

**VIOLATION JUDGMENTS DELIVERED BY THE
EUROPEAN COURT OF
HUMAN RIGHTS AGAINST TÜRKİYE IN THE
AFTERMATH OF 15 JULY**



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STICHTING JUSTICE SQUARE

FOREWORD

In Türkiye, tens of thousands of people have been subjected to violations of their rights through unlawful practices and decisions that began as a reaction to the corruption and bribery operations of 17/25 December and became state policy in the wake of the attempted coup of 15 July. Serious instances of lawlessness occurred, in particular, in the detentions, arrests and trials carried out within the scope of the investigations launched after the attempted coup of 15 July. As a result of these practices and decisions — contrary above all to universal principles of law, as well as to the Constitution and statute law — it has become impossible to protect fundamental rights and freedoms through domestic remedies or to redress the violations suffered. Indeed, in the present circumstances no effective domestic remedy remains before the Constitutional Court, the other first instance courts; most importantly, through the structural changes that have been made, the Turkish judiciary has been transformed into a judicial system operating under the direction of the government.

Throughout this period, victims lodged a great number of applications with the European Court of Human Rights (ECtHR) on account of these unlawful practices and decisions. Although not with the speed or quality desired, the applications lodged have begun to be adjudicated by the ECtHR. In this context, significant violation judgments have been delivered concerning arbitrary and unjustified interferences with the right to liberty and security first and foremost, as well as with the right to a fair trial, freedom of expression, freedom of association and other fundamental rights and freedoms. Accordingly, **as of July 2026, 114 violation judgments** had been delivered in joined cases concerning **8,056 applicants**, and a total of **20,672,440 euros** in compensation had been awarded in those judgments.

Against this background, our foundation has prepared this booklet, containing summaries of the violation judgments delivered by the ECtHR against Türkiye after the attempted coup of 15 July, in order to contribute to the legal struggle of the individuals harmed by the dark and lawless period experienced in Türkiye.

In the light of these judgments, which contain the most fundamental findings concerning universal law and constitutional guarantees, we hope that this study, prepared by **Justice Square**, will prove useful, with the wish that the human rights violations experienced in Türkiye may come to an end as soon as possible.

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I. JUDGMENTS DELIVERED IN 2018

MEHMET HASAN ALTAN v. TURKEY¹

THE FACTS

The applicant, a professor of economics and journalist in Türkiye, was placed in pre-trial detention in September 2016, after the attempted coup of 15 July 2016, on the allegation that he was linked to the media network of the organisation. He was charged with attempting to overthrow the constitutional order on account of statements he had made on a television programme and articles he had written. The Constitutional Court held that there was no concrete evidence justifying the applicant's detention and found violations of the right to personal liberty and of freedom of expression and of the press; the domestic courts, however, dismissed the applicant's requests for release notwithstanding that judgment.

THE VIOLATIONS

Having examined the Constitutional Court's findings of violation and the applicant's situation, the ECtHR reached the following conclusions:

Article 5 of the Convention (right to liberty and security): The lower courts' continuation of the applicant's pre-trial detention without any fresh concrete evidence, despite the Constitutional Court's violation judgment, deprived the detention of its "lawfulness". Concurring with the findings of the Constitutional Court, the Court held that there had been a violation of Article 5 § 1 of the Convention.

Article 10 of the Convention (freedom of expression and of the press): The applicant's detention on account of his journalistic activities and critical views was found to constitute a harsh and deterrent measure that was not necessary in a democratic society. The Court found that this interference had violated his freedom of expression.

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

OTHER ASPECTS OF THE JUDGMENT

The ECtHR examined the notice of derogation lodged by Türkiye on account of the state of emergency declared after 15 July, but emphasised that the measures taken in the instant case had exceeded the limits of proportionality “strictly required” by the exigencies of the situation. It drew attention to the fact that, as a requirement of the rule of law, the failure of the domestic courts to give effect to the “final and binding” judgments of the Constitutional Court was unacceptable. The applicant was awarded 21,500 euros in respect of non-pecuniary damage.

ŞAHİN ALPAY v. TURKEY²

THE FACTS

The applicant, a journalist and university lecturer, was placed in pre-trial detention in 2016, after the attempted coup of 15 July 2016, on the allegation that he was linked to the media network of the “FETÖ/PDY” terrorist organisation. He was charged with attempting to overthrow the constitutional order on account of articles published in the *Zaman* newspaper criticising the events of 17–25 December and government policies. Throughout his detention, the applicant argued that his state of health was incompatible with prison conditions and that his detention obstructed his freedom of expression. The Constitutional Court found a violation of his rights, holding that the articles in question did not constitute strong evidence that an offence had been committed, that there was no factual basis for the assertion that the applicant had supported the coup, and that his detention was disproportionate in a democratic society; the assize courts, however, characterising that judgment as a “usurpation of jurisdiction”, dismissed the applicant’s requests for release.

THE VIOLATIONS

The ECtHR examined the Constitutional Court’s finding that there was “no concrete evidence of a suspicion of an offence” and the decisions of the domestic courts maintaining the applicant’s detention notwithstanding that finding. The Court held that the right to liberty and security enshrined in Article 5 § 1 of the Convention had been violated in an unlawful and arbitrary manner.

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

Furthermore, the applicant's detention on account of his journalistic activities and critical writings was found to be a severe measure that was not necessary in a democratic society and produced a "chilling effect" on press freedom; the Court accordingly found a violation of Article 10 of the Convention. It emphasised that the detention had been turned into an instrument of punishment and that such a restriction of freedom of expression damaged the very foundations of the democratic system.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR regarded the domestic courts' refusal to recognise the "final and binding" violation judgments of the Constitutional Court and their dismissal of the requests for release as a clear breach of the principles of the rule of law and legal certainty. Examining the notice of derogation lodged by Türkiye under Article 15 of the Convention, the Court stated that even the conditions of a state of emergency could not justify such disproportionate interferences with press freedom. The Court did not confine itself to finding a violation: having regard to the circumstances of the case and the obligations arising under Article 46 of the Convention, it held that Türkiye was required to take all necessary measures, as a matter of urgency, to put an end to the applicant's detention. The applicant was ultimately awarded 21,500 euros in respect of non-pecuniary damage.

II. JUDGMENTS DELIVERED IN 2019

ALPARSLAN ALTAN v. TURKEY³

THE FACTS

The applicant, then a serving member of the Constitutional Court, was taken into police custody on 16 July 2016 and placed in pre-trial detention on 20 July 2016 on a charge of “membership of an armed terrorist organisation”. He challenged his detention, arguing that the special procedural safeguards afforded to members of the Constitutional Court had been disregarded and that there was no situation of *in flagrante delicto*. The Court of Cassation, for its part, characterised membership of an armed terrorist organisation as a “continuing offence” and maintained that a situation of *in flagrante delicto* therefore existed, with the consequence that the general provisions of procedure could be applied. In its judgment of 11 January 2018, the Constitutional Court found that the applicant’s detention had violated Article 19 of the Constitution; the domestic courts, however, characterising that judgment as a “usurpation of jurisdiction”, dismissed his requests for release.

THE VIOLATIONS

The ECtHR found that the procedural safeguards which the applicant enjoyed as a member of the Constitutional Court had been rendered ineffective by an extensive interpretation of the concept of *in flagrante delicto*. The Court held that the requirement of a “procedure prescribed by law” guaranteed by Article 5 § 1 of the Convention had been violated. Furthermore, noting that the evidence relied on as the basis for the applicant’s detention either did not exist at the time the detention order was made or did not raise suspicion to a “reasonable” degree, the Court found that the requirement of “reasonable suspicion” under Article 5 § 1 (c) of the Convention had not been satisfied. It accordingly concluded that the detention had been unlawful and arbitrary.

3 Alparslan Altan v. Turkey, no. 12778/17, 16 April 2019.

OTHER ASPECTS OF THE JUDGMENT

The Court emphasised that the state of emergency declared by Türkiye after the attempted coup of 15 July, and the accompanying notice of derogation, did not entirely suspend the minimum safeguards required by Article 5 of the Convention. It observed in particular that the detention of a member of the Constitutional Court must not render ineffective the judicial protections afforded against interference by the executive. The Court found the national authorities' failure to give effect to the judgments of the Constitutional Court to be contrary to the principles of the rule of law and legal certainty. Not confining itself to the finding of a violation, the ECtHR held that, in the circumstances of the case, Türkiye was required to take the necessary measures to put an end to the applicant's detention as soon as possible, and awarded the applicant 10,000 euros in respect of non-pecuniary damage.

III. JUDGMENTS DELIVERED IN 2020

BAŞ v. TURKEY⁴

THE FACTS

The applicant, a judge, was taken into police custody on 16 July 2016 and placed in pre-trial detention on 20 July 2016 within the scope of the investigations conducted after the attempted coup of 15 July 2016. In the course of the investigation conducted by the Kocaeli Public Prosecutor's Office, the applicant, although serving as a judge, was deprived of the procedural safeguards afforded to him by Law no. 2802 and was detained under the general provisions of procedure. During his detention, the applicant applied to the ECtHR, arguing that the decisions of the magistrates' courts were unlawful, that there was no reasonable suspicion that he had committed the offence with which he was charged, and that the review procedures were neither effective nor conducted with a hearing, thereby restricting his defence rights. The applicant remained in pre-trial detention for approximately fourteen months without being brought before a court.

THE VIOLATIONS

The ECtHR examined the applicant's detention and found serious violations under Article 5 of the Convention. First of all, the Court criticised the application, in the procedure for the detention of a judge, of the concept of *in flagrante delicto*, as extended by Turkish law and the case-law of the Court of Cassation, in the absence of any indication of a concrete and ongoing criminal act. Observing that this extensive interpretation rendered ineffective the judicial protections and procedural safeguards afforded to judges, the Court held that the detention had not been effected "in accordance with a procedure prescribed by law" and that Article 5 § 1 of the Convention had therefore been violated. The Court further found that, at the time of the detention order, there was no objective and sufficient evidence capable of satisfying an impartial observer that the applicant had committed the offence of membership of an armed terrorist organisation with which he was charged, and that the requirement of "reasonable suspicion" under Article 5 § 1 (c) had accordingly

4 Baş v. Turkey, no. 66448/17, 3 March 2020.

been breached. Lastly, the Court found that the examination of the applicant's challenges to his detention exclusively on the basis of the case file, without any hearing for approximately fourteen months, was contrary to the right to a "speedy judicial review" under Article 5 § 4 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye after the attempted coup and the accompanying notice of derogation. While accepting the difficulties created by the state of emergency as a contextual factor, the Court stated that the extension of the concept of *in flagrante delicto* beyond the statutory framework, and the denial to the applicant of the right to a hearing before a court, exceeded the measure of "strict necessity" required by the situation. It drew attention to the fact that the failure to apply the statutory procedures correctly in the detention of judges posed a serious risk to judicial independence and the rule of law. In conclusion, on account of these violations the applicant was awarded 6,000 euros in respect of non-pecuniary damage and 4,000 euros in respect of costs and expenses.

SABUNCU AND OTHERS v. TURKEY⁵

THE FACTS

The applicants (ten individuals) — the editor-in-chief and columnists of the *Cumhuriyet* newspaper, known for its editorial line critical of the government, and executives of the foundation to which the newspaper belonged — were taken into custody on the allegation that they had aligned the newspaper's editorial line with the aims of illegal organisations; they were placed in pre-trial detention on charges of "assisting terrorist organisations without being a member" and "disseminating propaganda" on behalf of terrorist organisations of differing ideologies, such as the PKK, FETÖ/PDY and the DHKP/C. The prosecution and the magistrates' courts characterised the critical news reports and interviews published by the newspaper as part of "asymmetric

5 Sabuncu and Others v. Turkey, no. 23199/17 and 9 other applications, 10 November 2020.

warfare” tactics, drawing an automatic inference of guilt, while the Constitutional Court dismissed the individual applications by a majority.

THE VIOLATIONS

The ECtHR held that there had been a violation of Article 5 § 1 of the Convention on account of the unlawfulness of the applicants’ arrest and pre-trial detention — their editorial stance, protected by press freedom, and their peaceful political criticism having been unlawfully equated with assistance to terrorist organisations, and the decisions being devoid of any objective factual basis — and a violation of Article 10 on account of the interference with freedom of expression and of the press, the restriction of liberty having no legal basis. (The complaint under Article 5 § 4 concerning the length of the Constitutional Court’s examination was rejected as disclosing no violation, on the ground of that court’s exceptional caseload during the period concerned and the complexity of the case.)

OTHER ASPECTS OF THE JUDGMENT

The ECtHR found that the news reports forming the basis of the charges (reports on the MIT lorries, criticism of public officials, and interviews) contained no incitement to violence whatsoever and constituted legitimate journalistic activities feeding public debate. Such an asymmetric and expansive interpretation of the criminal law — apt to characterise every dissenting voice at odds with the government’s views as terrorism or terrorist propaganda — poses a grave risk to the Convention system. The declaration of a state of emergency (Article 15) cannot be relied on to extend the safeguards of Article 100 of the Code of Criminal Procedure, which requires strong suspicion of an offence, to the point of eliminating them entirely. The judicial pressure to which the applicants — against whom there was no concrete evidence of any offence — were subjected created a heavy climate of self-censorship across the press as a whole. The complaint under Article 18, to the effect that the applicants’ detention had been driven entirely by political motives and ulterior purposes alien to the Convention, was held (by a majority) to disclose no violation, on the ground that it had not been proved beyond reasonable doubt. Each of the applicants was awarded 16,000 euros in respect of non-pecuniary damage.

AHMET ŞIK v. TURKEY (No. 2)⁶

THE FACTS

The investigative journalist Ahmet Şık was taken into custody and placed in pre-trial detention in December 2016 on a charge of “assisting terrorist organisations (the PKK, FETÖ/PDY and the DHKP/C)” on account of his articles and interviews in the *Cumhuriyet* newspaper and his social-media posts. The İstanbul 8th Magistrate’s Court ordered his detention under the “catalogue offences” presumption in Article 100 § 3 of the Code of Criminal Procedure, relying as evidence on his criticism of counter-terrorism policy and on his interviews with the militants who had taken a public prosecutor hostage and with the PKK leader Cemil Bayık. The applicant, who remained in detention for fourteen months until his release in March 2018, was sentenced in April 2018 to seven years and six months’ imprisonment for assisting an organisation without being a member. The Court of Cassation quashed the judgment, holding that the acts in question were capable of constituting not assistance but the offences of “propaganda and denigration of State institutions”, and the case file was remitted. The applicant’s individual application to the Constitutional Court was rejected in May 2019 as manifestly ill-founded.

THE VIOLATIONS

The ECtHR found that the writings relied on as grounds for the deprivation of liberty remained within the bounds of legitimate public debate and the exercise of Convention freedoms, and contained no element supporting violence in the political sphere or evincing any intention to contribute to the aims of terrorist organisations. Emphasising that the automatic detention of a journalist, and the extension of that detention, on the basis of the catalogue-offences presumption and without concrete factual data could not be justified by the state-of-emergency derogation, the ECtHR held that Article 5 § 1 of the Convention had been violated on account of the absence of reasonable suspicion that the applicant had committed an offence (unlawful detention for want of reasonable suspicion); it did not examine separately the grounds given for extending the detention.

6 Ahmet Şık v. Turkey, no. 36493/17, 24 November 2017.

Secondly, the Court, noting that this detention imposed on account of lawful journalistic activities produced a serious chilling effect on freedom of expression and was not necessary in a democratic society, held by six votes to one that Article 10 of the Convention (freedom of expression) had been violated; it dismissed the complaints under Articles 5 § 4 and 18 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

In order to redress the non-pecuniary harm sustained as a result of the serious violations found, the ECtHR ordered the respondent State to pay the applicant **16,000 euros** in respect of non-pecuniary damage. Since the applicant had submitted no formal invoice, receipt or supporting voucher in due form in respect of the costs of the proceedings before the Court and lawyers' fees, the Court held that no award was to be made under the head of costs and expenses. Lastly, it directed that the sum awarded in respect of non-pecuniary damage be converted into the national currency and paid within the statutory three-month period, and that in the event of that period being exceeded simple interest would be payable at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

PIŞKİN v. TURKEY⁷

THE FACTS

The applicant, while working as an expert at the Ankara Development Agency, was dismissed from his post under Legislative Decree no. 667, issued under the state of emergency declared following the attempted coup of 15 July 2016, on the ground that he was “assessed as being affiliated or in contact with structures considered to be engaged in activities against terrorist organisations or national security” — that is, with such structures. The applicant brought an action for reinstatement, arguing that his dismissal was not based on any valid ground, that no

7 Pişkin v. Turkey, no. 33399/18, 15 December 2020; “AİHM’in Hamit Pişkin Kararının Değerlendirilmesi” [An Assessment of the ECtHR’s Hamit Pişkin Judgment], <https://www.drgokhangunes.com/genel/aihmin-hamit-piskin-kararinin-degerlendirilmesi/>; “Pişkin v. Turkey: Observations on the Failure of the Lawfulness Test and the Engel Criteria within the Context of the Turkish Purge”, <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/>.

explanation had been given to him and that his defence submissions had not been taken. The domestic courts dismissed the action, holding that the dismissal was based on the provisions of the Legislative Decree and fell within the administration's discretionary power. The applicant took the matter to the Constitutional Court, likewise without success.

THE VIOLATIONS

Examining the applicant's dismissal and the judicial review thereof, the ECtHR found the following violations:

Article 6 § 1 of the Convention (right to a fair trial): The Court found that the domestic courts had failed to examine in depth whether the dismissal rested on a "valid ground", whether the applicant had any link with illegal structures, and the basis for the termination. Noting that the judicial review had been confined to verifying the formal existence of the administrative act and had failed adequately to examine the applicant's arguments, the Court held that the right to a fair trial had been violated.

Article 8 of the Convention (right to respect for private life): The Court found that the vagueness of the grounds for the dismissal, and the stigmatising effect of the applicant's being labelled as "linked to a terrorist organisation", had serious consequences for his private life. Observing that the national authorities had not put forward "relevant and sufficient" reasons capable of justifying that interference, and that the procedure lacked adequate procedural safeguards against arbitrariness, the Court held that Article 8 had been violated.

OTHER ASPECTS OF THE JUDGMENT

The Court assessed the state of emergency declared by Türkiye and the accompanying notice of derogation, but emphasised that judicial review must afford effective protection against decisions violating fundamental rights. It noted that Legislative Decree no. 667 did not expressly exclude judicial review, and that the domestic courts were therefore under an obligation to examine all the evidence and arguments in a manner capable of preventing arbitrariness. The absence of any individualised reasoning in the dismissal decision forming the subject of the application resulted in the guarantees of a "fair trial" and of "respect for private life" being

rendered wholly ineffective. On account of these violations the Court awarded the applicant 4,000 euros in respect of non-pecuniary damage and indicated that the reopening of the civil proceedings would constitute an appropriate form of redress.

