds for detention decisions (Art. 5/3).

3. Violation of the right to effective appeal against detention (time elapsed before the Constitutional Court does not meet the requirement of urgent review, Art. 5/4).

4. Absence of a remedy for compensation for detention (complaint concerning initial detention dismissed, Art. 5/5).

5. Violation of freedom of expression (the applicant was arrested for his articles and tweets, Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

In deciding whether there was a strong suspicion that the applicant had committed an offence, the Constitutional Court relied on evidence that was not included in the initial detention decision. As this evidence had no impact on the initial decision to detain the applicant, the Court considers that it is not necessary to examine these elements of evidence (§ 80).

Like the Constitutional Court, the Court notes that the criminal court of peace did not justify the applicant's detention on the basis of any concrete evidence. The Court therefore considers that at the time of the applicant's detention there were no facts or information which could have convinced an impartial observer that he had committed the alleged offences (§ 81).

In these circumstances, the Court considers that the interpretation and application of the statutory provisions invoked by the national authorities were so illogical as to render the deprivation of liberty to which the applicant was subjected unlawful and arbitrary (§ 82).

The existence of reasonable grounds for suspecting that the detained person has committed an offence is a sine qua non condition of the appropriateness of detention. In the absence of such grounds, the Court considers that there has been a violation of Article 5 § 3 of the Convention in respect of the alleged unreasonableness of the detention (§ 87).

The Court can recognise that, in the present case, the issues before the Constitutional Court were relatively complex. However, there is nothing in the case file to indicate that the applicant

or his lawyer had any role in the prolongation of the Supreme Court's examination (§ 103). For these reasons, the Court concludes that the period in question was excessively long and cannot be regarded as "short" (§ 106). As the applicant's complaints concerning his first detention were found inadmissible, the compensation awarded to the applicant by the Constitutional Court did not relate to the violations found by the Court. Consequently, notwithstanding the payment of compensation in respect of the applicant's second detention, the individual application to the Constitutional Court constituted an effective remedy within the meaning of Article 5 § 5 of the Convention in the circumstances of the instant case (§ 122).

Although not mentioned in the detention order, the applicant was subjected to criminal proceedings for his articles and tweets published in the newspaper (§ 138). The interpretation and application of the legal provisions invoked by the national authorities were found to be so unreasonable as to give an undue and arbitrary character to the deprivation of liberty to which the applicant was subjected. It therefore follows that the interference with the applicant's freedom of expression cannot be justified in terms of Article 10 § 2 of the Convention, since it was not provided for by law (§ 143).

The Court further notes that the detention of critical voices is likely to have a multiple adverse effect both for the person detained and for society as a whole (§ 144), as the application of a measure restricting liberty would have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices.

The judgement awards a total of EUR 13,375 in damages, of which EUR is non-pecuniary. As just satisfaction, each applicant was awarded with 12,275 EUR for non-pecuniary damage and 1,100 EUR for non- pecuniary damage.

2. TELEK AND OTHERS v TÜRKİYE[41]

a. FACTS

The applicants, publicly known as Peace Academics, were dismissed from the universities where they worked and had their passports cancelled by State of Emergency Decree Laws No. 675 and 686; they were unable to obtain new passports for a long time; two applicants were therefore unable to attend their doctoral studies abroad and one applicant had difficulties in proving his official identity in Germany where he was based.

41 Telek and Others v. Turkiye, Application no. 66763/17, 66767/17 and 15891/18, 21 March 2023, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-223639%22]}

b. VIOLATIONS

The following issues were put forward as the reasons for violation in the application

1 Violation of the right to respect for private life due to passport cancellation being open to arbitrariness, contrary to the principle of legality and not meeting the requirement of being prescribed by law (Art. 8).

2. Violation of the right to education as the interference was not foreseeable (Protocol No. 1 art. 2).

c. OTHER ISSUES RELATED TO THE DECISION

As the applicants had strong professional and personal ties with the countries to which they wished to go or stay, their inability to obtain a valid passport for a considerable period of time had a significant impact on their professional and private lives (§ 113). The interference in question therefore constituted an interference with the applicants' private life (§ 114).

The discretion exercised by the administrative authorities in revoking the applicants' passports was not subject to any conditions, the scope and procedures for the exercise of that discretion were not specified and no specific guarantees were provided. Consequently, the Court considers that this measure, taken in administrative proceedings under a state of emergency, is open to arbitrariness and incompatible with the requirement of legality (§ 125).

For these reasons, the Court considers that the impugned measure was not prescribed by law within the meaning of Article 8 § 2 of the Convention (§ 126). The considerations that the seizure of passports was arbitrary and incompatible with the principle of legality apply equally to the right to education (§ 152). Consequently, the interference with the applicants' right to education was not foreseeable (§ 153).

As just satisfaction, 12,000 EURfor non-pecuniary damages for two applicants; 9,750 non-pecuniary damages for one applicant, and 1,000 EUR for the costs of the proceedings.

3. USLU V TÜRKİYE[42]

a. FACTS

Two notebooks kept by the applicant were seized on the grounds that they contained information that could reveal the identities of third parties and that some persons held on FETÖ/PDY charges communicated in this way.

b. VIOLATIONS

The applicant claimed that there was no legal basis for the interference as there was no provision authorising the seizure of the notebooks and therefore his freedom of expression was violated (Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

As regards the Government's objection that no proceedings had been instituted under Article 141 of the Criminal Procedure Code, the applicant's application to the Constitutional Court was rejected as manifestly ill-founded, not for failure to exhaust remedies. Moreover, no examples of judgements by national courts awarding compensation in similar circumstances could be provided. The Government's appeal was therefore dismissed (§ 13).

The confiscation of the notebooks in which he had described his feelings about the criminal proceedings he had faced constituted an interference with his freedom of expression (§ 15). The Court has previously held that the seizure of a detainee's written documents has no basis in Turkish law (§ 18). In the present case the national authorities did not rely on any legal basis in seizing the applicant's notebooks and in rejecting his objection (§ 19). In the light of the above, the Court finds that the interference in question was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention (§ 20).

