

The ECtHR's *Mahmut Onur Uçar v. Türkiye* Decision: Legal and Procedural Deficiencies in the July 15 Trials

1. Introduction

The European Court of Human Rights (ECtHR), in its decision dated 12 December 2024 in *Mahmut Onur Uçar v. Türkiye* (Application no. 32565/23), examined the application of First Lieutenant Mahmut Onur Uçar, who served at the Mamak 28th Mechanized Brigade during the coup attempt of 15 July 2016. This decision evaluates whether the right to a fair trial, as guaranteed under Article 6 of the European Convention on Human Rights (ECHR), was violated. The judgment highlights deficiencies in the Turkish courts' obligation to provide reasoned decisions, respect for defense rights, the presumption of innocence, and principles of procedural justice. Despite Uçar's defense that he acted in accordance with orders received from his superiors, his conviction for attempting to overthrow the constitutional order with an aggravated life imprisonment sentence undermines the principles of individual criminal responsibility and legal foreseeability. In addition, the ECtHR's approval of the domestic courts' decisions over a superficial scrutiny is contrary to the principle of a fair trial. This study, drawing on the findings of the "*Observations on Uçar v. Türkiye*" report, published by the Rights Defenders Initiative, thoroughly discusses the fair trial aspects of the case.

2. The Framework of the Uçar Case: Events and the Judicial Process

Mahmut Onur Uçar, a Turkish citizen born in 1984, was serving as a tank commander at the Mamak 28th Mechanized Brigade on the night of 15 July 2016. He argued that he was deployed to the General Staff Headquarters to **ensure security against a terrorist threat**, pursuant to orders received from his superiors (Uçar v. Türkiye, § 3, § 6). Given the heightened state of alert within the Turkish Armed Forces (TSK) due to terrorist attacks in Ankara on 17 February and 13 March 2016, as well as an intelligence note from the National Intelligence Organization (MİT) dated 11 July 2016, this order could be considered a routine task under the Protocol for Supporting Law Enforcement in Social Incidents (KOKTOD) (Report, p. 7). Uçar was detained on 16 July 2016 and, on 9 April 2018, was sentenced by the Ankara 18th Assize Court to aggravated life imprisonment for attempting to overthrow the constitutional order under Article 309/1 of the Turkish Penal Code (TPC) and nine years' imprisonment for property damage under Article 152/1(a) of the TPC, while being acquitted of murder and attempted murder charges due to lack of evidence (Uçar v. Türkiye, § 4). The domestic court claimed that Uçar's tank was deployed to the General Staff Headquarters for the purpose of the coup, that he fired at civilians, and that he destroyed the hard drives of security cameras (Uçar v. Türkiye, § 16, § 58).

In his defense, Uçar stated that he acted within the framework of KOKTOD, that the refueling of tanks was part of routine maintenance, that the ammunition was intended for training purposes, and that he had no intention of harming civilians (Uçar v. Türkiye, § 6; Report, pp.

8–11). He further asserted that he had no connection with the Gülen movement, had not attended its schools, did not use ByLock, and had no account with Bank Asya (Uçar v. Türkiye, § 6). The domestic court rejected this defense as “not credible” and assumed that Uçar was aware of the coup attempt (Uçar v. Türkiye, § 15, §§ 20–23). However, considering the hierarchical structure of the TSK and the chaotic security environment of the period, it is evident that a tactical-level officer could not have known of any coup intent (Report, pp. 7, 35).

The conviction was upheld by the Ankara Regional Court of Appeal (19 June 2020), the 3rd Criminal Chamber of the Court of Cassation (14 June 2022), and the Constitutional Court (6 April 2023). The ECtHR ruled that the domestic courts fulfilled their obligation to provide reasoned decisions and that their judgments were not arbitrary (Uçar v. Türkiye, §§ 25, 28, 31, 61–67). However, this decision overlooked the procedural and substantive deficiencies in the trial (Report, p. 3; for detailed objections regarding the timeline and the inaccurate or incomplete portrayal of certain events, see Report, pp. 13–17).