IV. JUDGMENTS DELIVERED IN 2021

ATILLA TAŞ v. TURKEY⁸

THE FACTS

The applicant is a singer and columnist known for his writings and Twitter posts critical of government policies both before and after the attempted coup of 15 July 2016. Within the scope of the investigations launched after 15 July, he was taken into custody on 31 August 2016 and placed in pre-trial detention on 3 September 2016 on a charge of “knowingly and willingly assisting a terrorist organisation”. His detention was maintained even though, throughout the investigation, he declared that he opposed the attempted coup and maintained that he had no link whatsoever with any terrorist organisation. After approximately fourteen months in detention he was released on 24 October 2017, but was subsequently, on 8 March 2018, sentenced to imprisonment for assisting a terrorist organisation without being a member.

THE VIOLATIONS

Examining the applicant’s pre-trial detention and trial, the ECtHR found violations under Articles 5 and 10 of the Convention. The Court found that the evidence forming the basis of the applicant’s detention — namely his tweets and newspaper columns — did not give rise to a “plausible” suspicion that he had supported a terrorist organisation. Noting that the detention was arbitrary because acts falling within the scope of the applicant’s freedom of expression had been linked to a terrorism offence without any concrete factual basis, the Court held that Article 5 § 1 of the Convention had been violated. Furthermore, the punishment of the applicant on account of his critical views was regarded as a severe interference that was not necessary in a democratic society and had a chilling effect on press freedom; the Court accordingly held that Article 10 of the Convention had also been violated.

8 Atilla Taş v. Turkey, no. 72/17, 19 January 2021.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the restriction of the applicant's access to the investigation file — a matter of critical importance for challenging his detention — but found no violation on that point, on the ground that the applicant had been sufficiently informed during questioning of the allegations against him. Assessing the notice of derogation lodged by Türkiye after the coup attempt, the Court emphasised that the conditions of a state of emergency could not justify the arbitrary restriction of freedom of expression or detention in the absence of concrete evidence. On account of the violations, the applicant was awarded 12,275 euros in respect of non-pecuniary damage and 3,175 euros in respect of costs and expenses.

AHMET HÜSREV ALTAN v. TURKEY⁹

THE FACTS

The applicant, a well-known novelist and journalist, was taken into custody after the attempted coup of 15 July 2016 on the allegation that he was connected with the Movement ("Cemaat") and had prepared the ground for the coup attempt, and was placed in pre-trial detention in 2016. On the basis of statements in articles he had written before 15 July and his comments on a television programme, he was charged with attempting to overthrow the constitutional order and with assisting a terrorist organisation without being a member. The applicant applied to the ECtHR, alleging violations of Articles 5 and 10 of the Convention on account of the restriction of his access to the investigation file during his detention, the absence of concrete evidence capable of giving rise to reasonable suspicion, and the conduct of the proceedings without a hearing.

THE VIOLATIONS

Examining the applicant's detention and the judicial review thereof, the ECtHR found violations under Articles 5 and 10 of the Convention. The Court found that the evidence on which the applicant's detention was based — his newspaper articles and television remarks — did not

9 Ahmet Hüsrev Altan v. Turkey, no. 13252/17, 13 April 2021.

give rise to a “reasonable suspicion” of any connection with the attempted coup or with membership of a terrorist organisation. Noting that there was no objective basis for characterising critical writings protected by freedom of expression as incitement to violence or support for terrorism, the Court held that the detention was an arbitrary measure “without legal basis”. Furthermore, the examination of the applicant’s challenges to his detention for approximately fourteen months without any hearing was found to be contrary to the right to a “speedy judicial review” under Article 5 § 4 of the Convention. Lastly, the applicant’s detention on account of his journalistic activities and critical views was regarded as an arbitrary interference with the freedom of expression protected by Article 10 of the Convention, and a violation of that Article was found.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye after the attempted coup and the accompanying notice of derogation, but emphasised that, since no “reasonable connection” could be established between the applicant’s acts and the grave charges laid against him, the measures exceeded the limits of proportionality “strictly required” by the state of emergency. It stated that, as a requirement of the rule of law, the restriction of access to the investigation file impaired the rights of the defence, and that the grounds for detention must rest on plausible evidence, failing which the deprivation of liberty would become arbitrary. The Court found no violation in respect of the applicant’s allegation under Article 18 of the Convention that he had been detained for an ulterior purpose. Having regard to the gravity of the violations, the applicant was awarded 16,000 euros in respect of non-pecuniary damage.

MURAT AKSOY v. TURKEY¹⁰

THE FACTS

The applicant, a journalist, was taken into custody on 31 August 2016 and placed in pre-trial detention on 3 September 2016 on the allegation that he supported a terrorist organisation and sought to overthrow the Government. He was targeted on account of critical articles he had written

¹⁰ Murat Aksoy v. Turkey, no. 80/17, 13 April 2021.

for newspapers such as *Taraf*, *Millet* and *Yeni Hayat* and his social-media posts, and throughout the investigation he maintained that he had no involvement in the attempted coup or in any terrorist organisation. At the conclusion of the criminal proceedings against him, he was sentenced to imprisonment for assisting a terrorist organisation without being a member. He applied to the Constitutional Court on account of the restriction of his access to the investigation file during his detention, the review of his detention without a hearing, and the absence of concrete evidence capable of giving rise to reasonable suspicion; the Constitutional Court, however, dismissed his applications.

THE VIOLATIONS

Examining the applicant's detention, the ECtHR found serious violations under Article 5 of the Convention. The Court stated that the accusation that a journalist supported a terrorist organisation on account of his articles critical of the government and his social-media posts was devoid of objective evidence capable of giving rise to a "reasonable suspicion". Concluding that the detention measure pursued the aim of punishing activities protected by freedom of expression and was contrary to the "procedure prescribed by law", the Court held that Article 5 § 1 of the Convention had been violated. It further found that the applicant's detention on account of his journalistic activities had produced a chilling effect on freedom of expression, and held that Article 10 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye after the attempted coup and the accompanying notice of derogation, but emphasised that such arbitrary practices restricting freedom of expression exceeded the limits of "strict necessity" required by the situation. Noting that the grounds relied on for the journalist's detention were not "relevant and sufficient", the judgment drew attention to the fact that the use by the judicial authorities of the climate created by the attempted coup to silence dissenting voices was incompatible with the rule of law. It was accepted that the applicant retained his "victim" status on account of the Constitutional Court's approach in the individual-application proceedings and the inadequacy of the compensation

awarded to him. On account of these violations the Court awarded the applicant 11,500 euros in respect of non-pecuniary damage and 3,175 euros in respect of costs and expenses.

ÖĞRETEN AND KANAAT v. TURKEY¹¹

THE FACTS

The applicants are two journalists engaged in journalistic activities and known for their critical perspective on government policies. In 2016 they were taken into custody on the ground that they had published, through the media outlets for which they worked, material from the hacked e-mails of a government minister, and were placed in pre-trial detention on a charge of membership of a terrorist organisation. Throughout the investigation the applicants' access to the investigation file was restricted, and their applications for release and their objections were dismissed on the basis of the case file alone, without a hearing. The applicants maintained that the charges against them related to their journalistic activities and that there was no reasonable suspicion capable of justifying their detention.

THE VIOLATIONS

Examining the applicants' detention, the ECtHR found violations under Articles 5 and 10 of the Convention. The Court found that the charge of membership of a terrorist organisation brought against the journalists on account of material published in the course of their news-reporting activities and their duty to inform the public was devoid of objective evidence. Noting that this state of affairs produced a chilling effect on the applicants' freedom of expression, the Court held that Article 10 of the Convention had been violated. Furthermore, since no concrete evidence establishing a "reasonable suspicion" capable of justifying the applicants' detention had been produced, and in view of the unlawful nature of the detention measure, Article 5 § 1 of the Convention was violated. The restriction of access to the investigation file and the examination of the objections without a hearing constituted a violation under Article 5 § 4 of the Convention.

11 Öğreten and Kanaat v. Turkey, nos. 42201/17 and 42212/17, 18 May 2021.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye after the attempted coup and the accompanying notice of derogation, but emphasised that the extensive application of the concept of *in flagrante delicto* and the criminalisation of journalists' news-reporting activities exceeded the limits of the measures "strictly required" by the state of emergency. The judgment stated that the detention of a journalist for publishing newsworthy information already in the public domain, by directly linking that publication to terrorism offences, constituted an arbitrary interference. The Court accepted that the applicants retained their victim status, since the decisions delivered by the Constitutional Court in their regard, and the compensation it afforded, were inadequate. On account of the violations, each applicant was awarded 14,000 euros in respect of non-pecuniary damage and 2,250 euros in respect of costs and expenses.

BULAÇ v. TURKEY¹²

THE FACTS

Ali Bulaç, a columnist for the closed-down *Zaman* newspaper, surrendered voluntarily to the police in July 2016, within the scope of the investigations conducted after the attempted coup of 15 July 2016, and was placed in pre-trial detention. The İstanbul 4th Magistrate's Court and the public prosecutor's office made orders restricting his liberty under the "catalogue offences" presumption in Article 100 § 3 of the Code of Criminal Procedure, citing as evidence of strong suspicion his long-standing column in the *Zaman* newspaper, certain critical articles written after the events of 17–25 December 2013 ("Is the sword still an illegitimate political instrument?" and the like), his role in the management of the Journalists and Writers Foundation, his travels with executives of the organisation, the movements on his Bank Asya account, and the digital data on his computer. The applicant argued that he had always opposed military coups and had no knowledge that the structure in question was planning a coup; he was held in prison for approximately twenty-two months before his release in May 2018. In July 2018 the İstanbul 14th Assize Court sentenced him

12 Bulaç v. Turkey, no. 25939/17, 8 June 2021.

to eight years and nine months' imprisonment for membership of the organisation, a judgment upheld by the regional court of appeal. On an individual application lodged in the course of these proceedings, the Constitutional Court in May 2019 found a violation of his rights, holding that his writings disclosed no element of an offence and no strong indication of guilt, and awarded him 25,000 Turkish lira in respect of non-pecuniary damage.

THE VIOLATIONS

The ECtHR dismissed the Government's preliminary objections that domestic compensation remedies had not been exhausted and that the applicant had lost his victim status following the Constitutional Court's judgment: the sum of 25,000 Turkish lira awarded at national level by the Constitutional Court in respect of non-pecuniary damage was found to be manifestly inadequate having regard to the twenty-two months of unjustified detention endured by the applicant, and his "victim" status was accordingly held to subsist. On the merits, the Court, concurring with the Constitutional Court's findings of violation, held that the newspaper columns and lawful activities relied on as the basis for the applicant's detention provided no foundation for a "reasonable suspicion" capable of satisfying an impartial observer. While taking full account of Türkiye's notice of derogation in respect of the state-of-emergency period, the ECtHR emphasised that the automatic detention of a journalist on the basis of the catalogue-offences presumption, without concrete factual data, exceeded what was strictly required by the exigencies of the situation and could not be justified under Article 15 of the Convention; it accordingly held that Article 5 § 1 of the Convention had been violated (unlawful detention for want of reasonable suspicion) and, in the light of that finding, considered it unnecessary to examine separately the complaint concerning the reasons for detention under Article 5 § 3. Secondly, the Court, noting that this unjustified detention, imposed on account of entirely lawful press activities and critical columns, produced a serious chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices, and that this restriction, devoid of legal basis, was not necessary in a democratic society, held unanimously that Article 10 of the Convention (freedom of expression) had been violated. The applicant's remaining procedural complaints under Article 5 § 4 of the Convention,

concerning the length of the Constitutional Court's examination and the review of detention without a hearing, were rejected as manifestly ill-founded.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR dismissed the claim in respect of pecuniary damage on the ground that no concrete and verifiable causal link had been established between the serious violations found and the loss of income alleged by the applicant. Having regard to the magnitude of the non-pecuniary harm caused to the applicant by his unjustified deprivation of liberty in the exercise of his profession as a journalist, and to the inadequate compensation paid at national level, the Court ordered that the applicant be paid 12,240 euros in additional non-pecuniary damages. Since the applicant had submitted no itemised statement of expenses, supporting documents or receipts in due form in respect of the costs of the proceedings before the Court and lawyers' fees, the Court held that no award was to be made under the head of costs and expenses.

TERCAN v. TURKEY¹³

THE FACTS

The applicant, Erdal Tercan, is a former member of the Constitutional Court. On the day after the attempted coup of 15 July 2016, within the scope of an investigation launched on the allegation that he was a member of the organisation, he was taken into custody on the instructions of the Ankara Chief Public Prosecutor's Office and placed in pre-trial detention on 20 July 2016. The applicant lodged objections, arguing that the special judicial safeguards afforded to him as a member of the Constitutional Court had been disregarded and that there was no situation of *in flagrante delicto*. The Court of Cassation, characterising membership of an armed terrorist organisation as a "continuing offence", maintained that a situation of *in flagrante delicto* existed and dismissed the applicant's requests for release. In addition, the applicant's home was searched and his digital materials were seized.

13 Tercan v. Turkey, no. 6158/18, 29 June 2021.

THE VIOLATIONS

Examining the applicant's detention, the ECtHR found serious violations under Article 5 of the Convention. The Court, finding that the detention of a member of the Constitutional Court — deprived of the special judicial safeguards afforded to him and on the basis of an extensive and unreasonable interpretation of the concept of *in flagrante delicto* — was “unlawful” and “arbitrary”, held that Article 5 § 1 of the Convention had been violated. It further found a violation under Article 5 § 1 (c), noting that at the time of the initial detention there were no objective elements capable of supporting a reasonable suspicion that the applicant had committed the offence with which he was charged. The fact that the applicant remained in pre-trial detention for more than two years and eight months in the course of the proceedings, without relevant and sufficient reasons being given to justify that detention, amounted to a violation of Article 5 § 3. Lastly, the Court held that Article 8 of the Convention had been violated on account of the search of the applicant's home and the seizure of his belongings, carried out in breach of procedural safeguards and statutory procedures.

OTHER ASPECTS OF THE JUDGMENT

The Court assessed in detail the state of emergency declared by Türkiye after the attempted coup of 15 July and the accompanying notice of derogation. While accepting that extraordinary circumstances such as an attempted coup created a legitimate urgency, the Court emphasised that the extension of the concept of *in flagrante delicto* in a manner that entirely disabled the procedural safeguards of the Turkish legal system exceeded the limits of “strict necessity” required by the situation. The judgment stated that the disregard, in the detention of a member of a supreme court, of the special procedures protecting judicial independence and the separation of powers was incompatible with the principles of the rule of law and legal certainty. The Court found that the reasons given for the continuation of the detention were stereotyped and abstract and contained no concrete facts specific to the applicant's situation. It further drew attention to the fact that the judicial authorities' adoption, in the course of the applicant's detention, of an interpretation that rendered ineffective the judicial immunity and safeguards afforded to members of the Constitutional Court weakened the protection against arbitrariness provided by the Convention.

On account of these serious violations, the ECtHR awarded the applicant 20,000 euros in respect of non-pecuniary damage.

AKGÜN v. TURKEY¹⁴

THE FACTS

Within the scope of the investigations conducted after the attempted coup of 15 July 2016, the applicant attended to give a statement on 17 October 2016 in connection with an allegation of membership of a terrorist organisation and was taken into custody the same day. In the investigation conducted by the Ankara Chief Public Prosecutor's Office, it was alleged that the applicant was a user of the "ByLock" application. The applicant, a former police officer, maintained that he had had no connection whatsoever with the organisation throughout his career, that he had not used the application in question, and that he opposed the attempted coup. The Ankara 9th Magistrate's Court ordered the applicant's detention on the basis of findings drawn from digital materials; the Constitutional Court dismissed his applications, holding that his detention had a legal basis and that strong suspicion of an offence existed.

THE VIOLATIONS

Examining the applicant's detention, the ECtHR found violations under Article 5 of the Convention. The Court stated that the fact that the sole evidence forming the basis of a person's detention was the alleged use of an encrypted messaging application was not sufficient, even in exceptional circumstances such as an attempted coup, to establish a "reasonable suspicion". It held that Article 5 § 1 of the Convention had been violated because the detention order, and the continuation of the detention, had been effected without "plausible reasons" relating to the offence charged, and because the domestic courts had given no concrete reasoning. Furthermore, the examination of the applicant's challenges to his detention on the basis of the file alone and without a hearing, together with the restriction of his access to the investigation file, was found to have impaired the principle of equality of arms and thus to constitute a violation of Article 5 § 4.

14 Akgün v. Turkey, no. 19699/18, 20 July 2021.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR examined in detail the expert reports on the technical nature and organisational use of the ByLock application. Following that examination, while accepting that the technical features of the application (encryption, anonymity measures making the identification of users difficult, and the like) facilitated covert communication, the Court emphasised that the mere downloading or use of the application should not be regarded as sufficient evidence of membership of a terrorist organisation. While taking account of the case-law developed by the Constitutional Court under the conditions of the state of emergency declared after the attempted coup, the Court stated that the applicant's detention exceeded the limits of proportionality "strictly required" by the situation. The judgment reiterated that, when ordering a person's deprivation of liberty, the judicial authorities must give clear reasons for the concrete facts linking that person to the offence charged. On account of these violations, the applicant was awarded 12,000 euros in respect of non-pecuniary damage and 1,000 euros in respect of costs and expenses.

TURAN AND OTHERS v. TURKEY¹⁵

THE FACTS

The case concerns 427 applicants placed in pre-trial detention within the scope of the investigations conducted after the attempted coup of 15 July 2016. At the material time, all of the applicants were serving as members of the Court of Cassation or the Council of State, or as judges

15 Turan and Others v. Turkey, no. 75805/16 and 426 other applications, 23 November 2021; "AİHM'in Turan ve Diğerleri Kararına İlişkin Değerlendirme" [An Assessment of the ECtHR's Turan and Others Judgment], <https://www.drgokhangunes.com/makale/aihmin-turan-ve-digerleri-kararina-iliskin-degerlendirme/>; "Hâkim/Savcı Tutuklamalarına İlişkin Turan ve Diğerleri/Türkiye Kararı: Ne şış ne kebab!" [The Turan and Others v. Turkey Judgment on the Detention of Judges and Prosecutors: Neither Fish nor Fowl!], <https://www.colemerghaber.com/haber/hakimsavci-tutuklamalarına-iliskin-turan-ve-digerleri-türkiye-karari-ne-sis-ne-kebab-12212>; "Turan and Others v. Turkey: 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. Turkey and 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/>; "Results of the 2021 Strasbourg Observers Best & Worst Poll", <https://strasbourgobservers.com/2022/03/29/results-of-the-2021-strasbourg-observers-best-worst-poll/>.

or public prosecutors. Within the framework of the investigations initiated by the Ankara Chief Public Prosecutor's Office, proceedings were brought against the applicants on suspicion of involvement in the attempted coup or of membership of a terrorist organisation; the applicants lodged objections, arguing that they had had no direct involvement in the attempted coup, that they had been detained in breach of their statutory safeguards, and that no situation of *in flagrante delicto* existed. The domestic courts, characterising the offence of membership of an armed terrorist organisation as a "continuing offence", held that a situation of *in flagrante delicto* arose at the moment of arrest and that the general provisions of procedure therefore fell to be applied.