42 Uslu v. Turkiye, Application no. 51590/19, 21 March 2023, https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22USLU%22],%22itemid%22:[%22001-223646%22]}

4. HALLACOĞLU AND OTHERS v TÜRKİYE[43]

a. FACTS

The private letters, received or sent, of the applicants held on charges of FETÖ/PDY membership were recorded in UYAP system, while they were inmates; their requests to delete them were rejected by the prison administrations and judicial bodies.

b. VIOLATIONS

The ECtHR found the following violations: Violation of the right to respect for correspondence (Art. 8), as the applicants' letters were registered in UYAP without appropriate legislation.

c. OTHER ISSUES RELATED TO THE DECISION

The Court found a violation of Article 8 of the Convention, as the interference with the applicants' right to respect for private life and correspondence through the registration of their letters in UYAP could not be considered to be "prescribed by law" within the meaning of Article 8 § 2 of the Convention (§ 11).

As regards application No. 7360/19, the Government referred to two further circulars as the legal basis for the recording of the applicant's correspondence with his lawyer. The Court observes, however, that these circulars were not relied on in the contested decisions and, above all, that they do not contain any rules concerning the recording of prisoners' correspondence with their lawyers (§ 12).

The judgement held that the finding of violation constituted adequate as just satisfaction.

5. ÇAYLI AND SERLİ v TÜRKİYE[44]

a. FACTS

The Applicants held on charges of FETÖ/PDY membership had their correspondence with their lawyers monitored or confiscated.

b. VIOLATIONS

The ECtHR found the following violations: Violation of the right to respect for communication (interference did not meet the requirement of being necessary in a democratic society, Art. 8).

43 Hallaçoğlu and Others v. Turkiye, Application No. 6239/19 and 2 other applications, 4 April 2023.
44 Çaylı and Serli v. Turkey, Application Nos. 49535/18 and 10419/20, 9 May 2023.

c. Other Issues Related to the Decision

The confidentiality of correspondence between a detainee and his or her lawyer constitutes a fundamental right of individuals and directly affects the right to a defence. It may therefore only be restricted in exceptional circumstances and must be surrounded by adequate and effective safeguards against abuse, such as the mandatory control of correspondence being vested in independent judges and not in the prison administration (§ 25).

In the present case, it was not established that the monitoring and interception of correspondence between the applicants and their lawyers by the prison authorities was carried out in such exceptional circumstances and was surrounded by the necessary safeguards against abuse. The interference was therefore not "necessary in a democratic society" within the meaning of Article 8 § 2 (§ 26).

As just satisfaction, each applicant was awarded with 300 EUR for non-pecuniary damage.

6. DEMİRTAŞ AND YÜKSELDAĞ ŞENOĞLU v TÜRKİYE[45]

a. Facts

It was decided to monitor the meetings of the applicants detained for terrorism-related offences with their lawyers and to inspect the documents they exchanged (Article 6 of the Decree Law No. 676).

b. Violations

The ECtHR found the following violations: Violation of the right to an effective challenge to detention (effective legal assistance, Art. 5/4).

c. Other Issues Related to the Decision

The decision of the criminal court of peace was written in template terms and did not meet the requirements of domestic law. The Constitutional Court also failed to make an adequate assessment. No individualised examination was carried out in respect of the applicants (§ 109).

If a detained person is unable to consult his or her lawyer in private, it is quite likely that he or she will not feel free to do so. In such a situation, the legal assistance provided by a lawyer is in danger of losing its practical usefulness (§ 111).

45 Demirtaş and Yükseldağ Şenoğlu v. Turkey, Application Nos. 10207/21 and 10209/21, 6 June 2023.

The confidentiality of conversations between a detainee and his or her lawyer constitutes a fundamental right of the individual and directly touches on the rights of defence. Departure from this principle is therefore only permissible in exceptional circumstances and must be surrounded by appropriate and adequate safeguards against abuse. However, the legislation applicable in the present case is not surrounded by such safeguards. The legislation did not specify how the information obtained during such monitoring should be utilised. The scope of the discretionary powers vested in the authorities and the procedure for their exercise were not defined at all and no specific safeguards were provided for. In the absence of specific and detailed regulations, it cannot be said that the monitoring of communications between the detainee and his lawyer is surrounded by adequate safeguards against abuse (§ 112).

The Court considers that the national courts failed to establish the existence of exceptional circumstances which would have departed from the fundamental principle of the confidentiality of the applicants' meetings with their lawyers and that the breach of the confidentiality of those meetings prevented the persons concerned from enjoying the effective assistance of their lawyers in fulfilling the requirements of Article 5 § 4 of the Convention, and that the restrictions in question were not surrounded by appropriate and adequate safeguards against abuse (§ 113).

There are no exceptional circumstances to establish a link between Turkiye's derogation and the applicants' deprivation of liberty. Moreover, even assuming that such exceptional circumstances existed, the fundamental principle of the rule of law, which is at the core of all Articles of the Convention, must apply even in the context of a state of emergency. The national authorities did not provide the applicants with detailed information justifying the imposition of the measures in question under Decree-Law No. 676, which was adopted in the context of a state of emergency (§ 114).

As just satisfaction, each applicant was awarded with 5,500 EUR for non-pecuniary damage and 2,500EUR for the legal costs jointly.

7. AYVAZ AND OTHERS v TÜRKİYE[46]

a. FACTS

The applicants, who are judges or prosecutors, were arrested on charges of FETÖ/PDY membership based on a case of being caught red-handed.

46 Ayvaz and Others v. Turkey, Application No. 14347/17 and 130 other applications, 11 July 2023.

b. Violations

The ECtHR found the following violations: Unlawful detention (detention on suspicion of an offence, without observing judicial guarantees, Art. 5/1).

c. Other Issues Related to the Decision

Having regard to its findings in the cases of Baş and Turan and Others, the Court held that the applicants' detention was not in accordance with the procedure prescribed by law and that there had therefore been a violation of Article 5 § 1 of the Convention on the ground that their detention was unlawful (§ 15).