Uçar claimed that he was subjected to torture through reverse handcuffing during his detention from 16–26 July 2016, but this claim was rejected by the ECtHR due to the lack of supporting documentation (Uçar v. Türkiye, §§ 37–39). Nevertheless, it is considered that allegations of torture warrant serious investigation (Uçar v. Türkiye, §§ 37–39).

3. The ECtHR’s Approach: Uncritical Approval and Problematic Evaluation

ECtHR maintained that the domestic courts fulfilled their obligation to provide reasoned decisions under Article 6 of ECHR (Uçar v. Türkiye, § 67). Uçar’s guilt was predicated on the deployment of tanks to the General Staff Headquarters, firing at civilians, the destruction of security camera hard drives, and the assumption that he was aware of another personnel in the same tank was affiliated with the Gülen movement (Uçar v. Türkiye, §§ 16–17, § 58). However, the reliability of the evidence supporting these elements is seriously questioned, as the planning and execution of the coup attempt are deemed illogical. Actions such as deploying tanks to the General Staff Headquarters instead of the Turkish Grand National Assembly (TGNA) or using fighter jets to bomb suggest a scenario designed to fail from the outset (Report, pp. 13–14, 20–21). No concrete document or testimony establishes the existence of the “Peace at Home Council,” alleged to have organized the coup attempt. Although the indictment claimed that this structure consisted of 38 individuals, the reasoned judgment reduced this number to 20, and it has not been conclusively established that any of these individuals were members of the said council (Report, pp. 4–5).

4. UNWGAD’s Response to the Official Coup Narrative

According to the official coup narrative of the Turkish government, General Akın Öztürk is the leader of the coup. He was listed as the deputy chairman in the appointment and assignment records, despite allegedly being at the head of the council.

It is highly critical that [The UN Working Group on Arbitrary Detention](#), concluded that Öztürk was denied a fair trial and that his detention was arbitrary (Report, p. 5).

The paragraph 75 of the WGAD’s decision is noteworthy:

(...) the Government did not attempt to explain how Mr. Öztürk's arrest without a warrant was strictly required by the exigencies of the security situation, other than asserting that Mr. Öztürk was behind the creation of the said security situation. The Working Group thus notes that Mr. Öztürk was not arrested in flagrante delicto, when the opportunity to obtain a warrant would typically not be available; at the moment of his arrest on 17 July 2016 he had returned to his home after attempting to prevent the coup, and there is no indication that he engaged in any criminal activity between the time he left Akinci Air Base and when he was summoned to provide testimony [emp. added] The Working Group is not convinced by the Government's assertion that the state of emergency creates specific exigencies pertinent enough to justify such an arrest.

The ECtHR's approval over a weak examination of the Uçar case is problematic, as it relies on incomplete, contradictory, and assumption-based information, and was rendered without adequately examining these inconsistencies or notifying the parties, nor granting them the opportunity to make submissions, thereby undermining the principle of a fair trial.

5. Violations of the Fair Trial Principle

The Uçar v. Türkiye decision contains significant violations of the core components of the right to a fair trial, including reasoned decision-making, respect for defense rights, the presumption of innocence, procedural justice, consideration of the military context, and the right to legal assistance. These violations are detailed below:

a. Unreasoned Decisions and Assumption-Based Allegations

The domestic court assumed Uçar's participation in the coup attempt, but these allegations were not supported by concrete evidence beyond reasonable doubt. For instance, the terrorist attack near the General Staff Headquarters on 17 February 2016, which killed 29 people, and the Güvenpark attack on 13 March 2016, which claimed 36 lives, created a heightened state of alert among Turkish Armed Forces (TSK) personnel. The National Intelligence Organization (MIT), in an intelligence note dated 11 July 2016, warned of a terrorist threat to the General Staff Headquarters, making it reasonable for Uçar to believe that the orders he received were for security purposes (Uçar v. Türkiye, § 20; Report, pp. 36–37). The domestic court claimed that Uçar's possession of a mobile phone implied knowledge of the coup attempt, yet no communication related to the coup was found on his phone. Such assumptions lack evidence to prove individual intent and violate the presumption of innocence. The ECtHR, by deeming the domestic court's decision "sufficient" without questioning this unreasoned approach, undermined the obligation to provide reasoned decisions under Article 6 of the ECHR.