THE VIOLATIONS

Examining the applicants' detention, the ECtHR found violations under Article 5 of the Convention. The Court found "unlawful" the disabling of the special procedural safeguards and immunities afforded to members of the judiciary through an unlawful and extensive interpretation of the concept of *in flagrante delicto*. The failure, in the detention of the applicants, to respect the procedural safeguards afforded to members of the judiciary by the Constitution and the relevant legislation — notwithstanding the extraordinary circumstances of the attempted coup — led the Court to hold that Article 5 § 1 of the Convention had been violated. Moreover, the absence of concrete evidence in the grounds for detention, and the subjection of the applicants to the general provisions of procedure in the absence of any situation of *in flagrante delicto*, rendered the detention arbitrary.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye and the accompanying notice of derogation, but emphasised that the extension of the concept of *in flagrante delicto* — contrary to its settled interpretation in domestic law — in a manner depriving members of the judiciary of their special safeguards exceeded the limits of "strict necessity" required by the situation. The judgment stated that, in a State governed by the rule of law, the safeguards protecting judicial independence and the separation of powers constitute a "cornerstone" against arbitrary practices even in times of emergency. Noting that the applicants' situation corresponded to the findings made in previous similar cases (the *Alparslan Altan* and *Baş* judgments), the Court indicated that

Türkiye should remedy the legal shortcomings and systemic problems in the procedure for the detention of members of the judiciary. On account of the violations, each of the applicants was awarded 5,000 euros in respect of non-pecuniary damage and costs.

YASİN ÖZDEMİR v. TURKEY¹⁶

THE FACTS

The applicant is a university graduate who was working as a teacher at the material time. In April 2015 he posted comments beneath news items published on a newspaper's social-media account. In those posts he criticised the legal proceedings being conducted against the movement ("Cemaat") and government policies, expressing his views in peaceful terms. After the attempted coup of 15 July 2016, retrospective searches carried out by the cybercrime unit on the instructions of the Isparta Chief Public Prosecutor's Office brought these old comments to light, and the applicant was taken into custody and placed in pre-trial detention in August 2016. He was initially prosecuted on a charge of disseminating propaganda for a terrorist organisation, but in the course of the proceedings his acts were reclassified under the offence of "praising an offence or an offender". The applicant argued that in 2015, when he posted the comments in question, the structure concerned had not yet been recognised as a terrorist organisation, and that his acts fell entirely within the bounds of freedom of expression. The Isparta 2nd Assize Court, asserting that the applicant's peaceful comments posed a clear and imminent danger to public order, sentenced him to seven months and fifteen days' imprisonment and suspended the pronouncement of the judgment. Having exhausted the domestic remedies following that decision, the applicant applied to the ECtHR, alleging violations of his rights to a fair trial and to freedom of expression.

THE VIOLATIONS

The ECtHR subjected this punitive measure to detailed examination under Article 10 of the Convention (freedom of expression). The Court found that the applicant's Facebook posts had been

16 Yasin Özdemir v. Turkey, no. 14606/18, 7 December 2021; "AİHM'in Yasin Özdemir/Türkiye Kararına İlişkin Değerlendirme" [An Assessment of the ECtHR's Yasin Özdemir v. Turkey Judgment], <https://www.drgokhangunes.com/makale/aihmin-yasin-ozdemir-turkiye-kararina-iliskin-degerlendirme/>.

made approximately a year and a half before the attempted coup, namely in April 2015. On examination of their content, the comments were found to contain no incitement whatsoever to violence, insurrection or bloodshed; on the contrary, they consisted of peaceful criticism directed at current public debates. The ECtHR regarded it as a serious violation of rights that a person should be subjected to criminal sanction solely for words criticising the political authorities and contributing to a lawful debate, without any concrete evidence of an organic link with a terrorist organisation. Noting that the domestic court's conviction, which equated the applicant's peaceful criticism with praise of a terrorist organisation's acts of violence, did not correspond to any pressing social need in a democratic society and was disproportionate, the Court held unanimously that freedom of expression had been violated.

OTHER ASPECTS OF THE JUDGMENT

The Court drew attention to the fact that such a broad, unforeseeable and arbitrary interpretation of the provisions of the criminal law by the judicial authorities produced a very serious chilling effect on individuals. It emphasised that punitive practices of this kind would give rise to a climate of self-censorship in civil society and the press and would destroy the environment of free political debate that is the cornerstone of democratic pluralism. It stated in particular that the use of legal provisions to suppress dissenting voices and critical opinions, on the pretext of the sensitive atmosphere created by the attempted coup, undermined the principles of the rule of law and legal foreseeability. Assessing the notice of derogation lodged by Türkiye during the state of emergency, the ECtHR reiterated that even the conditions of a derogation could not legitimise the punishment of peaceful expression without a plausible and reasonable justification. Furthermore, by way of just satisfaction for the non-pecuniary damage sustained by the applicant, the Court awarded 11,500 euros in respect of non-pecuniary damage and 3,175 euros in respect of costs and expenses incurred in the proceedings.

İLİCAK v. TURKEY (No. 2)¹⁷

THE FACTS

The applicant, Ayşe Nazlı Ilıcak, a well-known journalist and writer, was taken into custody on 26 July 2016, after the attempted coup of 15 July 2016, and placed in pre-trial detention on 29 July 2016. She was charged with attempting to overthrow the constitutional order on the basis of articles she had published in her capacity as editor-in-chief of a newspaper, her comments on a television programme and her social-media posts. On account of the denial of access to the investigation file during her detention and the conduct of the detention reviews without a hearing, the applicant applied to the ECtHR, alleging violations of her rights to a fair trial and to freedom of expression.

THE VIOLATIONS

Examining the applicant's detention, the ECtHR found violations under Article 5 of the Convention. The Court stated that the accusation that a journalist was a member of a terrorist organisation or had participated in the coup, on account of her articles critical of the government and her social-media posts, was devoid of objective evidence capable of giving rise to a "reasonable suspicion". Concluding that the detention measure pursued the aim of punishing activities protected by freedom of expression and was contrary to the "procedure prescribed by law", the Court held that Article 5 § 1 of the Convention had been violated. Furthermore, the examination of the applicant's challenges to her detention on the basis of the file alone and without a hearing for approximately fifteen months was found to be contrary to the right to a "speedy judicial review" under Article 5 § 4. The Court also found that the applicant's freedom of expression had been violated.

17 İlıcak v. Turkey (no. 2), no. 1210/17, 14 December 2021; "AİHM'in Nazlı Ilıcak Kararına İlişkin Değerlendirme" [An Assessment of the ECtHR's Nazlı Ilıcak Judgment], <https://www.drgokhangunes.com/makale/aihmin-nazli-ilicak-kararina-iliskin-degerlendirme/>.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye and the accompanying notice of derogation, but, noting that the evidence on which the applicant's detention was based (social-media posts and the like) contained no incitement to violence and that no link with a terrorism offence had been established, emphasised that such practices exceeded the limits of proportionality "strictly required" by the situation. Observing that the grounds relied on for the journalist's detention were not "relevant and sufficient", the judgment drew attention to the fact that the use by the judicial authorities of the climate created by the attempted coup to silence dissenting voices was incompatible with the rule of law. The Court found that the applicant's detention was "unlawful" within the meaning of Article 5 § 1 of the Convention. On account of the violations, the applicant was awarded 16,000 euros in respect of non-pecuniary damage.

V. JUDGMENTS DELIVERED IN 2022

NUH UZUN AND OTHERS v. TURKEY¹⁸

THE FACTS

The applicants are fourteen Turkish nationals placed in pre-trial detention after 15 July 2016 on charges of membership of a terrorist organisation. They complained that, while they were detained in penal institutions, their private correspondence — both outgoing and incoming — was systematically scanned and uploaded to the National Judiciary Informatics System (UYAP) without any court order. Certain applicants further alleged a violation of their right to a fair trial on account of the failure to communicate to them the public prosecutor's opinion in the proceedings before the domestic courts. The applicants' objections to this practice were dismissed by the enforcement judges and the assize courts, and their individual applications to the Constitutional Court were declared inadmissible on various procedural grounds.

THE VIOLATIONS

The ECtHR examined the uploading of the applicants' private correspondence to the UYAP system under Article 8 of the Convention (right to respect for private life and correspondence). The Court found that the recording of the applicants' letters on the system indefinitely, without any limitation and without any legal basis being identified — even where their content was unobjectionable — constituted an interference with the confidentiality of private life. Having determined that the administrative instructions in force at the material time did not afford sufficient safeguards as regards the protection, storage and destruction of personal data and did not satisfy the requirement of being "in accordance with the law", the Court held that Article 8 of the Convention had been violated. The complaints raised by certain applicants concerning the monitoring of their correspondence were rejected on the ground that insufficient specific information had been provided.

¹⁸ Nuh Uzun and Others v. Turkey, no. 49341/18 and 13 other applications, 29 March 2022.

OTHER ASPECTS OF THE JUDGMENT

While accepting that the practice of uploading correspondence to UYAP might pursue legitimate aims such as the security of penal institutions and the prevention of crime, the Court emphasised that the existing regulatory framework (circulars of the Directorate General) did not have the quality of law and lacked the clarity and detail necessary to protect individuals against arbitrary interference. The judgment stated that the absence of clear rules on time-limits for the recording and storage of this correspondence — which constituted personal data — and on access rights and destruction procedures was incompatible with the requirements of the Convention. Beyond the finding of a violation, the Court awarded six applicants 500 euros in respect of costs and expenses, but declined most of the claims in respect of non-pecuniary damage, holding that the finding of a violation constituted in itself sufficient just satisfaction. The judgment set an important standard concerning the need to protect prisoners' right to respect for private life in increasingly digitalised enforcement procedures.

TANER KILIÇ v. TURKEY (No. 2)¹⁹

THE FACTS

The applicant, Taner Kılıç, is the Chair of the Board of Amnesty International's Türkiye Section and a human rights defender. He was taken into custody on 6 June 2017, in the period following 15 July 2016, and placed in pre-trial detention on a charge of "membership of an armed terrorist organisation". The applicant maintained that he had been targeted, in the absence of any concrete evidence, on account of activities falling within the scope of freedom of expression and his human rights work. Throughout the investigation he categorically denied the allegation that he had used the "ByLock" application attributed to him; the domestic courts, however, ordered the continuation of his detention without entering into any discussion of concrete evidence and relying

19 Taner Kılıç v. Turkey (no. 2), no. 208/18, 31 May 2022; "AİHM'in Taner Kılıç/Türkiye Kararının Değerlendirilmesi" [An Assessment of the ECtHR's Taner Kılıç v. Turkey Judgment], <https://www.drgokhangunes.com/makale/aihmin-taner-kilic-turkiye-kararinin-degerlendirilmesi/>; "Taner Kılıç v. Turkey (no. 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/>.

on the “catalogue offences” ground. The applicant was released after approximately fourteen months in detention, but his trial continued.

THE VIOLATIONS

Examining the applicant’s detention, the ECtHR found violations under Articles 5 and 10 of the Convention. Finding “unlawful” and “arbitrary” the detention of a human rights defender without the production of objective and plausible evidence capable of giving rise to a “reasonable suspicion” that he had engaged in organisational activities or was a member of a terrorist organisation, the Court held that Article 5 § 1 of the Convention had been violated. Noting that the reasons given throughout the detention were stereotyped and contained no concrete facts specific to the applicant’s situation, the Court also found a violation of Article 5 § 3. Furthermore, observing that the punishment of the applicant on account of his human rights work and activities falling within the scope of freedom of expression constituted a disproportionate interference that was not necessary in a democratic society, the Court held that Article 10 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR drew attention to the fact that the disregard of fundamental procedural safeguards in the detention of a human rights defender was incompatible with the principles of the rule of law and legal certainty. By way of redress for the violations, the Court awarded the applicant 16,000 euros in respect of non-pecuniary damage and 10,000 euros in respect of costs and expenses. The applicant’s allegation under Article 18 of the Convention that he had been detained for an “ulterior purpose” was not examined; the arbitrariness of the detention procedure and its chilling effect on freedom of expression were, however, clearly set out in the judgment.

ACAR AND OTHERS v. TÜRKİYE²⁰

THE FACTS

The case concerns the applications of fifty persons placed in pre-trial detention within the scope of the investigations conducted after the attempted coup of 15 July 2016. At the material time, all of the applicants were serving as judges, public prosecutors or trainee judges/prosecutors in courts of various levels. Within the framework of the investigations initiated by the Ankara Chief Public Prosecutor's Office, the applicants — who had been suspended from duty and stripped of their powers by decisions of the Council of Judges and Prosecutors — were taken into custody and detained on suspicion of involvement in the attempted coup or of membership of a terrorist organisation. The detention orders were based on the applicants' suspension from duty, on allegations of links with the organisation or, in respect of some applicants, on the allegation that they had used the ByLock application. The applicants applied to the Constitutional Court, arguing that their detention was unlawful, that there was no concrete evidence capable of giving rise to reasonable suspicion, and that their special judicial safeguards had been violated; having obtained no redress, they took the matter to the ECtHR.

THE VIOLATIONS

Examining the applicants' detention, the ECtHR found violations under Article 5 of the Convention. The Court held that the detention of a judge or public prosecutor — in the absence of any situation of *in flagrante delicto* or of concrete, plausible evidence, and solely on the basis of general administrative decisions (decisions of the Council of Judges and Prosecutors) or questionable allegations such as ByLock use — violated the right to liberty and security protected by Article 5 § 1 of the Convention. It was emphasised that, at the time of the applicants' detention, there were no plausible reasons or concrete elements capable of satisfying an impartial observer that they had committed the offence with which they were charged. The arbitrary interpretation of

²⁰ Acar and Others v. Türkiye, no. 64251/16 and 49 other applications, 28 June 2022.

the detention measure in a manner disabling the special procedural safeguards enjoyed by members of the judiciary amounted to a violation of Article 5 § 1 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

While acknowledging the extraordinary circumstances that arose in Türkiye after 15 July and the difficulties confronting the judicial system, the Court reiterated that this state of affairs did not permit the suspension of the fundamental safeguards laid down in Article 5 of the Convention. The judgment stated that the detention of a member of the judiciary — effected on a general charge of “membership of a terrorist organisation”, without any distinction being drawn between *in flagrante delicto* and offences connected with official duties, and without any discussion of the evidence — was incompatible with the principles of the rule of law and legal certainty. The Court found that the applicants’ detention exceeded the limits of “strict necessity” required by the situation and was disproportionate. It further reiterated that the use of “ByLock” could not, of itself, constitute a “reasonable suspicion” sufficient for detention unless its content and manner of use were established or it was supported by other concrete evidence. On account of these violations, each of the applicants was awarded 5,000 euros in respect of non-pecuniary damage.

ULUSOY AND OTHERS v. TÜRKİYE²¹

THE FACTS

The case concerns twenty-one applicants placed in pre-trial detention after 15 July 2016. The great majority of the applicants were serving, at the material time, as judges, public prosecutors or trainee judges/prosecutors in various courts; one was a police officer and three others were former members of the judiciary. Within the scope of the investigations initiated by the Ankara Chief Public Prosecutor’s Office, the applicants were suspended from duty and stripped of their powers, and detention orders were subsequently made against them on suspicion of “membership of an armed terrorist organisation”. The detention orders were based essentially on the suspension decisions taken by the Council of Judges and Prosecutors and, in respect of some applicants, on

21 Ulusoy and Others v. Türkiye, no. 73062/16 and 20 other applications, 6 September 2022.

the allegation that they had used the ByLock application. The applicants denied the charges against them and applied to the Constitutional Court, drawing attention to the absence of concrete evidence, the violation of their judicial safeguards and the deficiencies in the review procedures; having obtained no redress, they brought the matter before the ECtHR.

THE VIOLATIONS

The ECtHR examined the applicants' detention through the prism of Article 5 of the Convention (right to liberty and security) and found a violation. The Court determined that the evidence forming the basis of the applicants' detention (abstract allegations such as the suspension decisions of the Council of Judges and Prosecutors or ByLock use) did not satisfy the criterion of "reasonable suspicion" required for suspecting a person of the offence of membership of a terrorist organisation. It held that Article 5 § 1 of the Convention had been violated on account of the absence of plausible and concrete evidence in the applicants' detention and the fact that the allegations were not of a nature to satisfy an objective observer. While accepting the existence of extraordinary circumstances such as the attempted coup, the Court emphasised that this could not justify arbitrary and unfounded restrictions of the applicants' personal liberty.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye and the accompanying notice of derogation, but found that the grounds relied on for the applicants' detention, and the assessment of the evidence, exceeded the limits of proportionality "strictly required" by the situation. The judgment reiterated that the principles of the rule of law must be applied, even in periods of emergency, in a manner that prevents arbitrariness. The Court found that the decisions ordering the continuation of the applicants' detention were stereotyped, abstract and unindividualised, and contained no concrete facts specific to each applicant's situation. On account of these serious violations, the ECtHR awarded each applicant a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment consolidated precedent-setting legal principles to the effect that, in the procedures for the detention of members of the judiciary, administrative decisions or allegations concerning an encrypted application cannot, of themselves, constitute a situation of *in flagrante delicto* or a "reasonable suspicion".

BAYRAM AND OTHERS v. TÜRKİYE²²

THE FACTS

The case comprises the applications lodged by 109 persons (judges, public prosecutors and one police officer) placed in pre-trial detention after the attempted coup of 15 July 2016. All of the applicants, within the scope of the administrative and criminal investigations launched immediately after the attempted coup, were suspended from duty or stripped of their powers and subsequently detained on suspicion of membership of a terrorist organisation. The detention orders were based principally on the grounds for the applicants' suspension, on allegations of links with the organisation, or on the allegation that they had used the ByLock application. The applicants exhausted the remedies before the Constitutional Court, arguing that their detention was unlawful, that no situation of *in flagrante delicto* existed and that the judicial safeguards afforded to them had been violated; having obtained no redress, they applied to the ECtHR.