As just satisfaction, 121 of the 121 applicants were awarded EUR 5,000 each in compensation for non-pecuniary damage and costs of the proceedings.

8. KILINCLI AND OTHERS V TÜRKİYE[47]

a. Facts

The applicants, who were judges or prosecutors, were arrested on charges of FETÖ/PDY membership.

b. Violations

The ECtHR found the following violations: Detention without reasonable suspicion (Art. 5/1).

c. Other Issues Related to the Decision

In the absence of any indication, "fact" or "information" which could have convinced the Court that the applicants were "reasonably suspected" of having committed the alleged offence at the time of their initial detention, the Court finds that the requirements of Article 5 § 1 (c) concerning the "reasonableness" of a suspicion justifying detention are not met (§ 16).

As just satisfaction, 11 of the applicants were awarded with 5,000 EUR for each in compensation for non-pecuniary damage and costs of the proceedings.

47 Kılınçlı and Others v. Turkey, Application No. 27336/17 and 12 other applications, 11 July 2023.

9. YÜKSEL YALÇINKAYA v TÜRKİYE [GC][48]

a. FACTS

The applicant was convicted of FETÖ/PDY membership on the basis of his use of the ByLock application, having an account at Bank Asya and being members of associations legally founded and trade unions closed down by the Decree Law. However, the data on which the ByLock detection was based were not provided to the defence, were not brought to the court and subjected to independent expert examination, and no response was given to the requests on these issues; instead, the court relied exclusively on the findings of the prosecution and administrative authorities.

Yüksel Yalçınkaya v. Turkiye judgement is the first judgement on the merits of criminal proceedings on the grounds of FETÖ/PDY membership. The application was first referred to a Chamber of the ECtHR; however, the Chamber withdrew the case in favour of the Grand Chamber, taking into account the nature and scope of the application. The hearing of the case took place on 18 January 2023. Since the judgment was rendered by the Grand Chamber, it is precedent-setting and binding for all applications within this scope. Therefore, other cases will be finalised in line with the findings of the Grand Chamber of the ECtHR.

b. VIOLATIONS

The ECtHR found the following violations:[49]

1. Violation of the principle of no crime and punishment without law (overly broad and unpredictable application of the Criminal Code, Art. 7);

48 Yüksel Yalçınkaya v. Turkey [BD], Application No. 15669/20, 26 September 2023.

49 ECtHR Yalçınkaya Judgement and Its Impact on Current Trials (https://justicesquare.org/aihm-yalcinkaya-karari-ozeti-ve-guncel-yargilamalara-etkisi/); Evaluation of the ECtHR Judgement on Yüksel Yalçınkaya v. Turkey (https://www.drgokhangunes.com/makale/aihmin-yuksel-yalcinkaya-turkiye-kararina-iliskin-degerlendirme/);
Evaluation of the European Court of Human Rights' Yüksel Yalçınkaya v. Turkey Decision (http://tbbyayinlari.barobirlik.org.tr/TBBBooks/679.pdf); Will the ECtHR's 'ByLock and Bank Asya' Decision Set a Precedent? (https://www.bbc.com/turkce/articles/c51lxjde1dpo); Constitutional Court's ByLock Decision... (https://www.karar.com/yazarlar/elif-cakir/anayasa-mahkemesinin-bylock-karari-1597730); Evaluations on the European Court of Human Rights' Yüksel Yalçınkaya v. Turkey Decision (https://izzetozgenc.com/data/contents/avrupa-insan-haklari-mahkemesi'nin-yuksel-yalcinkaya-turkiye-karari-uzerine-degerlendirmeler.pdf); How Should the "ByLock Decision" of the Grand Chamber of the ICJ be Interpreted? (https://sen.av.tr/tr/makale/İHAM-büyük-dairenin-bylock-karari-nasil-yorumlanmali); 'Article 7' Shockwaves, Bylock and Beyond: Unpacking the Grand Chamber's Yalçınkaya Judgment (https://strasbourgobservers.com/2023/10/13/article-7-shockwaves-bylock-and-beyond-unpacking-the-grand-chambers-yalcinkaya-judgment/); Implications of the Landmark Judgment: Yalçınkaya vs. Turkey (https://arrestedlawyers.org/2023/09/29/implications-of-the-landmark-judgment-yalcinkaya-vs-turkey/);
Systemic Problems Unveiled: The Yalcinkaya Case and the Demise of the Bylock Digital Evidence

2. Violation of the principle of equality of arms and adversarial proceedings (failure to make ByLock data accessible to the defence, Art. 6/1);

3. Violation of freedom of association (penalties based on association and trade union membership do not meet the requirement of being prescribed by law, Art. 11).

c. OTHER ISSUES RELATED TO THE DECISION

The relevant issue in the present case is whether a conviction for membership of an armed terrorist organisation was sufficiently foreseeable, in particular as regards the totality of the material and moral elements of the offence, having regard to the conditions laid down in the Criminal Code and in the case-law of the Court of Cassation (§ 253).

The Court considers that, beyond its evidential value, the determination of ByLock use exceeded the requirements of Article 314/2 of the Criminal Code in a manner contrary to the principle of legality, replacing an individualised determination of the existence of the material and moral elements of the offence (§ 262).

The interpretation of the national courts imposes de facto criminal liability on the user of this application without establishing that all the conditions for membership of an armed terrorist organisation, including intent, are fulfilled. This is incompatible with the essence of the offence in question, which requires proof of an organic link based on continuity, diversity and intensity and the existence of a specific moral element, as well as with the right not to be punished without a moral link on which the element of personal responsibility can be established (§ 264).

The difficulties encountered in penetrating a means of communication allegedly used by an organisation designated as terrorist are not a sufficient justification for imposing criminal liability almost automatically on those who have previously used it (§ 265).