b. Disregard for the Defense

Uçar argued that he was deployed to the General Staff Headquarters under KOKTOD to counter a terrorist attack, that the refueling of tanks was part of routine maintenance, and that his actions complied with the Turkish Armed Forces (TSK) Internal Service Law (Uçar v. Türkiye, § 6, § 12). The Turkish Armed Forces' principle of absolute obedience deems the questioning of orders by lower-ranking personnel a breach of discipline. Articles 88, 89, and 90 of the TSK Internal Service Law regulate the use of weapons by personnel during duty or in self-defense. However, the domestic court dismissed Uçar's defense as "not credible" without providing reasoning and failed to examine arguments related to the KOKTOD order

and the military context (Uçar v. Türkiye, §§ 20–25). The defense that the tanks carried training ammunition and had no intent to harm civilians was disregarded (Report, p. 32). The ECtHR, by accepting that the defense was “sufficiently evaluated” without questioning this deficiency (Uçar v. Türkiye, § 65), caused a violation of the applicant’s defense rights.

c. Assumptions Contrary to the Presumption of Innocence and Violation of Individual Criminal Responsibility

The domestic court alleged Uçar’s participation in the coup attempt based on a hypothetical “Peace at Home Council” (Uçar v. Türkiye, § 10). However, the first-instance court explicitly stated that no concrete document or testimony identified the members of this council or confirmed its existence (Report, p. 5). In the Turkish Armed Forces’ (TSK) command hierarchy, lower-ranking personnel are not expected to have detailed knowledge of superior orders. Basing Uçar’s alleged awareness of the illegal coup—which directly contributed to his subsequent conviction—solely on his possession of a mobile phone is also a problematic aspect of the domestic court’s reasoning, as the prosecution failed to prove Uçar’s criminal intent and no coup-related communication was found on his device (Uçar v. Türkiye, § 20; Report, pp. 36–37). The ECtHR’s acceptance of these assumptions without scrutiny violated the principles of individual criminal responsibility and the presumption of innocence under the ECHR.

d. Procedural Errors and Issues with Evidence Reliability

The judicial processes in the coup trials were marred by significant procedural errors. Radar images, black box data, and voice recordings related to the bombings of the Gölbaşı Special Operations Headquarters and the TGNA contain inconsistencies. The F-16 aircraft (tail number 94-0110) accused in the Gölbaşı bombing was confirmed not to have flown on the day of the incident, as verified by black box data; expert reports indicate that the explosion crater and environmental damage were inconsistent with the alleged GBU-10 bomb. Security camera footage of the TGNA bombing shows the explosion occurring at 03:22:15, while the indictment states 03:24; radar images indicate no aircraft was within one mile of the TGNA at the time of the explosion, with the nearest aircraft five miles away. Media reports confirm no aircraft noise was heard before or after the explosion. Searches conducted in defendants’ offices were carried out unlawfully, raw audio recordings and radar data were not presented to the court, and reports based on copied data were used instead. Some experts who prepared these reports were later prosecuted and convicted in the same cases, yet their reports were relied upon in the judgments. Autopsy reports, ballistic analyses, and camera footage show that the number of deaths attributed to the coup attempt was inaccurately reported; for example, the 44 deaths alleged in Gölbaşı were not supported by detailed evidence (Report, pp. 16, 27–28). The ECtHR approved the domestic court’s decision without examining these procedural deficiencies and evidence reliability issues (Uçar v. Türkiye, § 61), thereby undermining the trial’s credibility.