THE VIOLATIONS

The ECtHR examined the applicants' detention on the basis of Article 5 of the Convention (right to liberty and security) and held that Article 5 § 1 of the Convention had been violated. The Court stated that the detention of a member of the judiciary on the basis solely of administrative acts or general suspicions, without concrete and plausible evidence, was "unlawful" and "arbitrary". In particular, the excessive and unreasonable interpretation of statutory exceptions such as *in flagrante delicto* — in a manner that entirely disabled legal safeguards even in extraordinary circumstances such as an attempted coup — weakened the protection afforded by the Convention. The Court concluded that the applicants had been deprived of their liberty in the absence of a "plausible" suspicion of an offence capable of satisfying an impartial observer that they had committed the offence with which they were charged.

22 Bayram and Others v. Türkiye, no. 20061/17 and 108 other applications, 6 September 2022.

OTHER ASPECTS OF THE JUDGMENT

While taking into account the extraordinary circumstances that arose in Türkiye, the Court emphasised that this state of affairs did not permit the suspension of the minimum legal safeguards laid down in Article 5 of the Convention. The judgment drew attention to the fact that the arbitrary circumvention, in the detention of a judge or public prosecutor, of the judicial safeguards (immunities and the like) that are among the fundamental pillars of the rule of law profoundly undermined legal certainty and judicial independence. The Court found that the decisions ordering the continuation of the applicants' detention rested on unindividualised and abstract grounds, a state of affairs incompatible with the principle that detention must be a measure of "last resort". Each of the applicants in respect of whom a violation was found was awarded a total of 5,000 euros in respect of non-pecuniary damage and costs of the proceedings. The judgment takes a notably critical stance against the transgression of the legal limits of the concept of *in flagrante delicto* in the procedure for the detention of members of the judiciary.

ATAMAN AND OTHERS v. TÜRKİYE²³

THE FACTS

The case concerns the applications of thirty-one members of the Turkish judiciary placed in pre-trial detention after the attempted coup of 15 July 2016. The applicants were detained within the scope of the suspension decisions taken by the Council of Judges and Prosecutors after the attempted coup and the criminal investigations conducted against them. The detention orders were based essentially on the suspicion that the applicants were in contact with a terrorist organisation and on the presumption of a situation of *in flagrante delicto*. The applicants applied to the Constitutional Court, arguing that the procedural safeguards and immunities afforded to members of the judiciary under domestic law had been disregarded, that no situation of *in flagrante delicto* existed and that the detention decisions were devoid of concrete evidence; having obtained no redress, they applied to the ECtHR.

23 Ataman and Others v. Türkiye, no. 14676/17 and 30 other applications, 6 September 2022.

THE VIOLATIONS

The ECtHR examined the applicants' detention on the basis of Article 5 of the Convention (right to liberty and security) and held that Article 5 § 1 of the Convention had been violated. The Court regarded as "unlawful" and "arbitrary" the disabling of the procedural safeguards afforded to members of the high judiciary and to other judges and prosecutors through an extensive interpretation of the concept of *in flagrante delicto* exceeding its statutory limits. It found that, at the time of the applicants' detention, there was no concrete evidence capable of constituting a "plausible" suspicion of an offence such as to satisfy an impartial observer that they had committed the offence with which they were charged. The carrying-out of the detentions on general and abstract grounds, contrary to the principles of the rule of law and legal certainty, was recorded as a violation of Article 5 § 1.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared after 15 July and the accompanying notice of derogation, but emphasised that the interpretation of the concept of *in flagrante delicto* in a manner that entirely suspended statutory safeguards exceeded the limits of "strict necessity" required by the situation. The judgment stated that, in a State governed by the rule of law, the procedural rules protecting judicial independence constitute the most important line of defence against arbitrary practices even in periods of emergency. As it had found in many similar cases (such as *Baş and Turan and Others*), the ECtHR reaffirmed the systemic problems and the lack of legal certainty in the procedures for the detention of members of the judiciary in Türkiye. Having regard to the gravity of the violations, each of the applicants was awarded a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is a significant example reiterating the ECtHR's settled case-law against the extensive interpretation of *in flagrante delicto* in the detention of members of the judiciary.

GELEŞ AND OTHERS v. TÜRKİYE²⁴

THE FACTS

The case concerns seventy members of the Turkish judiciary (judges, public prosecutors and one police officer) placed in pre-trial detention after 15 July 2016. Within the scope of the administrative and criminal investigations launched after the attempted coup, the applicants were suspended from duty on account of alleged association with the Movement (“Cemaat”) and subsequently detained on suspicion of “membership of an armed terrorist organisation”. The decisions ordering the applicants’ detention were based to a large extent on the suspension decisions taken by the Council of Judges and Prosecutors, on the supposed existence of a situation of *in flagrante delicto* and, in respect of some applicants, on the allegation that they had used ByLock. The applicants exhausted the remedies before the Constitutional Court against this practice; having obtained no redress, they took the matter to the ECtHR.

THE VIOLATIONS

Examining the applicants’ detention, the ECtHR found violations under Article 5 of the Convention (right to liberty and security). Referring to its settled case-law (the *Öğreten and Kanaat, Baş and Turan and Others* judgments), the Court stated that, at the time of the applicants’ detention, there was no “reasonable suspicion” or concrete evidence capable of satisfying an impartial observer that they had committed the offence with which they were charged. It held that basing the detention orders on the presumption of a situation of *in flagrante delicto*, in a manner disabling statutory safeguards, did not satisfy the criterion of conformity with “a procedure prescribed by law” laid down in Article 5 § 1 of the Convention. While taking into account the extraordinary circumstances that arose after the attempted coup, the Court emphasised that this could not justify arbitrary restrictions of the applicants’ personal liberty, and held that Article 5 § 1 of the Convention had been violated.

24 Geleş and Others v. Türkiye, no. 75881/16 and 69 other applications, 6 September 2022.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye and the accompanying notice of derogation, but stated that the procedures followed and the grounds given for the applicants' detention exceeded the limits of proportionality "strictly required" by the situation. It stated in particular that practices rendering ineffective the regime of legal protection in the procedure for the detention of members of the judiciary were incompatible with the principles of the rule of law. In view of the large number of applicants in the case and the similarity of the legal issues raised, the Court held that it was unnecessary to examine the applicants' remaining complaints under Article 5 (Article 5 §§ 3, 4 and 5). By way of redress for the violations, each of the applicants was awarded a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is in the nature of a "Committee judgment" confirming the ECtHR's continuing case-law on the systemic legal problems relating to the detention of members of the judiciary.

BAŞER AND ÖZÇELİK v. TÜRKİYE²⁵

THE FACTS

The case concerns the pre-trial detention of Mustafa Başer and Metin Özçelik, two judges serving in the İstanbul Criminal Courts of First Instance, on suspicion of "attempting to overthrow the government" and "membership of an armed terrorist organisation", for having ordered the release of sixty-three suspects detained within the scope of the investigations against the Movement ("Cemaat"). The applicants maintained that they had acted within their statutory powers when ruling on the applications for the recusal of judges and ordering the release, but that, as a result of the political authorities' pressure on the judiciary, they had been branded "kamikaze judges" and detained. The Turkish authorities, for their part, justified the detention by asserting that the applicants had carried out unlawful acts in a planned and organised manner, on the instructions of the illegal organisation.

25 Başer and Özçelik v. Türkiye, nos. 30694/15 and 30803/15, 13 September 2022.

THE VIOLATIONS

On examination of the applicants' detention, the ECtHR held that Article 5 § 1 of the Convention had been violated. The Court found "unlawful" and "arbitrary" the subjection of a judge to criminal investigation on account of his judicial activities or decisions in circumstances where the special procedural safeguards afforded to members of the judiciary (authorisation procedures, immunities and the like) had been disabled by an arbitrary interpretation of *in flagrante delicto*. It was established that, at the time of the applicants' detention, no concrete evidence had been produced constituting a "reasonable suspicion" capable of satisfying an impartial observer that they had committed the grave offences with which they were charged. The Court found that the broad interpretation of statutory exceptions such as *in flagrante delicto*, in a manner invalidating the procedural rules protecting judicial independence, wholly undermined the protection afforded by the Convention.

OTHER ASPECTS OF THE JUDGMENT

While taking into account the conditions of the state of emergency declared by Türkiye, the Court emphasised that, as a requirement of the rule of law, particular attention must be paid to the protection of members of the judiciary. It found that the decisions ordering the continuation of the detention rested on unindividualised and abstract grounds, a state of affairs incompatible with the principle that detention must be a measure of "last resort". On account of the violations, each of the applicants was awarded 5,000 euros in respect of non-pecuniary damage. The judgment constitutes case-law reiterating and consolidating the legal standards laid down by the ECtHR against practices undermining judicial independence in proceedings in which members of the judiciary are punished for their decisions.

MORAL AND OTHERS v. TÜRKİYE²⁶

THE FACTS

The case comprises thirty-two members of the Turkish judiciary (judges and public prosecutors) placed in pre-trial detention after the attempted coup of 15 July 2016. All of the applicants, within the scope of the administrative and criminal investigations launched after the attempted coup, were suspended from duty on account of alleged association with the Movement (“Cemaat”) within the judicial organisation, and subsequently detained on suspicion of “membership of an armed terrorist organisation”. The decisions ordering the applicants’ detention were based to a large extent on the suspension decisions taken by the Council of Judges and Prosecutors or, in respect of some applicants, on the allegation that they had used ByLock. The applicants exhausted the remedies before the Constitutional Court against this practice; having obtained no redress, they applied to the ECtHR.

THE VIOLATIONS

Examining the applicants’ detention, the ECtHR found a violation under Article 5 of the Convention. Referring to its settled case-law (the *Baş and Turan and Others* judgments), the Court stated that, at the time of the applicants’ detention, there was no “reasonable suspicion” or concrete evidence capable of satisfying an impartial observer that they had committed the offence with which they were charged. It held that basing the detention orders on the presumption of a situation of *in flagrante delicto*, in a manner disabling statutory safeguards, did not satisfy the criterion of conformity with “a procedure prescribed by law” laid down in Article 5 § 1 of the Convention. While taking into account the extraordinary circumstances that arose after the attempted coup, the Court emphasised that this could not justify arbitrary and unfounded restrictions of the applicants’ personal liberty, and held that Article 5 § 1 of the Convention had been violated.

26 Moral and Others v. Türkiye, no. 49867/17 and 31 other applications, 18 October 2022.

OTHER ASPECTS OF THE JUDGMENT

The Court examined the state of emergency declared by Türkiye after the attempted coup and the accompanying notice of derogation, but emphasised that the interpretation of the concept of *in flagrante delicto* in a manner that entirely suspended statutory safeguards exceeded the limits of proportionality “strictly required” by the situation. It stated that, in a State governed by the rule of law, the procedural rules protecting judicial independence constitute a “cornerstone” against arbitrary practices even in periods of emergency. In the light of its finding of a violation of Article 5 § 1, the Court held that a detailed examination of the applications under the other paragraphs of Article 5 (§§ 1, 3, 4 and 5) was unnecessary. Having regard to the gravity of the violations, each of the applicants was awarded a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is in the nature of a “Committee judgment” reiterating the ECtHR’s continuing case-law on the transgression of the legal limits of the concept of *in flagrante delicto* in the procedures for the detention of members of the judiciary.

SEVİNÇ AND OTHERS v. TÜRKİYE²⁷

THE FACTS

The case concerns the applications lodged by 135 persons (for the most part judges and public prosecutors) placed in pre-trial detention after 15 July 2016. Within the scope of the investigations launched after the attempted coup, the applicants were suspended from duty on account of alleged association with the Movement (“Cemaat”) and detained on suspicion of “membership of an armed terrorist organisation”. The detention orders were based essentially on the suspension decisions taken by the High Council of Judges and Prosecutors and on the presumption of a situation of *in flagrante delicto*. The applicants exhausted the remedies before the Constitutional Court against these practices; having obtained no redress, they took the matter to the ECtHR.

27 Sevinç and Others v. Türkiye, no. 63634/16 and 134 other applications, 18 October 2022.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 of the Convention and held that Article 5 § 1 had been violated. The Court held that the detention of a member of the judiciary solely on the basis of administrative acts (the suspension decisions of the High Council of Judges and Prosecutors) or suspicions of a general nature, without concrete and plausible evidence, was "unlawful" and "arbitrary". It was established that, at the time of the applicants' detention, there was no "reasonable suspicion" or concrete evidence capable of satisfying an impartial observer that they had committed the offence with which they were charged. The application of the detention measure through an interpretation of the special procedural safeguards enjoyed by members of the judiciary, and of the concept of *in flagrante delicto*, exceeding their legal limits was recorded as a violation of Article 5 § 1 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

While taking into account the extraordinary circumstances that arose after the attempted coup, the Court emphasised that this could not justify arbitrary and unfounded restrictions of the applicants' personal liberty. The judgment stated that, in a State governed by the rule of law, the procedural rules protecting judicial independence constitute a "cornerstone" against arbitrary practices even in periods of emergency. In the light of its finding of a violation of Article 5 § 1, the Court held that a detailed examination of the remaining complaints under the other paragraphs of Article 5 (§§ 1, 3, 4 and 5) and under Article 8 was unnecessary. By way of redress for the violations, each of the applicants was awarded a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is in the nature of a "Committee judgment" reiterating the ECtHR's continuing case-law on the systemic legal problems relating to the detention of members of the judiciary.

THE FACTS

The applications concern the refusal by the national authorities of the requests of nineteen persons — detained or convicted in connection with the events of 15 July — for weekend visits and telephone conversations with their school-age children. It was submitted that, owing to the distance between the applicants' places of detention and the places where their families resided, weekday visits created great difficulty, and that the education of the applicants' children and the applicants' right to family reunification were thereby prejudiced. The administrations of the penal institutions concerned refused the requests for weekend visits on grounds of prison overcrowding, staffing levels, security concerns and the statutory framework, and the objections lodged were upheld on similar grounds by the enforcement judges and the assize courts. The applicants' individual applications to the Constitutional Court were likewise declared inadmissible as manifestly ill-founded, on the basis of the case-law prevailing at the material time.

THE VIOLATIONS

The ECtHR treated the complaint under Article 8 of the Convention as an interference with the right to respect for family life. The Court found that the decisions of the prison administrations restricting visits to weekdays contained no concrete assessment of the individual situations of the applicants and their children and rested on very general grounds. It noted that the first-instance courts had likewise upheld the restrictions merely by reference to the administrative decisions, without balancing the competing interests or examining the applicants' arguments in detail. In this context, the ECtHR concluded that the existing national legal framework and practice failed to afford adequate protection against arbitrary interferences with the applicants' right to respect for their family life, and held that Article 8 of the Convention had been violated.

28 Subaşı and Others v. Türkiye, no. 3468/20 and 18 other applications, 6 December 2022.

OTHER ASPECTS OF THE JUDGMENT

The Court emphasised that States are under a positive obligation to assist prisoners in maintaining contact with their families and that visiting arrangements must be made with due regard to the particular circumstances of each case. It stated that, notwithstanding the extraordinary conditions that arose after the attempted coup, the administration must not disregard the interests of the applicants and their children when exercising its discretion. On account of the violation of Article 8 of the Convention, the Court awarded each applicant 1,500 euros in respect of non-pecuniary damage, together with additional sums to certain applicants in respect of costs and expenses. The allegation raised by some applicants of a violation of the right to a fair trial (Article 6 of the Convention) was, on the other hand, declared inadmissible on the ground that the public prosecutor's opinion contained no new element.

GÜNGÖR AND OTHERS v. TÜRKİYE²⁹

THE FACTS

The case concerns the situation of eighty-two applicants who were suspended from duty after 15 July 2016 and placed in pre-trial detention on suspicion of membership of a terrorist organisation. The great majority of the applicants were serving as judges or public prosecutors in various courts at the material time, while some had previously held such office. The detention orders were based on the nature of the offence, the state of the evidence and the likely sentence; the suspension of some applicants from duty, or the allegation that they were ByLock users, was also taken into account in this process. The applicants' challenges to their detention, including on the ground of the absence of reasonable suspicion, were dismissed by the domestic courts, including the Constitutional Court.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that, at the time of the applicants' initial

²⁹ Güngör and Others v. Türkiye, no. 59639/17 and 81 other applications, 13 December 2022.

detention, there was no concrete and specific evidence capable of giving rise to a “reasonable suspicion” that they had committed the offence with which they were charged. It stated that the domestic courts’ general and vague references to Article 100 of the Code of Criminal Procedure and to the evidence in the file were not sufficient to constitute the “reasonable suspicion” capable of justifying detention. It further held that the applicants’ suspension from their duties as judges or prosecutors, or the allegations that they were ByLock users, did not in the instant case give rise to a “reasonable suspicion” of the offence concerned within the meaning of Article 5 § 1.

OTHER ASPECTS OF THE JUDGMENT

While accepting the existence of extraordinary circumstances after 15 July, the ECtHR emphasised that this state of affairs could not justify arbitrary restrictions of the applicants’ personal liberty. In the light of the finding of a violation of Article 5 § 1 of the Convention, it was considered unnecessary to examine the applicants’ complaints under the other paragraphs of Article 5. By way of redress for the violations, the ECtHR awarded each applicant a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is in the nature of a Committee judgment reiterating the ECtHR’s previous case-law (for example, the *Baş v. Turkey* and *Turan and Others v. Turkey* judgments) on the systemic legal problems in the procedures for the detention of members of the judiciary.

VI. JUDGMENTS DELIVERED IN 2023

ABDULLAH KILIÇ v. TÜRKİYE³⁰

THE FACTS

The applicant, a journalist, was taken into custody on 26 July 2016 and placed in pre-trial detention on 29 July 2016. The grounds relied on for his detention were his journalistic activities, his social-media posts, his Bank Asya account, witness statements and allegations that he had been in contact with executives of the organisation. Although the İstanbul 25th Assize Court ordered his release, the applicant was taken back into custody immediately before being released, on a charge

30 Abdullah Kılıç v. Türkiye, no. 43979/17, 31 January 2023.

of “overthrowing the constitutional order”, and was detained anew on 14 April 2017. His application, based on the two separate periods of detention, was determined by the Constitutional Court in 2020; that court held that the applicant’s second detention was disproportionate and that his right to liberty and security had been violated, but rejected the complaints relating to the first period of detention as manifestly ill-founded.