The conviction for membership of an armed terrorist organisation had been handed down without the existence of all the constituent elements of the offence having been duly established in an individualised manner, contrary to the requirements of national law and the principles of legality and foreseeability. The national courts' interpretation has the effect in practice of

(https://www.echrblog.com/2023/10/systemic-problems-unveiled-yalcinkaya.html); Statement regarding the ECtHR's Judgment in the Yalçınkaya-Case (https://lawyersforlawyers.org/en/statement-regarding-the-ecthrs-judgment-in-the-yalcinkaya-case/); Strasburg Weighs In On Political Persecution In Turkey (https://verfassungsblog.de/strasburg-weighs-in-on-political-persecution-in-turkey/); What is the Meaning of "Systematic Violation of Rights" Mentıoned in the ECHR Yalçınkaya Decısıon? (https://www.crossborderjurists.org/what-is-the-meaning-of-systematic-violation-of-rights-mentioned-in-the-echr-yalcinkaya-decision/).

equating the mere use of ByLock with knowing and willing membership of an armed terrorist organisation (§ 267).

It is not the case that the guarantees contained in Article 7 of the Convention, which are inherent in the principle of the rule of law and are an unrestricted right, can be applied less strictly when it comes to the prosecution and punishment of terrorist offences (§ 270).

The scope of the offence in question was unforeseeably extended to the applicant's detriment (§ 271). For these reasons, there has been a violation of Article 7 of the Convention (§ 272).

Articles 4/1 and 6/1 of the MİT Law do not provide for procedural safeguards similar to those set out in Article 134 of the Criminal Procedure Code in relation to the collection of electronic evidence. Furthermore, the decision of the Ankara 4th Criminal Judgeship of Peace to examine the ByLock data does not constitute an after-the-fact judicial review of the MİT's data collection activity. The Court does not consider that the doubts as to the reliability of the ByLock data were abstract or unfounded, taking into account that the MIT kept the relevant data for months (§ 317).

The fact that the applicant had access to the ByLock reports in the case file does not mean that he did not have a right of access to or an interest in the data on which they were based (§ 327). Nor does the fact that the national courts found that the ByLock data were compatible with another set of data verified by an expert deprive the applicant of procedural rights in relation to that initial data (§ 318).

In particular, so far as it concerned him, no explanation was given as to why and on whose decision the raw data had been withheld from the applicant. The applicant was therefore deprived of the opportunity to present his counter-arguments (§ 331).

The courts also failed to take into account the applicant's request to submit the raw data to an independent examination in order to verify their content and integrity (§ 332). The applicant had a legitimate interest in requesting that the raw data be examined by independent experts and the courts had an obligation to provide an appropriate response (§ 333).

A number of other objections raising concerns about the reliability of the ByLock evidence (inconsistencies between different lists of users, discrepancies between the number of

downloads and the number of people under investigation, etc.) were also not responded to by the courts (§ 334).

Fourthly, the Regional Court of Appeal issued its judgement without waiting for the ByLock correspondence contents and the information on the persons contacted; the Court of Cassation rejected the objection regarding the absence of these data (§ 335).

The disadvantage suffered by the defence as a result of these defects was compounded by the deficiencies in the courts' reasoning on the ByLock evidence (§ 337).

A number of factual objections pointed to concrete gaps in the "exclusivity" and "organisational use" argument and required further explanation from the courts as to why it was accepted as such (§ 340). The Court considers that there were insufficient guarantees to ensure that the applicant had the opportunity to challenge the evidence against him and to present his defence effectively and on an equal footing with the prosecution. Moreover, the courts' failure to respond to the applicant's requests and objections gave rise to a justified suspicion that they were insensitive to the defence arguments and that the applicant had not been truly "heard" (§ 341).

It is incompatible with the procedural rights under Article 6 § 1 that the courts failed to provide appropriate safeguards against the main element of evidence for the applicant to challenge effectively, failed to address the substantive issues at the heart of the case and failed to justify their decisions (§ 345). These considerations are sufficient to conclude that the criminal proceedings did not fulfil the requirements of a fair trial (§ 346). The restrictions mentioned cannot be regarded as strictly required by the state of emergency (§ 355).

Having regard to these considerations, there has been a violation of Article 6 § 1 of the Convention (§ 356).

The manner in which Article 314 § 2 of the Criminal Code has been interpreted in respect of trade union and association membership has unforeseeably widened the scope of that provision, did not offer minimum protection against arbitrary interference and cannot be regarded as "prescribed by law" (§ 396). For these reasons, there has been a violation of Article 11 of the Convention (§ 402).

The violations under Articles 7 and 6 of the Convention arise in particular from the national courts' characterisation of the use of ByLock. Anyone found by national courts to have used this application could be convicted of membership of an armed terrorist organisation (§ 413).

The deficiencies identified need to be addressed by the Turkish authorities on a wider scale beyond the present case in order to avoid the Court having to decide on a large number of similar violations in the future. It is for the national authorities to draw the necessary conclusions from the present judgment, in particular but not limited to the cases pending before the national courts, and to take appropriate general measures to remedy the problem identified as giving rise to the violation (§ 418).

Following the judgement, the Court held that the finding of violation constituted adequate compensation on the grounds that the applicant had the possibility of renewal of the proceedings under Article 311/1 (f) of the Code of Criminal Procedure and that renewal of the proceedings would be the best remedy. The applicant was awarded with 15,000 EUR for the costs of the proceedings.

10. MEHMET DEMİR v TÜRKİYE[50]

a. FACTS

Executive Decree No. 676, the Criminal Judgeship of Peace decided that the documents taken and given to the applicant during his meeting with his lawyer were subject to inspection.

b. VIOLATIONS

The ECtHR found the following violations: Violation of the right to respect for communication (the interference did not meet the requirement of being prescribed by law within the meaning of the Convention, Art. 8).

c. OTHER ISSUES RELATED TO THE DECISION

In imposing the measure in question, the national courts did not point to any specific element indicating the particular danger posed by the documents exchanged between the applicant and his lawyer. The Court notes that the discretion exercised by the authorities to control the exchange of documents between the applicant and his lawyer was not subject to any conditions, the scope and manner of its exercise were not defined and no other specific safeguards were provided. Derogation from the right to respect for the communication of

50 Mehmet Demir v. Turkey, Application No. 55569/19, 24 October 2023.

prisoners and their lawyers is permitted only in exceptional circumstances and must be accompanied by appropriate and adequate safeguards against abuse (§ 24).