e. Disregard for the Military Context and Hierarchical Structure

The principle of absolute obedience within the Turkish Armed Forces (TSK) limits the ability of personnel to question orders. Articles 88, 89, and 90 of the TSK Internal Service Law regulate the use of weapons by personnel during duty or in self-defense (Report, pp. 34–35). Prior to 15 July 2016, MIT’s terrorist threat notifications to the General Staff Headquarters (11 July 2016)

and frequent terrorist attacks in Ankara kept military personnel on high alert. Article 11/j of the Provincial Administration Law, enacted on 14 July 2016, ensured legal protections for military personnel performing their duties. Thus, Uçar's deployment to the General Staff Headquarters can be considered a reasonable security task under KOKTOD (Report, pp. 8–12). In the Turkish Armed Forces (TSK), compliance with orders that are not manifestly unlawful is mandatory; Uçar acted under the assumption that the KOKTOD orders were lawful, and the subsequent determination of their illegality should not give rise to individual criminal responsibility. However, the domestic court disregarded the military context and hierarchical structure by presuming Uçar's intent to participate in the coup (Uçar v. Türkiye, § 18, § 22; Report, p. 35). The ECtHR also failed to consider this hierarchical context, which constitutes a violation of the right to a fair trial.

f. Failure to Communicate with the Government and Violation of the Right to an Effective Application

The ECtHR dismissed Uçar's application without communicating it to the Turkish government, thereby undermining the right to an effective individual application under Articles 34 and 35 of the ECHR. This approach contradicts the principle of adversarial proceedings and renders the decision's legitimacy questionable. In complex and controversial cases such as the coup attempt, denying parties the opportunity to fully present their arguments poses a serious threat to the fair trial principle.

g. Restriction of the Right to Legal Assistance

In the Uçar v. Türkiye decision, the ECtHR rejected the applicant's claim that his right to legal assistance was violated due to the recording of his meetings with his lawyer in prison, citing insufficient substantiation. However, this practice was widespread during the State of Emergency (OHAL) period and was applied almost uniformly in coup-related trials. The ECtHR found violations of Article 8 of the ECHR in the [Canavcı](#) case and Article 5/4 in the [Demirtaş and Yüksekdağ](#) cases regarding similar practices, yet deemed it unnecessary to examine this issue in the [Yalçınkaya](#) case. The ECtHR's rejection of Uçar's complaint regarding such a widespread and serious violation cannot be considered a sound decision.

Conclusion

The Uçar Decision Should Not Set a Precedent: Assessing the ECtHR's Responsibility

The Uçar v. Türkiye decision violates the right to a fair trial due to the Turkish courts' unreasoned decisions, disregard for defense rights, assumptions contrary to the presumption of innocence, procedural errors, and failure to consider the military context. The domestic court's acceptance of an unproven entity, the so-called 'Peace at Home Council', as the organizer of the coup demonstrates that the allegations were primarily based on assumptions. The absence of forensic or ballistic reports supporting claims of firing at civilians, the disregard for the fact that tanks carried training ammunition, and the baseless rejection of the defense that Uçar acted under KOKTOD undermined his defense rights. Unlawful searches, the potential manipulation of evidence, and unresolved contradictions in radar data further undermined the reliability of the trial. The ECtHR's approval of the domestic court's decision

without examining these serious violations harmed the fair trial principle. The coup attempt of 15 July 2016, linked to the main case known as the ["General Staff Headquarters Case,"](#) was overturned by the Court of Cassation, and the trial process is ongoing. Despite the absence of a final judgment in the main case, hundreds of soldiers, military cadets, and non-commissioned soldiers were convicted without their actions being thoroughly examined. While some defendants were acquitted, most of those convicted were punished based on the assumption of affiliation with the Gülen movement rather than concrete evidence. As in the *Mahmut Onur Uçar v. Türkiye* case, many critical issues in these trials were not investigated, and proceedings were conducted with a presumption of guilt. The ECtHR's swift decision on this application, without awaiting the outcome of the main case and as if all aspects of the coup attempt had been clarified, is noteworthy.

This decision should not set a precedent for similar applications, as unreasoned decisions, violations of defense rights, assumptions contrary to the presumption of innocence, and procedural errors contravene Article 6 standards of the ECHR. The issues in the Uçar case reflect systemic deficiencies that prevent fair trials in complex cases like the coup attempt. The ECtHR, when examining similar cases, must scrutinize domestic courts' evidence evaluation processes more rigorously, seriously consider defense arguments, and take into account critical factors such as the military context. The superficial review approach in the Uçar decision is a mistake the ECtHR should not repeat in other cases. The right to a fair trial is a cornerstone of the rule of law, not only for Uçar but for all individuals facing similar charges.