THE VIOLATIONS

The ECtHR examined the applicant’s detention within the framework of Article 5 of the Convention and held that Article 5 § 1 had been violated. The Court found that, at the time of the applicant’s detention, there was no concrete and plausible evidence capable of giving rise to a “reasonable suspicion” that he had committed the offence with which he was charged, and that the domestic courts had ordered his detention on the basis of no more than general and vague statutory references. It emphasised that the detention was “unlawful and arbitrary” owing to the unreasonable interpretation of the relevant legislation. The Court further held that Article 5 § 3 of the Convention had been violated on account of the absence of reasonable suspicion; that Article 5 § 4 had been violated on account of the excessive length of the proceedings before the Constitutional Court; and that Article 5 § 5 had been violated because the applicant’s grievance had not been fully redressed. Having regard to the applicant’s deprivation of liberty on account of his journalistic activities and to the chilling effect thereby produced on society, a violation was also found under Article 10 of the Convention (freedom of expression).

OTHER ASPECTS OF THE JUDGMENT

While accepting that the declared state of emergency constituted a “public emergency” within the meaning of the Convention, the ECtHR stated that the measures taken in the course of the applicant’s detention did not correspond to the exigencies of the situation and were incompatible with the principles of the rule of law. By way of redress for the violations, the ECtHR awarded the applicant 12,275 euros in respect of non-pecuniary damage and 1,100 euros in respect of costs and expenses. In view of the systemic violations found under the right to liberty and freedom of expression, it was considered unnecessary to examine separately the complaint under Article 18 of the Convention.

TELEK AND OTHERS v. TÜRKİYE³¹

THE FACTS

The applications concern three academics who were dismissed from public service under the legislative decrees issued under the state of emergency declared after 15 July, and whose passports were confiscated. The applicants, who are academics, alleged that, as a result of the cancellation of their passports and their prolonged inability to obtain new ones, they were unable to pursue their academic work, doctoral programmes and professional projects abroad. The administrative measures taken against the applicants and the passport restrictions were based on the statutory ground of “contact or affiliation with terrorist organisations or structures harmful to the national security of the State”; the applicants were not, however, charged with any concrete connection with the attempted coup or with any terrorist activity. As the relevant domestic remedies (the administrative courts, the Constitutional Court and the State of Emergency Commission) proved ineffective in respect of their complaints concerning the passport restrictions and failed to produce a result for a protracted period, the applicants took the matter to the ECtHR.

THE VIOLATIONS

The ECtHR held that the confiscation of the passports constituted an interference with the applicants’ right to respect for their private life (Article 8 of the Convention). The Court found that the legal provisions and administrative acts relied on for the cancellation of the passports contained no concrete reasoning assessing the applicants’ personal situations, were arbitrary, and did not satisfy the requirement of being “prescribed by law”. It further emphasised that the confiscation of passports could not be regarded as a measure required by the specific conditions of the state of emergency. As regards the applicants who were unable to pursue their doctoral studies abroad on account of the passport restriction, the Court also found a violation of Article 2 of Protocol No. 1 to the Convention (right to education). The Court stated that, in present-day conditions, higher education — and doctoral studies in particular — form an integral part of the right to education,

31 Telek and Others v. Türkiye, nos. 66763/17, 66767/17 and 15891/18, 21 March 2023.

and that States must not unjustifiably obstruct the exercise of the right to education at universities abroad.

OTHER ASPECTS OF THE JUDGMENT

The Court reiterated that, in accordance with the principles of the rule of law, measures affecting fundamental rights must be capable of being made the subject of adversarial proceedings before an independent body; it found that the domestic courts had not subjected the applicants' passport restrictions to any concrete and effective review. On account of the violations found, the Court awarded each applicant compensation in differing amounts in respect of non-pecuniary damage and costs and expenses (12,000 euros each for Alphan Telek and Edgar Şar; a total of 10,750 euros for Zeynep Kızılcım). The judgment drew attention to the chilling effect produced on civil society and academic freedom by the cancellation of academics' passports. Judge Saadet Yüksel delivered a partly dissenting opinion in respect of the finding of a violation of Article 2 of Protocol No. 1, on the ground that the reasons given for extending the scope of application of that provision were insufficient.

USLU v. TÜRKİYE³²

THE FACTS

The application concerns the seizure, on the ground of a "security risk", of two notebooks belonging to the applicant, who was detained in the Düzce Penal Institution. The notebooks in question contained the applicant's draft defence submissions, notes addressed to his family, and writings on his personal experiences in the course of the criminal proceedings against him. The applicant's request for the return of the notebooks was refused by the prison administration on the grounds that certain detainees used notebooks as a means of communication and that the notebooks might contain information capable of disclosing the identity of third parties. The domestic courts found the administration's decision to be in conformity with procedure and law and dismissed the objections, while the Constitutional Court found the applicant's freedom-of-

32 Uslu v. Türkiye, no. 51590/19, 21 March 2023.

expression complaint to be manifestly ill-founded. The notebooks were handed over to the applicant's wife approximately ten months later, and the applicant was subsequently released.

THE VIOLATIONS

The ECtHR characterised the seizure of the notebooks written by the applicant himself as an interference with the exercise of the right to freedom of expression (Article 10 of the Convention). The Court reiterated that Turkish domestic law contained no specific legal basis providing for the seizure of manuscript documents belonging to detainees. It found that the legislation relied on by the Government (Law no. 5275 and the relevant Regulation) permitted only general "searches" in penal institutions and conferred no power to seize manuscript documents. Accordingly, the Court concluded that the requirement of being "prescribed by law" within the meaning of Article 10 of the Convention had not been satisfied, and held that freedom of expression had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR stated that the return of the notebooks after a period of approximately ten months neither extinguished the violation of freedom of expression nor deprived the applicant of his "victim" status. As to the complaint under Article 1 of Protocol No. 1 to the Convention (right to property), the Court held that it raised no separate issue in the light of the finding of a violation under Article 10. The Court rejected the claim in respect of non-pecuniary damage, considering it to be satisfied by the finding of a violation, and awarded the applicant only 35 euros in respect of costs and expenses.

HALLAÇOĞLU AND OTHERS v. TÜRKİYE³³

THE FACTS

The applications concern the electronic recording and storage by the administration of the correspondence, during their detention, of applicants held in penal institutions on allegations of membership of a terrorist organisation within the scope of the investigations conducted after 15 July 2016. The administrations of the penal institutions concerned, acting on instructions from the

33 Hallaçoğlu and Others v. Türkiye, no. 6239/19 and 2 other applications, 4 April 2023.

Directorate General of Prisons and Detention Houses of the Ministry of Justice, recorded all correspondence sent and received by the applicants on the National Judiciary Informatics System (UYAP). The objections lodged by the applicants (three persons) against this practice before the enforcement judges and the assize courts were dismissed, and their individual applications to the Constitutional Court were likewise found to be manifestly ill-founded.

THE VIOLATIONS

The ECtHR found that the recording and storage of the applicants' private correspondence on the UYAP system constituted an interference with the right to "respect for correspondence" guaranteed by Article 8 of the Convention. Referring to its earlier judgment on a similar issue in *Nuh Uzun and Others v. Turkey*, the Court held that the interference in question had no basis "prescribed by law" within the meaning of Article 8 § 2 of the Convention. It noted in particular that no express legal instruction or basis had been identified even for the recording on the system of correspondence with lawyers, and that the circulars relied on by the Government contained no provision on the recording of lawyer–client correspondence. In this context, the Court concluded that the interference with the applicants' private life and correspondence did not satisfy the requirement of lawfulness, and held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR had regard to the grievance caused by the unauthorised recording of the applicants' personal data and correspondence on the system. Together with the finding of a violation, it held that the finding of a violation in itself afforded sufficient just satisfaction for the non-pecuniary damage sustained by the applicants. The applicants' claims in respect of pecuniary damage were rejected for want of a causal link, and their claims in respect of costs and expenses for failure to submit the necessary documents and receipts. By this judgment the Court reiterated its earlier case-law on this systemic violation.

ÇAYLI AND SERLİ v. TÜRKİYE³⁴

THE FACTS

The applications concern the monitoring and withholding by prison officials of the correspondence between the applicants, who were detained in penal institutions, and their lawyers. A letter sent to the first applicant by his lawyer was delivered only after being opened and inspected by the prison authorities; the enclosures to a letter from the second applicant's lawyer were seized on the grounds that they "could not be regarded as a letter" and did not concern the applicant. Both applicants lodged objections against these measures before the enforcement judges and the assize courts, but their objections to these administrative and judicial acts were dismissed. Their individual applications to the Constitutional Court were either rejected on the merits or declared inadmissible for failure to exhaust the available remedies.

THE VIOLATIONS

The ECtHR regarded the monitoring and withholding by prison officials of the applicants' correspondence with their lawyers as an interference with the right to "respect for correspondence" guaranteed by Article 8 of the Convention. The Court reiterated that the confidentiality of lawyer-client communications is a fundamental element of the rights of the defence. Finding that, in the instant case, the existence of exceptional circumstances capable of justifying the monitoring of the correspondence had not been demonstrated, and that adequate independent judicial safeguards against abuse had not been provided, the ECtHR held that the interference was not "necessary in a democratic society" and that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR emphasised that the confidentiality of prisoners' correspondence with their lawyers may be restricted only in exceptional circumstances and subject to adequate safeguards under the supervision of independent judges. Together with the finding of a violation, the ECtHR awarded each applicant 300 euros in respect of non-pecuniary damage. The applicants' claims in

34 Çaylı and Serli v. Türkiye, nos. 49535/18 and 10419/20, 9 May 2023.

respect of pecuniary damage and costs and expenses were rejected for want of a causal link or for failure to submit supporting documents. By this judgment the Court once again confirmed its settled case-law on lawyer–client confidentiality.

KARACA v. TÜRKİYE³⁵

THE FACTS

Hidayet Karaca, the president of the Samanyolu Media Group, was taken into custody and placed in pre-trial detention in December 2014 on the charge of having, in the “Dark Council / Decision Council” episodes of the television series “Tek Türkiye” and “Şefkat Tepe” broadcast by the group, and in line with the speeches and instructions of Fethullah Gülen, portrayed and denigrated a dissident religious group known as the “Tahşiyeciler” as terrorists linked to Al-Qaeda, and of having directed the framing of that group with fabricated evidence. The İstanbul 1st Magistrate’s Court ordered his detention for the offence of “founding and directing an armed terrorist organisation”, relying on telephone conversations in which the applicant had allegedly obtained Fethullah Gülen’s approval of the series’ scripts, on the scriptwriters’ statements that they had not themselves written the episodes in question, and on the operations in which police officers affiliated with the Gülen movement, acting in the wake of those broadcasts, had unlawfully kept the Tahşiyeciler in detention for seventeen months. The applicant’s lawyers challenged all the İstanbul magistrates’ court judges, arguing that the police operations had been lawful, that the series were mere fiction and that the magistrates’ courts had been established under the direction of the executive; the İstanbul 29th Criminal Court of First Instance, designated as the competent court, upheld the recusal applications in April 2015, and the İstanbul 32nd Criminal Court of First Instance ordered the applicant’s release. The İstanbul 10th Magistrate’s Court and the public prosecutor’s office, however, treated those release decisions as null and void for lack of jurisdiction and declined to enforce them, while the High Council of Judges and Prosecutors suspended from duty and had detained the first-instance judges who had ordered the release. The İstanbul 14th Assize Court maintained the applicant’s detention on the basis of the catalogue-offences

35 Karaca v. Türkiye, no. 25285/15, 20 June 2025.

presumption and abstract evidentiary presumptions and, in November 2017, sentenced him to terms of imprisonment for directing a terrorist organisation, defamation and forgery; that judgment was upheld and became final, and the individual applications lodged with the Constitutional Court were dismissed.

THE VIOLATIONS

The ECtHR rejected the Government's preliminary objection of non-exhaustion of domestic remedies, since the Constitutional Court's dismissal decisions had afforded the national authorities the opportunity to remedy the violation; it declared inadmissible as ill-founded (over the dissenting vote of Judge Schembri Orland) the applicant's complaint that there was no "reasonable suspicion" that he had directly committed an offence through a work of fiction. In its procedural examination of the merits, however, the Court found it to be a grave procedural defect that, although the application for the recusal of the magistrates' court judges had been formally upheld in April 2015 by the competent judicial authority — the İstanbul 29th Criminal Court of First Instance — the magistrates' courts whose jurisdiction had been removed, and the 10th Magistrate's Court, had disregarded that decision and ordered the continuation of the applicant's detention. Holding that the decisions had been taken in breach of the legal avenues available under domestic law and of the principle of legal certainty, the ECtHR held unanimously that Article 5 § 1 of the Convention had been violated (detention not in accordance with a procedure prescribed by law). The Court further held unanimously that Article 5 § 3 (unjustified prolongation of detention) and Article 5 § 4 of the Convention (absence of an effective right of challenge before an independent and impartial tribunal) had been violated, treating as an absence of procedural safeguards the absolute preclusion of any challenge to the impartiality and independence of the magistrates' courts at the preliminary-investigation stage, the failure to comply with the recusal decisions, and the assize courts' automatic dismissal of the requests for release on stereotyped grounds (the catalogue-offences presumption and the like); it did not examine separately the restrictions on access to the case file.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR rejected in its entirety the claim in respect of pecuniary damage, on the ground that no direct causal link could be established between the procedural and structural violations found and the loss of income of 25,200 euros which the applicant claimed to have sustained by reason of his imprisonment. In order to redress the non-pecuniary harm suffered by the applicant — whose liberty had been restricted in breach of legal procedures and who had been deprived of the guarantee of an independent and impartial tribunal — the Court awarded him 12,000 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, a total of **6,000 euros** was awarded to the applicant.

AYVAZ AND OTHERS v. TÜRKİYE³⁶

THE FACTS

The case concerns the situation of 131 applicants arrested and placed in pre-trial detention after 15 July 2016 on suspicion of membership of the organisation. All of the applicants were serving as judges or public prosecutors in various courts at the material time. The applicants were detained under the general statutory provisions on the ground that a situation of *in flagrante delicto* falling within the jurisdiction of the assize courts existed. The relevant criminal investigations were initiated, the applicants were detained on various dates, and many of them were subsequently convicted by the domestic courts. All of the individual applications lodged by the applicants with the Constitutional Court alleging a violation of their right to liberty and security were dismissed.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the applicants had not been detained in accordance with a procedure prescribed by law and that their initial pre-trial detention had not been lawful. Referring to its judgments on similar issues in *Baş v. Turkey* and *Turan and Others v. Turkey*, the ECtHR, while accepting the existence of extraordinary circumstances after 15 July, held

³⁶ Ayvaz and Others v. Türkiye, no. 14347/17 and 130 other applications, 11 July 2023.

that the detention measures applied to the applicants could not be regarded as “strictly required” by the exigencies of the situation.

OTHER ASPECTS OF THE JUDGMENT

In respect of application no. 36993/19, the ECtHR rejected the Government’s contention that the applicant had applied to the United Nations Working Group on Arbitrary Detention (WGAD), on the grounds that no document had been submitted showing that a specific procedure had been initiated and that the application had been withdrawn. By way of redress for the violations, the ECtHR awarded each of the applicants, with the exception of ten applications, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The Court considered it unnecessary to examine separately the remaining complaints (under the other paragraphs of Article 5 and under Article 8) and, by this judgment, reiterated its earlier case-law on the detention of members of the judiciary.

BARANSU v. TÜRKİYE³⁷

THE FACTS

The journalist Mehmet Baransu was taken into custody in March 2015 and detained by the İstanbul Magistrate’s Court on charges of “destroying, stealing, procuring and disclosing secret documents relating to the security of the State”, in connection with news reports published in the *Taraf* newspaper and the “Sledgehammer Plan” (“Balyoz”) documents. The magistrates’ courts and the public prosecutor’s office ordered the continuation of the applicant’s detention using abstract, general and stereotyped formulae, citing the gravity of the offences charged, the lower and upper limits of the sentences, the risk of flight and the statutory thresholds in Article 100 of the Code of Criminal Procedure; in the proceedings opened in June 2016 the charge of “membership of an armed terrorist organisation” was added to the accusations. The applicant lodged individual applications with the Constitutional Court alleging unjustified and excessively lengthy detention; the high court, however, dismissed the applications by its decisions of May 2016 and December

37 Baransu v. Türkiye, no. 68309/16, 11 July 2023.

2018, holding that there had been no negligence in the proceedings and that the period of detention, which had reached three years and ten months, was reasonable. In March 2022 the İstanbul Assize Court sentenced the applicant to a total of thirteen years' imprisonment for procuring and disclosing secret State documents, acquitted him of the charge of destroying documents, and rejected the charge of membership of an organisation on account of a previous conviction imposed by the Mersin Assize Court. Following the upholding of the sentences imposed in various sets of proceedings, the applicant began serving his sentence as a convicted prisoner in March 2021; the period covered by his complaint of unjustified detention was calculated at a total of six years and seven days.

THE VIOLATIONS

The ECtHR rejected all of the Government's preliminary objections — that domestic remedies had not been exhausted, that the application was manifestly ill-founded, and that the applicant had abused the right of application by using disagreeable critical language towards the official authorities — since the applicant's criticisms were not regarded as insulting or threatening in nature and it was established that the Constitutional Court's dismissal decisions had already afforded the judicial authorities the opportunity to remedy the violation. In its examination of the merits, the Court emphasised that the period of detention of six years and seven days, running from the date of the applicant's initial custody to the enforcement of his final sentence, was excessively long. Noting that the national judges and assize courts, in their decisions ordering the continuation of the detention, had in no way examined the arguments in favour of release or the personal situation of the accused, the ECtHR found that the decisions consisted of no more than a stereotyped recitation of the statutory provisions and that no "relevant and sufficient" reasons had been given to justify the restriction of liberty. While having regard to Türkiye's state-of-emergency derogation following the attempted coup of 15 July, the Court, taking into account that the detention measure had begun well before the declaration of the state of emergency and had continued after it, found that the general manner in which the case had been conducted exceeded the limits strictly required by the situation within the meaning of Article 15 of the Convention, and

held that Article 5 § 3 of the Convention (the right to a reasoned decision on detention and to trial within a reasonable time) had been violated.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR rejected the claim in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found — unjustifiably lengthy detention — and the loss of income which the applicant claimed he would have earned had he not been detained. Having regard to the magnitude of the non-pecuniary harm caused to the applicant by his unjustified deprivation of liberty, the Court awarded him 7,800 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, the Court examined the retainer agreement, the hourly-fee receipts and the travel invoices submitted by the applicant in respect of his legal representation, and awarded him 2,000 euros in respect of the documented legal expenditure.