The national courts' interpretation and application of the relevant provision is broad and ambiguous and such an expansive interpretation and application of the relevant provision is incompatible with the requirements of foreseeability and legality (§ 25). The Court therefore considers that the interference in question was not "prescribed by law" and was not strictly required by the circumstances of the state of emergency (§ 26).

11. ERİŞ AND OTHERS v TÜRKİYE[51]

a. FACTS

The applicants were arrested on charges of FETÖ/PDY membership. The judgement is the first ECtHR judgement on the merits of the detention of persons other than members of the judiciary.

b. VIOLATIONS

The ECtHR found the following violations: Detention without reasonable suspicion (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

It has already been held that ByLock does not constitute reasonable suspicion. Other evidence (Bank Asya, media publications) is circumstantial and, in the absence of other information justifying suspicion of guilt, enjoys a presumption of legality and cannot be considered as evidence of membership of an armed terrorist organisation (§ 8).

The Court finds that the requirements of Article 5 § 1 (c) concerning the "reasonableness" of a suspicion justifying detention are not met, as no indication, "fact" or "information" could be adduced which could have convinced the Court that the applicants were "reasonably suspected" of having committed the alleged offence at the time of their initial detention. The fact that the applicants were not members of the judiciary, as argued by the Government, does not alter this conclusion (§ 9).

As just satisfaction, each of the 44 applicants was awarded with 5,000 EUR for non-pecuniary damage and the costs of the proceedings.

51 Eriş and Others v. Turkey, Application No. 58665/17 and 44 other applications, 24 October 2023.

12. CANAVCI AND OTHERS v TÜRKİYE[52]

a. FACTS

Based on Executive Decree 667 Article 6/1 (d), the applicants' meetings with their lawyers were monitored and audio and video recorded by an officer.,

b. VIOLATIONS

The ECtHR found the following violations: Violation of the right to respect for private life (the interference did not meet the requirement of being prescribed by law within the meaning of the Convention, Art. 8).

c. OTHER ISSUES RELATED TO THE DECISION

As the confidentiality of the attorney-client relationship is a fundamental rule which can only be suspended in exceptional circumstances, the Court does not consider that restrictions imposed for prolonged periods constitute insignificant harm (§ 79).

The rule of respect for the attorney-client privilege may be suspended only in exceptional circumstances and provided that appropriate and adequate safeguards against abuse are in place (§ 96).

In their decision restricting the confidentiality of the detainees' meetings with their lawyers, the public prosecutors did not demonstrate the existence of a security risk based on the applicants' individual circumstances and their assessment was based on general considerations of the danger that the meetings might pose (§ 102).

Decree Law No. 667 did not contain any guarantees as to the duration of this measure, preventing those concerned from knowing or anticipating when it would end. The open-ended application of these measures undermined the principle of legal certainty (para. 103). Nor did the Decree-Law provide for a mechanism for automatic and continuous review of the necessity of the measures in question. The Court considers that judicial review of the implementation of the contested measures was neither adequate nor effective (§ 104).

The Court notes that the public prosecutors' discretion to impose restrictions is not subject to any conditions, that the scope and manner of exercise of their discretion are not defined and that no other safeguards are provided. It considers that the impugned measures were open to arbitrariness and incompatible with the requirement of legality (§ 105). The Court finds that the

52 Canavcı and Others v. Turkey, Application No. 24074/19 and 2 other applications, 14 November 2023.

impugned interference was not "prescribed by law" within the meaning of Article 8 § 2 of the Convention (§ 106).

Turkiye's notice of derogation does not justify the absence of any safeguards against arbitrariness and abuse in Article 6 § 1 (d) of Executive Decree 667 (§ 107).

As just satisfaction, each applicant was awardedb with 9,750 EUR for non-pecuniary damage and a total of EUR 9,126 for legal costs.

13. BURGAZ AND OTHERS v TÜRKİYE[53]

a. FACTS

The applicants' letters were recorded in UYAP and their request to terminate this practice was rejected.

b. VIOLATIONS

The Court found the following violations: Violation of the right to respect for private life and correspondence (the interference did not meet the requirement of being prescribed by law within the meaning of the Convention, Art. 8).

c. OTHER ISSUES RELATED TO THE DECISION

The Court has previously found a violation of Article 8 of the Convention (§ 11), as the registration of the letters in UYAP cannot be regarded as "prescribed by law" within the meaning of that provision.

As just satisfaction, each of the 18 applicants was awarded with 500 EUR for the legal costs.

14. İLERDE AND OTHERS v TÜRKİYE[54]

a. FACTS

The applicants were held in overcrowded wards and two applicants were placed in prisons away from their families.

53 Burgaz and Others v. Turkey, Application No. 57407/19 and 17 other applications, 28 November 2023.
54 İlerde and Others v. Turkey, Application No. 35614/19 and 10 other applications, 5 December 2023.

b. VIOLATIONS

The Court found the following violation

1. Violation of the prohibition of ill-treatment (detention in overcrowded wards in respect of eight applicants, art. 3);

2. Violation of the right to respect for family life (transfer to a prison away from the applicant's family in respect of an applicant, Art. 8)

c. OTHER ISSUES RELATED TO THE DECISION

Where overcrowding is caused by a systemic issue and the authorities are confronted with a large number of simultaneous requests, measures that only assist individual complainants, rather than addressing the system as a whole, cannot be considered effective. Nor does national legislation contain a minimum standard as to the surface area to be assessed. The Court considers that a complaint to the execution judge, which had previously been considered capable of providing an accessible remedy and redress for inadequate conditions of detention, was insufficient in the present applicants' circumstances (§ 153).

Where an effective preventive remedy has been established, applicants in detention are not, as a rule, exempted from the obligation to use it. They must first use the available and effective preventive remedy and then, as far as appropriate, the relevant compensatory remedy (§ 159). The Court observes that the remedy of compensation before the civil and administrative courts does not have the element of preventiveness in the sense of securing an improvement of conditions (§ 161). The fact that the administrative courts conditioned the award of compensation on a defect of service on the part of the administration was not appropriate (§ 164).

Bathroom and toilet facilities within the ward should not be taken into account in the measurement of the total surface area of the ward. The Court considers that the outside courtyard cannot be included in the calculation of personal living space. However, the availability of free access to the courtyard during daylight hours is an important element in the overall assessment of the concrete conditions of detention (§ 175).

In respect of eight applicants, it was established that they had less than 3 m of personal space[2] during the relevant period. The period during which the applicants had insufficient space was of considerable length (§ 188). The conditions of detention of these applicants subjected

them to a level of distress which went beyond the level of unavoidable suffering inherent in detention and violated Article 3 of the Convention (§ 189).

As regards the six applicants with 3 to 4 m^2 of living space, a violation may be found where the element of space is combined with other aspects of inappropriate physical conditions of detention (§ 190). The fact that the applicants had unrestricted access to the outside courtyard during daylight hours must be regarded as a factor which significantly mitigated the provision of little personal space (§ 191). As regards cleanliness and hygiene, the Court concludes that the general conditions of the wards, including cleanliness, ventilation and lighting, were adequate (§ 193). Having regard to the cumulative effect of the conditions, the Court does not consider that the threshold necessary to qualify as inhuman or degrading has been reached (§ 195).

As regards the applicants with more than^2 personal space, the Court, taking into account other aspects of detention, considers that the conditions did not rise to the level of ill-treatment (§ 198).

As regards the transfer to distant prisons, the applicant was not provided with any justification when he was transferred from prisons close to his family's place of residence and the place where the proceedings were held, to more distant prisons. His transfer to these prisons therefore took place without procedural safeguards against arbitrary interference with his right to respect for family life. When he was refused transfer to closer prisons, there was no concrete consideration of whether he could be transferred to a place relatively closer to his family or of alternative means of compensating for the lack of visits (§ 219). These considerations demonstrated that the interference was disproportionate and there had been a violation of Article 8 of the Convention (§ 220).

As just satisfaction, 8 applicants were awarded with 57,500 EUR total for non-pecuniary damage and 1,000 EUR for legal costs for each 5 of the applicants.

15. HALİT KARA v TÜRKİYE[55]

a. FACTS

The applicant's letter and its attachments, which were detained in another prison, were confiscated on the grounds that they were objectionable.

55 Halit Kara v. Turkey, Application No. 60846/19 , 12 December 2023.

b. VIOLATIONS

The Court found the following violations: Violation of the right to respect for communication (interference not being necessary in a democratic society, Art. 8).

c. OTHER ISSUES RELATED TO THE DECISION

The personal importance of the matter for the applicant is obvious, as he genuinely wished to maintain contact with his brother. Moreover, the fact that the applicant's brother was also in detention increased the importance of one of the limited means of communication between them, namely written communication. The case involved a question of principle, namely the right to respect for the applicant's right to private correspondence with a close family member and the existence of effective judicial review in this respect (§ 30). It cannot be said that the authorities' refusal to send the letter in question did not cause substantial damage (§ 31).

The judgments fail to establish that the disciplinary board or the trial courts conducted a concrete and Convention-compliant assessment. It does not appear from the judgments that the applicant's allegations were carefully considered and that the right to respect for his correspondence was adequately weighed against the other interests at stake (such as the maintenance of order and discipline in the prison, § 54). The prison authorities and the judicial authorities did not provide an adequate explanation of the possibility of sending the letter after the correction of certain objectionable passages (§ 55).

The Court considers that the national authorities failed to fulfil their duty to balance the competing interests and to prevent arbitrary interference with the applicant's right to respect for his right to correspondence. Accordingly, it has not been established that the grounds put forward by the national authorities to justify the refusal to send the letter in question were relevant and sufficient or that the contested measure was necessary in a democratic society (§ 58).

Since the applicant did not benefit from a minimum degree of protection against arbitrary interference, it cannot be said that the impugned condemnation was strictly required by the particular circumstances of the state of emergency (§ 59). There has therefore been a violation of Article 8 of the Convention (§ 60).

16. KOLAY AND OTHERS v TÜRKİYE[56]

a. FACTS

The applicants were arrested on charges of FETÖ/PDY membership.

b. VIOLATIONS

The Court found the following violations: Detention without relevant and sufficient grounds, (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

Any system of compulsory detention is, by itself, incompatible with Article 5 § 3 of the Convention. Where the law presupposes grounds for detention, it must still be convincingly shown that there are concrete facts justifying a departure from the rule of respect for individual liberty (§ 15). Formulaic and stereotyped judgments, such as in the present case, cannot be considered sufficient to justify the continued detention of a person (§ 16).

Having regard to the reasons provided by the national judicial authorities, the Court considers that the applicants' detention and its prolongation were ordered on grounds which cannot be regarded as sufficient to justify the measure in question (§ 17).

As just satisfaction, each of the 269 applicants were awarded witj 3,000 EUR for non-pecuniary damage and costs of the proceedings.

17. MECİT AND OTHERS v TÜRKİYE[57]

a. FACTS

The applicants were arrested on charges of FETÖ/PDY membership.

b. VIOLATIONS

The ECtHR found the following violations: Detention without reasonable suspicion (Art. 5/1).

c. OTHER ISSUES RELATED TO THE DECISION

The arrest warrants were based on their use of the ByLock application, their banking activities, their subscription to certain publications, their possession of $1 bills with the serial number "F" and/or their work in or membership of certain institutions or organisations. It has

56 Kolay and Others v. Turkey, Application No. 15231/17 and 283 other applications, 12 December 2023.
57 Mecit and Others v. Turkey, Application No. 69884/17 and 81 other applications, 12 December 2023.

already been decided that the use of ByLock does not constitute "reasonable suspicion" in respect of the offence attributed. The Court considers that, in the absence of any other information justifying such suspicion, their other acts are secondary elements which benefit from a presumption of legality and cannot be considered as evidence of membership of a terrorist organisation (§ 8).