KILINÇLI AND OTHERS v. TÜRKİYE³⁸

THE FACTS

The applications concern thirteen persons placed in pre-trial detention after 15 July 2016. All of the applicants were serving as judges or public prosecutors in various courts at the material time and were suspended from duty within the scope of the criminal investigations initiated against them. The applicants were detained under the general statutory provisions, on the ground that a situation of *in flagrante delicto* existed, without regard to the special procedural safeguards afforded to members of the judiciary. The detention orders cited as evidence the applicants' suspension from duty and, in respect of some applicants, the use of ByLock. The applicants' challenges to their detention and their individual applications to the Constitutional Court were dismissed.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that, at the time of the applicants' detention,

38 Kılınçlı and Others v. Türkiye, no. 27336/17 and 12 other applications, 11 July 2023.

there was no concrete and specific evidence capable of giving rise to a “reasonable suspicion” that they had committed the offence with which they were charged. It stated that the domestic courts’ general and vague references to Article 100 of the Code of Criminal Procedure and to the evidence in the file were not sufficient to constitute the reasonable suspicion capable of justifying detention. Referring to its earlier judgments in *Baş v. Turkey* and *Turan and Others v. Turkey*, the ECtHR, while accepting the existence of extraordinary circumstances after 15 July, emphasised that the detention measures applied to the applicants were not “strictly required” by the exigencies of the situation.

OTHER ASPECTS OF THE JUDGMENT

In respect of application no. 63841/17, the ECtHR rejected the objection raised by the Government on the basis of the applicant’s application to the United Nations Human Rights Council, on the ground that the subject-matter of the complaints was different. By way of redress for the violations, the ECtHR awarded each of the applicants, with the exception of two applications, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The Court considered it unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention and under Article 8, and by this judgment reiterated its settled case-law on the systemic legal problems in the procedures for the detention of members of the judiciary.

YÜKSEL YALÇINKAYA v. TÜRKİYE [GC]³⁹

THE FACTS

The applicant was convicted of membership of the organisation on the basis of findings that he had used the ByLock application, of the fact that he held an account at Bank Asya, and of his

39 Yüksel Yalçinkaya v. Türkiye [GC], no. 15669/20, 26 September 2023; “AİHM Yalçinkaya Kararı ve Güncel Yargılamalara Etkisi” [The ECtHR’s Yalçinkaya Judgment and Its Impact on Ongoing Proceedings], <https://justicesquare.org/aihm-yalcinkaya-karari-ozeti-ve-guncel-yargilamalara-etkisi/>; “AİHM’in Yüksel Yalçinkaya/Türkiye Kararına İlişkin Değerlendirme” [An Assessment of the ECtHR’s Yüksel Yalçinkaya v. Türkiye Judgment], <https://www.drgokhangunes.com/makale/aihmin-yuksel-yalcinkaya-turkiye-kararina-iliskin-degerlendirme/>; “Avrupa İnsan Hakları Mahkemesinin Yüksel Yalçinkaya/Türkiye Kararına İlişkin Değerlendirme” [An Assessment of the European Court of Human Rights’ Yüksel Yalçinkaya v. Türkiye Judgment], <http://tbbyayinlari.barobirlik.org.tr/TBBBooks/679.pdf>; “AİHM’in ‘ByLock ve Bank Asya’ Kararı Emsal Teşkil Eder Mi?” [Does the ECtHR’s ‘ByLock and Bank Asya’ Judgment Constitute a Precedent?], <https://www.bbc.com/turkce/articles/c51lxjde1dpo>; “Anayasa Mahkemesi’nin ByLock kararı...” [The Constitutional Court’s ByLock decision...], <https://www.karar.com/yazarlar/elif-cakir/anayasa-mahkemesinin-bylock-karari-1597730>; “Avrupa İnsan Hakları Mahkemesi’nin Yüksel Yalçinkaya-Türkiye Kararı Üzerine

membership of an association and a trade union closed down by legislative decree. The data underlying the ByLock finding, however, were not disclosed to the defence, were not brought before the court and subjected to independent expert examination, and no response was given to the requests made in that regard; instead, exclusive reliance was placed on the findings of the prosecution and the administrative authorities.

The *Yüksel Yalçinkaya v. Türkiye* judgment is the first judgment on the merits of the criminal proceedings conducted on the ground of membership of the organisation. The application was first allocated to a Chamber of the ECtHR; the Chamber, however, having regard to the nature and scope of the application, relinquished jurisdiction in favour of the Grand Chamber. The hearing in the case took place on 18 January 2023. As it was delivered by the Grand Chamber, the judgment constitutes a binding precedent for all applications falling within its scope. The other cases will accordingly be determined in line with the findings of the Grand Chamber of the ECtHR.

THE VIOLATIONS

The ECtHR made the following findings of violation:

1. violation of the principle of no punishment without law (the excessively broad and unforeseeable application of the Criminal Code, Article 7);

Değerlendirmeler” [Reflections on the European Court of Human Rights’ Yüksel Yalçinkaya v. Türkiye Judgment], <https://izzetozgenc.com/data/contents/avrupa-insan-haklari-mahkemesi’nin-yuksel-yalcinkaya-turkiye-karari-uzerine-degerlendirmeler.pdf>; “İHAM Büyük Daire’nin ‘ByLock Kararı’ Nasıl Yorumlanmalı?” [How Should the ECtHR Grand Chamber’s ‘ByLock Judgment’ Be Interpreted?], <https://sen.av.tr/tr/makale/İHAM-büyük-dairenin-bylock-karari-nasil-yorumlanmalı>; “‘Article 7’ Shockwaves, Bylock and Beyond: Unpacking the Grand Chamber’s Yalçinkaya Judgment”, <https://strasbourgobservers.com/2023/10/13/article-7-shockwaves-bylock-and-beyond-unpacking-the-grand-chambers-yalcinkaya-judgment/>; “Implications of the Landmark Judgment: Yalçinkaya 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”, <https://www.echrblog.com/2023/10/systemic-problems-unveiled-yalcinkaya.html>; “Statement regarding the ECtHR’s Judgment in the Yalçinkaya-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’ Mentioned in the ECHR Yalçinkaya Decision?”, <https://www.crossborderjurists.org/what-is-the-meaning-of-systematic-violation-of-rights-mentioned-in-the-echr-yalcinkaya-decision/>.

2. violation of the principles of equality of arms and adversarial proceedings (the failure to make the data underlying the ByLock finding accessible to the defence, Article 6 § 1);

3. violation of freedom of association (the failure of the penalties based on membership of an association and a trade union to satisfy the requirement of being prescribed by law, Article 11).

OTHER ASPECTS OF THE JUDGMENT

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

The Court considers that the finding of ByLock use, going beyond its own evidentiary weight, took the place of an individualised determination of the existence of the material and mental elements of the offence, thereby overriding the requirements of Article 314 § 2 of the Criminal Code in a manner contrary to the principle of legality (§ 262).

The domestic courts' interpretation attaches criminal liability, in effect, to the user of the application without establishing that all of the conditions of membership of an armed terrorist organisation — including intent — were 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 mental element, and with the right not to be punished in the absence of a mental link capable of grounding personal responsibility (§ 264).

The difficulties encountered in penetrating a means of communication allegedly used by an organisation designated as terrorist do not constitute a justification sufficient to attach criminal liability, in a virtually automatic manner, to those who had previously used that means (§ 265).

The conviction for the offence of membership of an armed terrorist organisation was imposed 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 to the principles of

legality and foreseeability. The domestic courts' interpretation has the effect, in practice, of equating mere use of ByLock with knowingly and willingly becoming a member of an armed terrorist organisation (§ 267).

There can be no question of the guarantees enshrined in Article 7 of the Convention — a non-derogable right lying at the very core of the principle of the rule of law — being applied less strictly where the prosecution and punishment of terrorist offences are concerned (§ 270).

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

Sections 4(1) and 6(1) of the Law on the National Intelligence Organisation (MİT) do not provide procedural safeguards comparable to those set out in Article 134 of the Code of Criminal Procedure in relation to the collection of electronic evidence. Moreover, the decision of the Ankara 4th Magistrate's Court concerning the examination of the ByLock data did not amount to an *ex post facto* judicial review of the MİT's data-collection activity. Taking into account also the fact that the MİT retained the relevant data for months, the Court does not consider the doubts as to the reliability of the ByLock data to be abstract or unfounded (§ 317).

The fact that the applicant had access to the ByLock reports in his case file does not mean that he had no right of access to, or no interest in, the data on which those reports were based (§ 327). Nor does the domestic courts' finding that the ByLock data were consistent with another set of data verified by an expert extinguish the procedural rights attaching to those primary data (§ 318).

No explanation whatsoever was given as to why, and on whose decision, the raw data — in so far as they concerned him — were withheld from the applicant. The applicant was thereby deprived of the opportunity to submit counter-arguments (§ 331).

The request that the raw data be submitted to independent examination for verification of their content and integrity was likewise disregarded by the courts (§ 332). The applicant had a legitimate interest in requesting the examination of the raw data by independent experts, and the courts were under an obligation to give an appropriate response to that request (§ 333).

Nor did the courts respond to certain other objections pointing to concerns about the reliability of the ByLock evidence (inconsistencies between the different user lists, discrepancies between the number of downloads and the number of persons placed under investigation, and so forth) (§ 334).

Fourthly, the Regional Court of Appeal delivered its judgment without awaiting the arrival of the content of the ByLock communications and the information on the persons contacted; the Court of Cassation dismissed the objection based on the absence of those data (§ 335).

The disadvantage suffered by the defence as a result of the defects identified was further aggravated by the deficiencies in the courts' reasoning concerning the ByLock evidence (§ 337).

Certain factual objections point 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 safeguards to ensure that the applicant had the opportunity to challenge the evidence against him and to conduct 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 legitimate doubt that they were impervious to the arguments of the defence and that the applicant was not genuinely "heard" (§ 341).

The courts' failure to provide appropriate safeguards in respect of the principal item of evidence enabling the applicant to challenge it effectively, their failure to address the important issues lying at the heart of the case, and their failure to give reasons for their decisions are incompatible with the procedural rights under Article 6 § 1 (§ 345). These considerations are sufficient to conclude that the criminal proceedings did not satisfy the requirements of a fair trial (§ 346). The limitations in question cannot be regarded as strictly required by the state of emergency (§ 355).

In the light of these considerations, Article 6 § 1 of the Convention has been violated (§ 356).

As regards membership of the trade union and the association, the manner in which Article 314 § 2 of the Criminal Code was interpreted extended the scope of that provision in an unforeseeable manner, afforded no minimum protection against arbitrary interference and cannot

be regarded as “prescribed by law” (§ 396). For these reasons, Article 11 of the Convention has been violated (§ 402).

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

In order that the Court should not be compelled to find numerous similar violations in the future, the shortcomings identified must be addressed by the Turkish authorities on a broader scale, beyond the confines of the present case. It falls to the national authorities to draw the necessary conclusions from the present judgment — in particular, but not exclusively, as regards the cases pending before the domestic courts — and to take appropriate general measures to resolve the problem found to have given rise to the violation (§ 418).

The Court held that the finding of a violation constituted sufficient just satisfaction, on the ground that, following the judgment, the applicant would have the opportunity to seek the reopening of the proceedings under Article 311 § 1 (f) of the Code of Criminal Procedure, and that the reopening of the proceedings would be the best form of redress. An award of 15,000 euros was made in respect of the costs of the proceedings.

MEHMET DEMİR v. TÜRKİYE⁴⁰

THE FACTS

The application concerns the monitoring by prison officials of the exchange of documents during the applicant’s meetings with his lawyer at the penal institution where he was detained on a charge of membership of a terrorist organisation. The Osmaniye Magistrate’s Court, relying on section 59(5) of Law no. 5275, issued an order permitting the monitoring, by technical means, of the exchange of documents during the lawyers’ meetings of persons detained within the scope of the investigations against the Movement (“Cemaat”), and the recording of those meetings. As grounds for that order, the court cited attempts at covert communication by certain detainees in

⁴⁰ Mehmet Demir v. Türkiye, no. 55569/19, 24 October 2023.

the penal institution and security shortcomings. The applicant lodged objections against the monitoring of his exchange of documents with his lawyer before the enforcement judge and the assize court, but those objections were dismissed. His individual application to the Constitutional Court was likewise rejected for failure to exhaust the domestic remedies.

THE VIOLATIONS

The ECtHR considered that the monitoring of the exchange of documents during meetings with a lawyer constituted an interference with the right to “respect for private life and correspondence” guaranteed by Article 8 of the Convention. The Court reiterated that confidential communication between detainees and their lawyers is a fundamental element of the rights of the defence. Finding that the domestic courts had subjected all correspondence and document exchange to monitoring by means of a general order, without giving any concrete reasoning relating to the applicant’s particular situation, the ECtHR held that the interference was not of an exceptional nature and lacked adequate independent judicial safeguards against abuse. It accordingly concluded that the interference applied was not “in accordance with the law” within the meaning of Article 8 § 2 of the Convention and was not necessary in a democratic society, and held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR emphasised that the right to communicate confidentially with one’s lawyer is a fundamental right and that departures from it may be permitted only in highly exceptional circumstances and subject to strict safeguards. Together with the finding of a violation, no compensation was awarded, as the applicant had made no claim for just satisfaction. By this judgment the Court reiterated its settled case-law on the protection of lawyer–client confidentiality.

ERİŞ AND OTHERS v. TÜRKİYE⁴¹

THE FACTS

The case concerns the applications of forty-five persons arrested and placed in pre-trial detention after the attempted coup of 15 July 2016 on suspicion of being members of the Movement (“Cemaat”). The applicants were detained on charges of membership of the organisation within the scope of the investigations launched after the attempted coup. The detention orders relied on general grounds such as the nature of the offence, the state of the evidence, the likely sentence and the fact that the offence was a catalogue offence. The evidence adduced in the applicants’ files consisted in particular of the allegation that they were users of the ByLock messaging system and, for some applicants, of elements such as movements on their Bank Asya accounts or subscriptions to publications associated with the organisation. All of the applicants’ challenges before the national authorities, including the Constitutional Court, alleging that their detention was unlawful and that no reasonable suspicion existed, were dismissed.

THE VIOLATIONS

The ECtHR assessed the applicants’ detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that, at the time of the applicants’ arrest, there was no concrete and specific evidence capable of giving rise to a “reasonable suspicion” that they had committed the offence with which they were charged. It emphasised that ByLock use, of itself and unless supported by other concrete data, was not regarded as sufficient for reasonable suspicion, and that the other financial or social activities were insufficient to prove membership of a terrorist organisation. It stated that the domestic courts’ general and vague references to the relevant articles of the Code of Criminal Procedure and to “the evidence in the file” did not constitute sufficient grounds for the reasonable suspicion capable of justifying detention. Notwithstanding the context of the attempted coup after 15 July, the Court concluded that the detention measure, as applied to these applicants, was not a measure strictly required by the

41 Eriş and Others v. Türkiye, no. 58665/17 and 44 other applications, 24 October 2023.

exigencies of the situation. The judgment is the first ECtHR judgment on the merits of the detention of persons other than members of the judiciary.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants, with the exception of application no. 70782/17, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The Court further stated that, in the light of the finding of a violation, it was unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention and under Article 8. The judgment is in the nature of a “Committee judgment” reiterating the ECtHR’s previous case-law on the systemic legal problems in the detention procedures conducted after 15 July.

CANAVCI AND OTHERS v. TÜRKİYE⁴²

THE FACTS

The case concerns the monitoring and recording of the meetings with their lawyers of three applicants detained in penal institutions under the state of emergency declared after 15 July 2016. The first applicant’s meetings were recorded, with both sound and video, by the administration of the Silivri Penal Institution on the instructions of the Bakırköy Chief Public Prosecutor’s Office, issued under Legislative Decree no. 667, and were observed by an officer. A similar measure was applied to the second applicant at the Kocaeli Penal Institution by decision of the Zonguldak Chief Public Prosecutor’s Office, while the third applicant’s meetings at the Düzce Penal Institution were recorded and observed by the prison administration without any decision of a prosecutor’s office. The applicants lodged objections before the enforcement judges and the assize courts, arguing that these practices violated lawyer–client confidentiality and lacked any legal basis, but to no avail. Their individual applications to the Constitutional Court were likewise dismissed, either for failure to exhaust the domestic remedies or upon examination under the right to a fair trial.

42 Canavcı and Others v. Türkiye, no. 24074/19 and 2 other applications, 14 November 2023.

THE VIOLATIONS

The ECtHR regarded the monitoring and recording of lawyer–client meetings by the penal-institution authorities as an interference with the right to “respect for private life and correspondence” guaranteed by Article 8 of the Convention. The Court concluded that this interference was not “prescribed by law” within the meaning of Article 8 § 2 of the Convention. The judgment emphasised that the relevant provisions of Legislative Decree no. 667, and the manner of their application, did not afford adequate legal safeguards against arbitrary interference, and that the measures applied contained no individualised reasoning based on concrete risks. Moreover, as illustrated by the case of the third applicant, the application of the measure without any decision of a prosecutor’s office undermined the principle of legal certainty. Holding that even the conditions of a state of emergency could not justify such open-ended and unsupervised interferences with a fundamental right such as lawyer–client confidentiality, and that the judicial review in question was ineffective, the Court held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

While accepting that the state of emergency declared after 15 July constituted a “public emergency threatening the life of the nation”, the ECtHR stated that restrictions on lawyer–client confidentiality must be protected against abuse. By way of redress for the violations found, the Court awarded each applicant 9,750 euros in respect of non-pecuniary damage, together with 2,000 euros to the first applicant, 4,942 euros to the second applicant and 2,184 euros to the third applicant in respect of costs and expenses. The judgment reiterates and extends the ECtHR’s settled case-law on the protection of lawyer–client confidentiality and the lawfulness of administrative measures during pre-trial detention.

BURGAÇ AND OTHERS v. TÜRKİYE⁴³

THE FACTS

The applications concern the practice whereby the correspondence — both outgoing and incoming — of eighteen applicants detained in penal institutions was systematically recorded on the National Judiciary Informatics System (UYAP) during their detention. The applicants, arguing that this practice constituted an interference with their private life and the confidentiality of their correspondence, applied to the enforcement judges and the assize courts for the termination of the practice. The domestic courts dismissed the applicants' objections, and the Constitutional Court declared the individual applications inadmissible as "manifestly ill-founded". The domestic remedies having proved fruitless, the applicants brought the matter before the European Court of Human Rights.

THE VIOLATIONS

The ECtHR characterised the recording and storage of the correspondence on the UYAP system as an interference with the right to private life and the confidentiality of correspondence protected by Article 8 of the Convention. On the basis of the case-law it had established in *Nuh Uzun and Others v. Turkey*, the Court found that this practice had no basis "prescribed by law" within the meaning of Article 8 § 2 of the Convention. It emphasised that the relevant legislation and administrative regulations lacked the clarity and sufficiency required to legitimise the systematic monitoring of detainees' correspondence and its storage in digital form. Holding that Türkiye's notice of derogation from the Convention could not justify an interference of this kind, which was devoid of statutory basis and opened the door to arbitrariness, the Court held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 8 of the Convention had been violated. By way of redress, the Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-

43 Burgaç and Others v. Türkiye, no. 57407/19 and 17 other applications, 28 November 2023.

pecuniary damage sustained by the applicants. It further awarded each of the applicants listed in the annex to the judgment a total of 500 euros in respect of costs and expenses, and rejected the remaining claims in respect of pecuniary damage for want of a causal link. The judgment is in the nature of a Committee judgment reiterating the Court's earlier findings of systemic violation.