As no other evidence, facts or information has been adduced to convince the Court that the applicants were "reasonably suspected" of having committed the alleged offence at the time of their initial detention, the Court finds that the requirements as to the reasonableness of the suspicion justifying the detention have not been met. The fact that the applicants were not members of the judiciary has no bearing on the conclusion reached (§ 9).

As just satisfaction, each applicant was awarded with 5,000 EUR for non-pecuniary damage and costs of the proceedings.

VII. THE ECHR JUDGEMENTS IN 2024

1. SİL AND OTHERS V TÜRKİYE[58]

a. FACTS

Letters received or sent by the applicants under pre-trial detention were recorded in UYAP system, and their requests to stop this practice were rejected.

b. VIOLATIONS

The ECtHR found the following violations: Violation of the right to respect for private life and correspondence (Art. 8) as the letters registration in UYAP could not be regarded as having been in accordance with the law.

c. OTHER ISSUES RELATED TO THE DECISION

In the case of *Nuh Uzun and Others v. Türkiye*, the Court already found a violation of Article 8 of the Convention as the interference with the applicants' right to respect for private life and correspondence through the registration of their letters in UYAP could not be regarded as having been “in accordance with the law” within the meaning of Article 8 § 2 of the Convention. There is no reeson to reach a different conclusion in the present case (§ 11).

58 Sil and Others v. Türkiye, Application No. 8130/19 and 2 other applications, 6 February 2024.

2. PARILDAK v TÜRKİYE[59]

a. FACTS

The applicant had worked as a legal columnist for the daily newspaper *Zaman* between 2012 and 2016, which was regarded as the principal publication medium of the "Gülen Movement". *Zaman* was closed down following the adoption of Legislative Decree no. 668, issued on 27 July 2016 in connection with the state of emergency. In August 2016 the Polis in Ankara received an anonymous tip-off stating: "Ayşenur Parıldak, who gives information to *Fuat Avni* and is followed by that account on Twitter, has her bags packed at the Ankara University Faculty of Law and is going to flee after her last exam". The following day Ms. Parıldak was arrested and taken into police custody. After police questioning she was brought before the Court, which placed her in pretrial detention on 11 August 2016. The applicant's objection against the pre-trial detention was rejected by domestic courts.

b. VIOLATIONS

1. Detention without reasonable suspicion (absence of evidence to suspect the applicant of a criminal offence at the time of detention, Art. 5/1)

2. Lack of grounds for detention (Art. 5/3)

3. Violation of freedom of expression (The applicant was arrested for the reasons of his alleged contact with the owner of the Twitter account named "fuatavni", his possession of a bank account at Bank Asya, his allegation of using ByLock messaging, the content of the documents and materials found on him, and finally his father's connection with Gülen Movement., Art. 10).

c. OTHER ISSUES RELATED TO THE DECISION

The Court notes that neither the the Peace Court who ordered the applicant's pre-trial detention nor other courts who decided to keep her in detention mentioned in their decisions the evidence on which they relied (§ 67).

The Court notes that the publications did not incite the commission of terrorist offences, glorify violence or encourage an uprising against the legitimate authorities (§ 77).

The Court considers that in the present case the facts were to be presumed to be in conformity with national law and the Convention and were not, taken as a whole, such as to

59 Parildak v. Turkey, Application No. 66375/17, 19 March 2024, https://hudoc.echr.coe.int/fre?i=001-231602

constitute "plausible suspicions" capable of leading to the belief that the applicant had committed criminal offences (§ 79).

The Court considers that, in the absence of other evidence or information of the kind referred to above, the document in question, which merely states that the applicant was a user of ByLock, cannot in itself lead it to conclude that there were plausible suspicions capable of convincing an objective observer that the applicant had indeed used ByLock in a manner likely to constitute the offence of which she was accused (§ 82).

In the present case that the interference with the applicant's rights and freedoms under Article 10 § 1 of the Convention cannot be justified under Article 10 § 2, since it was not provided for by law (§ 127).

As just satisfaction, the applicant was awarded with 16,000 EUR non-pecuniary damages and 6,000 EUR for costs and expenses.

3. KARTAL v TÜRKİYE[60]

a. FACTS

The applicant is a judge by profession. At the time of the events in question Mr. Kartal was the vice-president of the Inspection Board of the High Council of Judges and Prosecutors. In February 2014, the Grand National Assembly of Türkiye adopted Law no. 6524, which, among other provisions, amended Law no. 6087 on the Council of Judges and Prosecutors. The case concerns the ending of Mr. Kartal's term of office at the Inspection Board by virtue of those amendments.

b. VIOLATIONS

Violation of the right of access to a court (The respondent State impaired the very essence of the applicant's right of access to a court on account of the lack of judicial review in the case Art. 6/1)

c. OTHER ISSUES RELATED TO THE DECISION

The time taken to examine an application which is the subject of a challenge to the lawfulness and proper conduct of detention is not in itself sufficient to draw a conclusion as to the effectiveness of the Constitutional Court (§ 92).

60 Kartal v. Turkey, Application No. 54699/14, 26 March 2024, https://hudoc.echr.coe.int/fre?i=001-231738

The Court considers that the termination of the office of the applicant at the Inspection Board by means of legislative interference was not compatible with the rule of law and might threaten the independence of the judiciary (§ 96).

As just satisfaction, the applicants awarded with 7,800 EUR for non-pecuniary damages and 1,767 EUR for costs and expenses.

4. GÜLCÜ AND OTHERS (49 APPLICATIONS) v TÜRKİYE[61]

a. FACTS

At the time of the events in question Mr. Gülcü and other applicants were serving as judges or prosecutors at different types or levels of courts. The applications concern the applicants' alleged inability to have recourse to judicial review of the decisions of the Council of Judges and Prosecutors to transfer them without their consent either to other cities or, in the case of the applicant in application no. 56732/15, Mr. Seyfullah Çakmak, to transfer him without his consent from the office of public prosecutor at the Court of Cassation to the position of judge rapporteur at the same court.

b. VIOLATIONS

Violation of the right of access to a court (The respondent State impaired the very essence of the applicants' right of access to a court on account of the lack of judicial review in the case Art. 6/1).

c. OTHER ISSUES RELATED TO THE DECISION

This is a committee judgement in the context of the Bilgen v Turkey (Application no. 1571/07, 9 March 2021), which is a leading case. The issues examined in that judgment were repeated in this decision and it was decided that there was no reason to depart from that decision.

In this judgment, the ECtHR, having regard to the strong public interest in safeguarding the independence of the judiciary and the rule of law, reiterated that the lack of judicial review of the HSK's decisions on the transfer of the applicant judges and prosecutors did not pursue any legitimate aim and thus undermined the essence of the applicants' right of access to a court.

61 Gülcü and others v. Türkiye, Application no: 37013/15 and 49 others, 26 March 2024https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-233211%22]}

As just satisfaction, the applicants awarded with a compensation ranging from EUR 2000 to EUR 2500 non-pecuniary damages and for costs and expenses. It has been observed that the difference in the compensation amount is made according to whether the applicant is represented by a lawyer.

5. SÖZEN v TÜRKİYE[62]

a. FACTS

The applicant is a judge of the administrative courts. He sat as a member of the Supreme Administrative Court, an office to which he had been appointed in 2011 by the Council of Judges and Prosecutors. Following the entry into force of Law no. 6723 on 23 July 3 2016 the term of office of every member of the Supreme Administrative Court was terminated, including that of Mr Sözen. The HSK subsequently appointed some of the judges whose terms of office had been terminated pursuant to Law no. 6723 as new members of that court. Mr. Sözen was not re-appointed as a new member of the Supreme Administrative Court but was instead assigned to the office of judicial investigator at the court. The case concerns the early termination of the applicant's term of office as a member of the Supreme Administrative Court following the entry into force of Law no. 6723, without termination of his duties as a judge.

b. VIOLATIONS

Violation of the right of access to a court (Art. 6/1)

c. OTHER ISSUES RELATED TO THE DECISION

The Court notes that the criteria on which the by the HSK based its decision to appoint the new members of the Conseil d'État in accordance with the reduced number of members applicable after the adoption of Law no. 6723 were not known, and it further notes that the interested parties had no means of appeal against the HSK's decision to appoint the new members under Article 159 of the Constitution (§ 76).

In any event, it recalls that even in the context of a state of emergency, the fundamental principle of the rule of law must prevail. However, it would be incompatible with the rule of law in a democratic society and with the fundamental principle underlying Article 6 § 1, namely that civil claims must be capable of being brought before a judge for effective judicial review, for a State to be able, without reservation or review by the organs of the Convention, to remove from

62 Sözen v. Turkey, Application No. 73532/16, 9 April 2024, https://hudoc.echr.coe.int/eng?i=001-231998

the jurisdiction of the courts a whole series of civil actions or to exempt categories of persons from liability (§ 77).

As just satisfaction, the applicant was awarded with 7,800 EUR non-pecuniary damages and 1,000 EUR for costs and expenses.

6. AYDIN SEFA AKAY v TÜRKİYE[63]

a. FACTS

The applicant, Aydın Sefa Akay, started working as a legal advisor for the Ministry of Foreign Affairs in 1987 and since then has held a number of overseas postings, including at the Permanent Representation of Türkiye to the Council of Europe, where he represented Türkiye before the European Court.

In September 2016, Mr. Akay, at the time a judge for the UN Criminal Tribunals Mechanism and working remotely from his home in Istanbul, was arrested. The indictment referred to Mr. Akay's use of Bylock, an encrypted messaging application allegedly used exclusively by members of FETÖ/PDY, and two legal books found during the search of his home written by Fetullah Gülen.

The case went to trial, with Mr. Akay being found guilty as charged at first instance in June 2017. The trial court rejected his claim for diplomatic immunity. It found that he had immunity for acts related to his duties as a UN judge but not in the jurisdiction of Türkiye. He was sentenced to seven years and six months' imprisonment, and immediately released on bail with a ban on leaving the country. Mr. Akay's conviction was upheld in February 2021 in a final judgment by the Court of Cassation and he is now serving his sentence in Rize L-Type Prison.

b. VIOLATIONS

1. Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights
2. Article 8 (right to respect for private life and home) of the European Convention.

c. OTHER ISSUES RELATED TO THE DECISION

The Court emphasised that the special role of the judiciary as the guarantor of justice, and the need for safeguards to protect its members from interference by the executive were also applicable in respect of international judges. (§ 113). Contrary to the national courts, the Court

63 Aydın Sefa Akay v. Turkey, Application No. 59/17, 23 April 2024, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-14315%22]}

considered that Mr Akay appeared to have been entitled to full diplomatic immunity, including personal inviolability and being shielded from any form of arrest or detention, during his term of office as a UN judge from July 2016 to June 2018.

The Court noted that its findings regarding the interpretation of the scope of Mr Akay's diplomatic immunity under Article 5 § 1 meant that he had also been entitled to enjoy under international law the inviolability of his person and his private residence (§ 143). Moreover, since the applicant had been working for the UN Criminal Tribunals Mechanism from Türkiye at the relevant time, the Court found that his place of residence had been under heightened protection, similar to the protection afforded to searches of a lawyer's office in its case-law under Article 8 of the Convention. Accordingly, it concluded that the search of his house and person in September 2016 had interfered with his rights and that that interference had not been "prescribed by law", in violation of Article 8.

As just satisfaction, the applicant was awarded with 21,000 EUR for non-pecuniary damage and EUR 7,000 in respect of costs and expenses.

VIII. TABLE ON VIOLATION DECISIONS

Year	Number of Decisions	Number of Applicants	Amount of Compensation (EUR)
2018	2	2	43,100
2019	2	2	10,000
2020	2	2	14,000
2021	9	436	2,272,875
2022	12	564	2,697,060
2023	17	599	2,268,136
2024	5	53	185,967
TOTAL	**50**	**1,661**	**7,491,138**