İLERDE AND OTHERS v. TÜRKİYE⁴⁴

THE FACTS

The applications concern the poor conditions of detention — in particular, severe overcrowding — in the penal institutions in which the applicants were held following their detention after 15 July 2016 on suspicion of membership of the organisation. The applicants (eleven persons) alleged that the living space per person in the prisons where they were held was insufficient, that they were obliged to sleep on mattresses on the floor, that they had no access to cleaning materials, and that basic amenities such as ventilation and hot water were restricted. Some applicants further complained that, owing to their transfer to prisons very far from their families, their right to family unity and their visiting opportunities had been curtailed. The objections lodged through the domestic remedies — before the enforcement judges, the assize courts and the Constitutional Court — were dismissed, in general on grounds of the density of the prison population after 15 July and considerations of security.

THE VIOLATIONS

The ECtHR examined the conditions of detention in the prisons under Article 3 of the Convention (prohibition of inhuman or degrading treatment). Reiterating that a presumption of violation arises where the living space per person falls below 3 square metres, the Court found that the periods spent below that threshold were not “short, occasional or minor”. It held that Article 3 of the Convention had been violated in respect of the periods during which the relevant applicants' total living space (excluding the dormitory beds, the common area, the exercise yard and the sanitary facilities) fell below 3 square metres. As regards the applicants with living space of

44 İlerde and Others v. Türkiye, no. 35614/19 and 10 other applications, 5 December 2023.

between 3 and 4 square metres, or above 4 square metres, no violation was found, the other conditions — ventilation, light and hygiene — being regarded as adequate. In addition, in respect of two applicants who had been transferred far from their families, with the result that family visits became difficult, the Court held that Article 8 of the Convention had also been violated, since the administration had failed to offer adequate alternatives when assessing their transfer requests and had imposed a disproportionate restriction on the right to family unity.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected most of the Government's objections of non-exhaustion of domestic remedies in respect of Article 5 and the other complaints, but declared inadmissible the transfer complaints of certain applicants who had not duly raised them before the Constitutional Court. The Court awarded the applicants in respect of whom violations were found sums ranging from 2,300 to 10,900 euros in respect of non-pecuniary damage, according to the length of their detention and the severity of the conditions. It further awarded 1,000 euros each to the five applicants who had claimed costs and expenses. The judgment reiterates the ECtHR's settled case-law on the persistent overcrowding in Turkish prisons and the resulting problems of humane conditions.

HALİT KARA v. TÜRKİYE⁴⁵

THE FACTS

The applicant, detained in the Şanlıurfa T-Type Penal Institution, sought to send an eight-page letter to his elder brother, who was detained in another penal institution. The letter contained statements concerning allegations of ill-treatment and torture during the periods of custody and detention, as well as certain shortcomings in prison conditions. The prison letter-reading commission ordered the seizure of the letter and of the specimen petitions enclosed with it, on the ground that it contained statements that were "objectionable, false and defamatory in nature". The applicant's objections before the enforcement judge and the assize court were dismissed on the ground that the decision was in conformity with the law. His individual application to the

⁴⁵ Halit Kara v. Türkiye, no. 60846/19, 12 December 2023.

Constitutional Court having likewise been rejected as “manifestly ill-founded”, the matter was brought before the ECtHR.

THE VIOLATIONS

The ECtHR regarded the prison authorities’ refusal to dispatch the applicant’s letter as an interference with the freedom of correspondence protected by Article 8 of the Convention. The Court found that, in restricting the letter on account of its content, the national authorities had failed to strike a fair balance between the competing interests and had not provided safeguards capable of preventing arbitrary interference with the applicant’s right. It emphasised that the relevant authorities had been unable to give any concrete and convincing reasons as to why the statements in the letter were characterised as “defamatory or false”, and that less restrictive measures — such as redacting only the passages found objectionable, rather than seizing the letter in its entirety — had not been considered. The Court concluded that there were no relevant and sufficient reasons demonstrating that the interference was necessary in a democratic society or strictly required by the specific conditions of the state of emergency, and held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

While accepting that the state-of-emergency period declared after 15 July constituted a “public emergency threatening the life of the nation”, the ECtHR stated that this could not legitimise arbitrary interferences with lawyer–client confidentiality or with the right to private correspondence with close relatives. The Court made no award of compensation, as the applicant had submitted no claim for just satisfaction. The judgment forms part of the settled case-law reiterating that disciplinary practices affecting the right of convicted and remand prisoners to communicate with the outside world must be compatible with Convention standards and the principle of legal certainty.

KOLAY AND OTHERS v. TÜRKİYE⁴⁶

THE FACTS

The case concerns the situation of 284 applicants who were placed in pre-trial detention on allegations of membership of the organisation after the attempted coup of 15 July 2016 and whose detention lasted between one year and four and a half years. The detention orders were based on general grounds such as the nature of the offence, the state of the evidence, the likely sentence and the fact that the offence was a catalogue offence. The evidence in the files consisted of allegations such as the applicants' use of ByLock, their accounts at Bank Asya, participation in the activities of the Movement ("Cemaat"), communication with persons detained on the same charge, or employment in institutions associated with the Movement. The applicants' challenges alleging violations of their right to liberty and security were dismissed by the national authorities, including the Constitutional Court.

THE VIOLATIONS

The ECtHR assessed the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the reasons given in the decisions ordering and extending the detention were not sufficient to constitute a "reasonable suspicion". It emphasised that ByLock use, of itself and unless supported by other concrete evidence, could not constitute a "reasonable suspicion" in respect of the charge of membership of a terrorist organisation. It stated that the domestic courts' references to Article 100 of the Code of Criminal Procedure and to the evidence in the file — consisting of general, abstract and formulaic assertions — contained no individualised examination and did not attain the level required to justify detention. Notwithstanding the extraordinary conditions after 15 July, the Court concluded that the detention measure, as applied to these applicants, was not a measure strictly required by the exigencies of the situation.

⁴⁶ Kolay and Others v. Türkiye, no. 15231/17 and 283 other applications, 12 December 2023.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who had claimed just satisfaction, with the exception of ten applications, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. It stated that, in the light of the finding of a violation, it was unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention and under Article 8. The judgment is a Committee judgment reiterating the settled ECtHR case-law on the systemic legal problems relating to the detention of members of the judiciary and public servants.

MECİT AND OTHERS v. TÜRKİYE⁴⁷

THE FACTS

The case concerns the situation of eighty-two applicants placed in pre-trial detention after 15 July 2016. The applicants were detained on suspicion of membership of the organisation under Article 314 of the Turkish Criminal Code. The detention orders were based essentially on the nature of the offence, the state of the evidence and the likely sentence; in the course of the proceedings, allegations such as the applicants' use of the ByLock messaging system, their accounts at Bank Asya or subscriptions to publications associated with the Movement ("Cemaat") were adduced as evidence. The applicants' challenges to their detention and their individual applications to the Constitutional Court were dismissed.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that, at the time of the applicants' detention, there was no concrete and specific evidence capable of giving rise to a "reasonable suspicion" that they had committed the offence with which they were charged. It emphasised that the domestic courts' general, abstract and formulaic references to Article 100 of the Code of Criminal Procedure and to the evidence in the file did not constitute sufficient grounds for the reasonable suspicion

⁴⁷ Mecit and Others v. Türkiye, no. 69884/17 and 81 other applications, 12 December 2023.

capable of justifying detention. Notwithstanding the extraordinary conditions that arose after 15 July, the Court concluded that the measures applied by the administration and the judicial authorities, containing no concrete individualised examination, were not measures strictly required by the exigencies of the situation and were tainted by arbitrariness.

OTHER ASPECTS OF THE JUDGMENT

Holding that the applicants' rights had been violated, the ECtHR awarded each of the applicants who had claimed compensation a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. After the judgment it emerged that one of the applicants had died before its delivery and, in line with the request of his heirs to pursue the application, a revision judgment was adopted on 27 May 2025. By that revision judgment, it was decided that the compensation of 5,000 euros awarded in favour of the deceased be paid to his heirs.

VII. JUDGMENTS DELIVERED IN 2024

SİL AND OTHERS v. TÜRKİYE⁴⁸

THE FACTS

The applications concern the systematic recording on the National Judiciary Informatics System (UYAP), by the administrations of the penal institutions, of the letters sent and received by three applicants during their pre-trial detention. The applicants applied to the enforcement judges and the assize courts for the termination of the practice of recording and storing their correspondence in digital form. The domestic courts dismissed those requests, and the Constitutional Court rejected the applicants' complaints concerning the right to respect for private life and correspondence as "manifestly ill-founded". The domestic remedies having proved fruitless, the applicants applied to the European Court of Human Rights.

THE VIOLATIONS

The ECtHR regarded the recording of the applicants' correspondence on the UYAP system as an interference with the right to "respect for correspondence" guaranteed by Article 8 of the Convention. On the basis of the case-law it had established in *Nuh Uzun and Others v. Turkey*, the Court found that the systematic recording of detainees' correspondence in this manner had no basis "prescribed by law" within the meaning of Article 8 § 2 of the Convention. Holding that, since the practice in question was devoid of legal foundation and afforded no adequate protection against arbitrariness, even Türkiye's notice of derogation from its obligations during the state of emergency could not justify the violation, the Court held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants, and accordingly rejected their claims for compensation. The claims in respect of costs and expenses were likewise rejected for failure to

⁴⁸ Sil and Others v. Türkiye, no. 8130/19 and 2 other applications, 6 February 2024.

submit the necessary supporting documents. The judgment is in the nature of a Committee judgment reiterating the Court's settled case-law on the lawfulness of digital-monitoring practices applied to the correspondence of remand and convicted prisoners.

PARILDAK v. TÜRKİYE⁴⁹

THE FACTS

The applicant is a journalist who, at the material time, was a student at the Ankara University Faculty of Law and worked as a court reporter for the *Zaman* newspaper. She was taken into custody on 4 August 2016 and placed in pre-trial detention on 11 August 2016 on the basis of her social-media posts, the newspaper for which she worked, her bank account and the digital materials found in her possession. The detention order set out general grounds such as the nature of the offence and its inclusion among the "catalogue offences", but identified no concrete evidence indicating the applicant's membership of the organisation. The indictment drawn up against her cited her social-media posts and columns as evidence and further alleged that she had used ByLock. The applicant, who remained in detention for a lengthy period during the proceedings, was sentenced on 21 November 2017 to seven years and six months' imprisonment for membership of a terrorist organisation, and her individual applications to the Constitutional Court were dismissed.

THE VIOLATIONS

The ECtHR examined the applicant's detention under Article 5 of the Convention and held that Articles 5 § 1 and 5 § 3 of the Convention had been violated. The Court found that, at the time of the applicant's detention, there was no concrete evidence constituting a "reasonable suspicion" capable of satisfying an objective observer that she was a member of a terrorist organisation. The domestic courts' decisions ordering the continuation of her detention on general, abstract and formulaic grounds based on the nature of the offence and its status as a "catalogue offence" were found not to be "relevant and sufficient". It was emphasised in particular that ByLock use and

49 Parıldak v. Türkiye, no. 66375/17, 19 March 2024.

social-media posts — regard being had to their connection with the applicant’s freedom of expression and journalistic activities — did not, of themselves, constitute a body of evidence sufficient for membership of a terrorist organisation. Furthermore, the applicant’s detention solely on account of her journalistic activities and acts falling within the scope of freedom of expression was recorded as a violation of Article 10 of the Convention (freedom of expression).

OTHER ASPECTS OF THE JUDGMENT

The ECtHR stated that the conditions of the state of emergency that arose after 15 July could not justify arbitrary and unreasoned detentions undermining the principle of legal certainty. By way of redress for the violations, the Court awarded the applicant 16,000 euros in respect of non-pecuniary damage and 6,000 euros in respect of costs and expenses. The judgment stated that the exercise by the applicant of her freedom of expression had been the subject of an interference and that the national authorities had failed to provide adequate safeguards in that process. Judge Saadet Yüksel appended a partly dissenting opinion in respect of the findings of violation under Articles 5 and 10 of the Convention, with reference to previous judgments.

KARTAL v. TÜRKİYE⁵⁰

THE FACTS

The applicant is a judge who, while serving as Deputy President of the Inspection Board of the High Council of Judges and Prosecutors (HSYK), had his term of office terminated prematurely by operation of law upon the entry into force of the legislative amendment made by Law no. 6524. The Law in question provided for various changes within the HSYK and, by a transitional provision, terminated the terms of office of all personnel serving on the Council on the date of its entry into force. Although the Constitutional Court annulled this provision on the ground that it violated the principle of legal certainty, the applicant was unable to return to his former post because the annulment did not have retrospective effect. The applicant applied to the European Court of Human Rights, alleging that his right of access to a court had been restricted, since there

50 Kartal v. Türkiye, no. 54699/14, 26 March 2024.

was no effective judicial review available in domestic law against that measure and he had been unable to challenge the termination of his duties.

THE VIOLATIONS

The ECtHR examined the denial of access to a court in respect of the termination of the applicant's administrative post under Article 6 § 1 of the Convention (right of access to a court) and held that that provision had been violated. The Court reiterated that, in order to prevent arbitrariness, adequate judicial safeguards must be provided against measures affecting the status and career of a judge and capable of threatening judicial independence. In the instant case, it was established that the termination of the applicant's duties had been effected directly by a legislative act, without any concrete reasoning, and that there was no effective legal remedy by which the applicant could challenge that state of affairs. The Court concluded that depriving members of the judiciary of judicial review against the arbitrary termination of their duties was incompatible with the principle of the rule of law and with judicial independence.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR assessed the procedure relating to the termination of the applicant's post as Deputy President of the Inspection Board within the scope of "civil rights and obligations", as a safeguard of judicial independence, and held that Article 6 of the Convention was applicable in the case. Together with the finding of a violation, the Court awarded the applicant 7,800 euros in respect of non-pecuniary damage and 1,767 euros in respect of costs and expenses. In the judgment, Judge Pauliine Koskelo, while joining in the finding of a violation, delivered a concurring opinion to the effect that the reasoning on the applicability of Article 6 of the Convention contained sensitive points requiring clarification in the case-law, particularly in the context of legislative acts and constitutional-review procedures.

GÜLCÜ AND OTHERS v. TÜRKİYE⁵¹

THE FACTS

The case concerns the situation of fifty judges and prosecutors who, by decisions taken by the High Council of Judges and Prosecutors (HSYK) in 2014 and 2015, were appointed to other cities or had their places of duty changed without their consent. The applicants alleged that their right of access to a court had been denied, since their objections to those appointment decisions had been dismissed by the HSYK and no judicial remedy whatsoever lay against the decisions. Only one applicant (Talip Karakuş), although he obtained a change in his place of duty as a result of his objection, stated that he had likewise been unable to seek judicial review of that change. The great majority of the applicants regarded the exclusion of HSYK decisions from judicial review as a violation under Article 6 § 1 of the Convention (right to a fair trial — access to a court) and, having obtained no result from their individual applications to the Constitutional Court, took the matter to the ECtHR.

THE VIOLATIONS

The ECtHR examined the applicants' situation under Article 6 of the Convention and held that the right of access to a court had been violated. On the basis of its earlier judgment in *Bilgen v. Turkey*, the Court found that the exclusion from judicial review of changes in the places of duty of members of the judiciary was incompatible with the safeguards designed to protect judicial independence. It emphasised that the general grounds put forward by the HSYK for the appointments, framed as "requirements of the service", did not constitute exceptional or compelling reasons capable of justifying the exclusion of those measures from judicial review. The Court found that members of the judiciary must be protected against arbitrariness even in assignments of an administrative nature, and that the absence of judicial review of the administration's appointment decisions impaired the very essence of the right of access to a court under Article 6 § 1 of the Convention.

51 Gülcü and Others v. Türkiye, no. 37013/15 and 49 other applications, 26 March 2024.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 6 § 1 of the Convention had been violated. By way of redress, the Court awarded 2,500 euros in respect of non-pecuniary damage and costs and expenses to each of the applicants who had claimed compensation, other than those in applications nos. 37013/15, 1441/16, 1447/16, 3011/16, 5623/16, 19288/16, 19642/16, 37611/16, 37613/16 and 40017/16. Each of the applicants in those ten applications was awarded 2,000 euros in respect of non-pecuniary damage only.

SÖZEN v. TÜRKİYE⁵²

THE FACTS

The applicant is a judge who, while serving as a member of the Council of State, had his membership of that court terminated prematurely by operation of law — although his status as a judge continued — as a result of the judicial reform effected by Law no. 6723, adopted in 2016. The legislation in question aimed to reduce the number of members of the Council of State and the Court of Cassation and, to that end, terminated the memberships of the serving members directly by statute. The applicant lodged an individual application with the Constitutional Court against his removal from office and against his subsequent omission from the election of the new members of the Council of State; his application, alleging a denial of the right of access to a court, was, however, dismissed. Having found no possibility of effective judicial review in domestic law, the applicant brought the matter before the ECtHR.

THE VIOLATIONS

The ECtHR examined the denial of judicial review of the termination of the applicant's office under Article 6 § 1 of the Convention (right of access to a court) and held that that provision had been violated. The Court found that the termination of the applicant's membership of the Council of State had been effected through a process devoid of any judicial review against arbitrary interference, impairing judicial independence and the security of judicial tenure. Notwithstanding

52 Sözen v. Türkiye, no. 73532/16, 9 April 2024.

even the Constitutional Court's findings that structural changes of this kind undermined the "principle of legal certainty", the absence of any administrative or judicial remedy by which the applicant could challenge his removal from office was regarded as a disproportionate restriction impairing "the very essence of the right of access to a court".

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 6 § 1 of the Convention had been violated. By way of redress, the Court awarded the applicant 7,800 euros in respect of non-pecuniary damage and 1,000 euros in respect of costs and expenses.

AYDIN SEFA AKAY v. TÜRKİYE⁵³

THE FACTS

The applicant is a judge serving on the United Nations International Residual Mechanism for Criminal Tribunals ("the Mechanism"). After the attempted coup of 15 July 2016, he was taken into custody at his home on 21 September 2016 on suspicion of membership of a terrorist organisation and placed in pre-trial detention. The applicant argued that, under Article 29 of the Statute of the Mechanism, he enjoyed diplomatic immunity and could not be arrested unless his immunity was waived by the UN Secretary-General. The United Nations Office of Legal Affairs and the President of the Mechanism formally notified the Turkish authorities that the applicant enjoyed diplomatic immunity and must be released immediately; indeed, the President of the Mechanism issued a binding order to Türkiye to cease the prosecution. The domestic courts, however, dismissed the applicant's arguments on the grounds of "catalogue offence" and "strong suspicion of an offence" and maintained his detention. The applicant was subsequently sentenced to seven years and six months' imprisonment for membership of an armed terrorist organisation, and the proceedings were concluded without his claims of diplomatic immunity being taken into account.

53 Aydın Sefa Akay v. Türkiye, no. 59/17, 23 April 2024.

THE VIOLATIONS

The ECtHR examined the applicant's detention and the search of his home under Articles 5 and 8 of the Convention and held that both provisions had been violated. The Court found that the diplomatic immunity which the applicant enjoyed by virtue of his status as an international judge had been assessed belatedly and inadequately by the national authorities, thereby nullifying the protection afforded to him. It stated that the domestic courts' failure to take into account the international legal obligations relating to the applicant's immunity was contrary to the "procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention. Noting that, having regard to the immunities recognised by the UN and the applicant's "remote working" status, the search of his home and person was subject to protection analogous to the inviolability of official premises, and that the search could not be regarded as an interference "in accordance with the law", the Court held that Article 8 had been violated. It was further emphasised that the conditions of the state of emergency could not justify an arrest contrary to the immunity obligations arising under international law.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR found that the applicant's detention and conviction were incompatible with the Convention on account of the violation of his diplomatic immunity. By way of redress, the Court awarded the applicant 21,100 euros in respect of non-pecuniary damage and 1,000 euros in respect of costs and expenses. The judgment stated that the independence and immunities of international judges are an indispensable condition for the rule of law and the administration of international justice.

ALTUN AND OTHERS v. TÜRKİYE⁵⁴

THE FACTS

The case concerns the applications of twenty-three judges and prosecutors placed in pre-trial detention within the scope of the investigations conducted against them after the events of 15 July.

⁵⁴ Altun and Others v. Türkiye, no. 60065/16 and 22 other applications, 24 September 2024.

The applicants submitted that the detention orders relied on general grounds such as the nature of the offence, its inclusion among the catalogue offences, the state of the evidence and the likely sentence, but that no concrete “reasonable suspicion” that they had committed the offence charged had been established. In the course of their detention, grounds such as ByLock use, subscriptions to publications associated with the organisation, movements on Bank Asya accounts or membership of YARSAV (the Association of Judges and Prosecutors) were added to their files as evidence; all of the applicants’ objections and their individual applications to the Constitutional Court were dismissed.

THE VIOLATIONS

The ECtHR assessed the applicants’ detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the general references to the evidence in the detention orders were insufficient to establish a reasonable suspicion that the persons concerned had committed an offence. It emphasised that allegations such as ByLock use or membership of institutions affiliated with the organisation could not, without a concrete individualised analysis, constitute of themselves a “reasonable suspicion” for the purposes of detention. While accepting the extraordinary conditions after 15 July as a contextual factor, the Court concluded that the detention measures were not “strictly required by the exigencies of the situation” and that the domestic courts’ reasoning remained abstract.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants, with the exception of application no. 2541/20, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. In the light of the finding of a violation, it was considered unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention.

DUYMAZ AND OTHERS v. TÜRKİYE⁵⁵

THE FACTS

The applicants were arrested and placed in pre-trial detention on suspicion of “membership of an armed terrorist organisation” under Article 314 of the Turkish Criminal Code, within the scope of the investigations launched after 15 July 2016, on the basis of indirect elements such as the allegation that they were users of the ByLock messaging system, movements on Bank Asya accounts, membership of closed-down institutions, witness statements or possession of lawful publications. In their decisions restricting liberty, the magistrates’ courts referred in general terms to the nature of the offence, its status as a catalogue offence and “the evidence in the file”; the applicants’ claims of unjustified detention were dismissed by the Constitutional Court, while most of the first-instance courts convicted the applicants.

THE VIOLATIONS

The ECtHR rejected the Government’s preliminary objections that the compensation remedy under Article 141 of the Code of Criminal Procedure had not been exhausted and that the right of application had been abused, and declared the complaints admissible. On the merits, the Court found that the magistrates’ courts, in their detention orders, had relied solely on the wording of the statute and on vague expressions, without specifying concretely which item of evidence gave rise to reasonable suspicion and for what purpose. Stating that ByLock use, or lawful banking activities and subscriptions to publications, could not of themselves constitute a “reasonable suspicion” within the meaning of Article 5 § 1 (c) of the Convention unless supported by concrete acts, and that the prolonged detention exceeded the limits strictly required by the situation notwithstanding the state-of-emergency crisis, the ECtHR held unanimously that Article 5 § 1 of the Convention had been violated (unlawful detention for want of reasonable suspicion); it did not examine the remaining complaints.

⁵⁵ Duymaz and Others v. Türkiye, no. 58437/17 and 313 other applications, 24 June 2024.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected all of the claims in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found and the pecuniary losses alleged. In order to redress the grievance suffered, the Court awarded each of the applicants whose claims for just satisfaction had been reserved, or in respect of whom no adverse decision had been taken, a lump sum of 5,000 euros to cover jointly their non-pecuniary damage and the costs and expenses of the proceedings.

KURİŞ AND OTHERS v. TÜRKİYE⁵⁶

THE FACTS

The case concerns the situation of twenty-six applicants placed in pre-trial detention within the scope of the investigations conducted after the attempted coup of 15 July 2016. The applicants, who were serving as judges or prosecutors, were taken into custody and subsequently detained as a result of the criminal investigations initiated against them. The detention orders referred to the nature of the offence charged, the state of the evidence, the inclusion of the offence among the “catalogue offences” and the continuing threat to public order arising from the attempted coup. Some of the applicants were charged with membership of a terrorist organisation on grounds such as movements on their Bank Asya accounts or membership of YARSAV. The objections lodged before the domestic courts and the Constitutional Court proved fruitless, and the great majority of the applicants were convicted by the first-instance courts in the course of the proceedings.

THE VIOLATIONS

The ECtHR assessed the applicants’ detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that, at the time of the applicants’ detention, there was no concrete and specific evidence capable of giving rise to a “reasonable suspicion” in relation to the offence they were alleged to have committed. It emphasised that the general references in the detention orders to the relevant provisions of the Code of Criminal Procedure and

⁵⁶ Kuriş and Others v. Türkiye, no. 54683/16 and 25 other applications, 25 June 2024.

to “the evidence in the file” contained no individualised examination and did not constitute sufficient grounds for the reasonable suspicion capable of justifying detention. Notwithstanding the context of the state of emergency declared after 15 July and the notice of derogation, the Court concluded that the detention measure, as applied to these applicants, was not a measure “strictly required” by the exigencies of the situation.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who had claimed just satisfaction, with the exception of the applicant in application no. 48669/20, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is a Committee judgment reiterating the settled case-law established in the earlier *Baş v. Turkey* and *Turan and Others v. Turkey* judgments.

KURKUT AND OTHERS v. TÜRKİYE⁵⁷

THE FACTS

Seven applicants who, having succeeded in the examinations and interviews, had become entitled to appointment to civil-service posts, but whose appointments were refused by the administration on the basis of the requirement — introduced by Legislative Decree no. 676, which entered into force after the coup attempt of 15 July — that “the security investigation and archive check produce a favourable outcome”, brought actions for annulment before the administrative courts. Although there was no concrete judicial record concerning the applicants themselves, the administrative authorities withheld approval of their appointments on the basis of intelligence reports received from the police alleging that the applicants or their close relatives had links with terrorist organisations (the PKK/KCK or FETÖ/PDY). The applicants’ annulment claims were dismissed by the administrative courts on the grounds of the administration’s discretionary power and the sensitivity of the posts, and the regional administrative courts and the Constitutional Court upheld those dismissals.

⁵⁷ Kurkut and Others v. Türkiye, no. 58901/19 and 6 other applications, 25 June 2024.

THE VIOLATIONS

The ECtHR rejected the objections that certain applicants had lost their victim status by virtue of their subsequent appointment to public service and that the domestic remedies had not been duly exhausted. On the merits, the Court found that the administration had entirely withheld from the applicants the content of the secret archive checks on which the refusal of their appointments was based, and that the administrative courts, although they obtained those secret data from the administration, had neither communicated them to the applicants nor afforded them the opportunity to prepare a defence. Noting that the courts had accepted the administration's assertions as true without subjecting them to any scrutiny and had failed to discharge their obligation of effective judicial review, the ECtHR, emphasising that this procedure — in which the principle of the individual nature of criminal responsibility was disregarded — could not be justified by the state-of-emergency notices of derogation, held that Article 6 § 1 of the Convention (right to a fair trial) had been violated; it rejected the complaint concerning the presumption of innocence (Article 6 § 2) for non-exhaustion of domestic remedies.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected all of the claims in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation of the right to a fair trial and the allegedly substantial losses of salary and income sustained by the applicants during the period in which they could not be appointed. In order to redress the moral attrition suffered by the applicants, who were denied entry to public service on the basis of adverse intelligence reports drawn up about them, the Court awarded each applicant, without distinction, 2,000 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, it awarded 1,000 euros to one applicant who was able to document his expenditure and 500 euros each to two further applicants.

THE FACTS

Fırat Çinici, who was serving as a military judge at the material time, was placed in pre-trial detention in July 2016, within the scope of the investigations conducted after 15 July 2016, on suspicion of membership of the organisation, on the ground that his name appeared on the “Martial Law Courts Appointment List”. In their detention and extension decisions, the courts relied on general and abstract formulae, citing the gravity of the offence charged, its inclusion among the catalogue offences, and the risks of flight and of tampering with evidence, and at later stages took account of the time already spent in prison. The applicant lodged an individual application with the Constitutional Court, arguing that the procedural safeguards afforded by the Law on Military Judges had not been complied with and that alternative measures had not been considered; the high court, however, dismissed the application in January 2019.

THE VIOLATIONS

The ECtHR rejected the Government’s objection that the compensation remedy under Article 141 of the Code of Criminal Procedure had not been exhausted; it rejected, for non-exhaustion of domestic remedies, the applicant’s complaints under Article 5 § 1 of the Convention alleging breach of the procedural safeguards in the Law on Military Judges, since those allegations had not been duly raised before the Constitutional Court. Examining the complaints of lack of reasoning, the Court accepted that, in the crisis climate following the attempted coup, the risks of flight or of tampering with evidence could justify detention at the initial stage of the criminal investigation. It found, however, that in the subsequent extension decisions the domestic courts had carried out no individualised analysis of the martial-law list, which constituted the key item of evidence, and had automatically repeated their decisions in abstract and stereotyped formulae, taking refuge in the catalogue-offence presumptions. Regarding as a procedural violation the complete absence, in the judicial decisions, of any discussion of why alternative measures would be insufficient — having

58 Çinici v. Türkiye, no. 32264/19, 9 July 2024.

regard to the applicant's lengthy detention exceeding one year and five months — the Court, emphasising that this state of affairs could not be justified by Türkiye's notice of derogation, held that Article 5 § 3 of the Convention (the right to a reasoned decision on detention) had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected in its entirety the applicant's claim for 50,000 euros in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found — the unreasoned extension of detention — and the applicant's professional or personal losses. In order to redress the non-pecuniary harm suffered by the applicant, whose liberty was unjustifiably restricted for a lengthy period in prison as a result of stereotyped decisions, the Court awarded him 3,000 euros in respect of non-pecuniary damage. Since the applicant submitted no official invoice, receipt or verifiable evidence of expenditure relating to the proceedings before the Court or to lawyers' fees, no award was considered necessary under the head of costs and expenses.

YILDIRIM v. TÜRKİYE⁵⁹

THE FACTS

The applicant brought an action for annulment before the administrative courts against the termination of his temporary-assignment contract of 3 March 2012, effected on the ground of suspected affiliation with the Movement ("Cemaat"). The Kastamonu Administrative Court dismissed the action essentially on the basis of information received from the Governor's Offices, without carrying out any concrete and individualised assessment of the applicant and without explaining what information or concrete grounds had been put forward concerning his alleged affiliation. The applicant pursued his challenge before the Ankara Regional Administrative Court and the Constitutional Court, arguing that no investigation or complaint had been made against him throughout his period of employment, that the domestic courts had not set out in their

59 Yıldıırım v. Türkiye, no. 24775/19, 10 July 2024.

decisions the concrete grounds for the suspicion of affiliation, and that the court decisions remained unreasoned; his applications were, however, dismissed.

THE VIOLATIONS

The ECtHR declared admissible the applicant's complaint concerning the absence of adequate — or of any — reasoning in the court decisions, and rejected his remaining complaint under Article 8 of the Convention as failing to satisfy the admissibility criteria. On the merits, the Court reiterated that, in accordance with the principle of the proper administration of justice, courts are under an obligation to provide a specific, sufficient and express response to the decisive arguments on which their decisions are based. Finding that in the present case the administrative courts had failed to discharge their obligation to give reasons, using template or stereotyped expressions in their decisions, and had not addressed the relevant and significant arguments raised by the applicant, the Court held that Article 6 § 1 of the Convention (right to a reasoned decision / right to a fair trial) had been violated on account of these concrete procedural deficiencies.

OTHER ASPECTS OF THE JUDGMENT

On account of the violation of the right to a reasoned decision under Article 6 § 1 of the Convention, the ECtHR, in accordance with its settled case-law, awarded the applicant 2,000 euros in respect of the non-pecuniary damage he had sustained. It was directed that the sum awarded be converted into the national currency of the respondent State at the rate applicable on the date of payment and paid within the statutory three-month period following notification of the judgment.

ŞİŞMAN AND OTHERS v. TÜRKİYE⁶⁰

THE FACTS

The case concerns the situation of fifty judges and prosecutors who, by decisions taken by the HSYK in 2014 and 2015, were appointed to different cities or had their places of duty changed without their consent. The objections lodged with the HSYK for the annulment of those appointment decisions were dismissed, and since the HSYK's decisions were final in nature they

⁶⁰ Şişman and Others v. Türkiye, no. 52107/14 and 10 other applications, 22 October 2024.

remained closed to judicial review. The applicants applied to the ECtHR, arguing that the absence of an independent judicial authority before which they could challenge the appointment measures violated their right to a fair trial and their right of access to a court.

THE VIOLATIONS

The ECtHR examined the applicants' situation under Article 6 § 1 of the Convention (right of access to a court) and held that that provision had been violated. Referring to its earlier judgments in *Bilgen v. Turkey* and *Eminağaoğlu v. Turkey*, the Court found that the exclusion of the HSYK's administrative appointment decisions from judicial review was incompatible with the safeguards designed to protect judicial independence and with the principle of the rule of law. It emphasised that the HSYK's general grounds framed as "requirements of the service" did not constitute an exceptional circumstance justifying the complete elimination of any legal defence mechanism against changes in the places of duty of members of the judiciary. The Court found that the absence of review of the administration's appointment decisions by an independent judicial body impaired the very essence of the applicants' right of access to a court.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 6 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants, with the exception of the applicant in application no. 5585/16, a total of 2,500 euros in respect of non-pecuniary damage and costs and expenses. The applicant in application no. 5585/16, who had made no claim in respect of costs and expenses, was awarded 2,000 euros in respect of non-pecuniary damage only. The judgment is in the nature of a Committee judgment reiterating the ECtHR's settled case-law on the absence of judicial review of the personal rights of members of the judiciary and of changes in their places of duty.

KAPLAN AND OTHERS v. TÜRKİYE⁶¹

THE FACTS

The case concerns the applications of 223 judges and prosecutors placed in pre-trial detention within the scope of the investigations conducted against them after the events of 15 July. The applicants were detained on various dates on allegations of membership of the organisation under Article 314 of the Turkish Criminal Code. The detention orders rested essentially on general grounds such as the nature of the offence, the state of the evidence, the likely sentence and its inclusion among the catalogue offences. The files disclose the use of evidence such as use of the ByLock messaging system, movements on Bank Asya accounts, publications and witness statements. The objections lodged against the detention decisions and the individual applications to the Constitutional Court were dismissed, and some of the proceedings ended in conviction before the domestic courts.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that, at the time of the applicants' detention, there was no concrete and specific evidence capable of giving rise to a "reasonable suspicion" that they had committed the offence with which they were charged. It emphasised that the general, abstract and formulaic references in the decisions ordering and continuing detention to Article 100 of the Code of Criminal Procedure and to the evidence in the file contained no individualised assessment and did not attain the level required to justify detention. Notwithstanding the context of the state of emergency declared after 15 July, the Court found that the measures applied were not of a nature "strictly required" by the exigencies of the situation and, concluding that the detentions opened the door to arbitrariness, delivered a finding of violation.

⁶¹ Kaplan and Others v. Türkiye, no. 49484/17 and 222 other applications, 22 October 2024.

OTHER ASPECTS OF THE JUDGMENT

The Court decided unanimously to join the applications and held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who had claimed just satisfaction, with the exception of the applicant in application no. 48669/20, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. In the light of this finding of violation, it was considered unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention.

TANYAŞ AND OTHERS v. TÜRKİYE⁶²

THE FACTS

The case concerns the situation of 240 applicants placed in pre-trial detention after 15 July 2016. The applicants, who were serving as judges or prosecutors at the material time, were taken into custody and subsequently detained as a result of the criminal investigations initiated against them. The detention orders referred to the nature of the offence charged, the state of the evidence, its inclusion among the catalogue offences and the continuing threat to public order arising from the attempted coup. Grounds such as use of the ByLock messaging system, movements on Bank Asya accounts, publications, possession of “F”-series United States dollar banknotes or witness statements were adduced as evidence in the files. The applicants’ challenges to the detention decisions and their individual applications to the Constitutional Court proved fruitless.

THE VIOLATIONS

The ECtHR examined the applicants’ detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the general and abstract references to the evidence in the decisions ordering and continuing detention were insufficient to establish a reasonable suspicion that the persons concerned had committed an offence. It emphasised that allegations such as ByLock use or membership of affiliated institutions could not, without a concrete individualised analysis, constitute of themselves a “reasonable suspicion” for the

62 Tanyaş and Others v. Türkiye, no. 36167/18 and 239 other applications, 12 November 2024.

purposes of detention. While accepting the context of the state of emergency declared after 15 July, the Court found that the detention measures were not “strictly required by the exigencies of the situation” and that the domestic courts’ reasoning remained abstract, and delivered a finding of violation.

OTHER ASPECTS OF THE JUDGMENT

The Court held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who had claimed just satisfaction, with the exception of the applicants in applications nos. 38532/19, 42022/19, 44066/19, 47075/19, 53060/19 and 53333/19, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. In the light of the finding of a violation, it was considered unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention. The judgment is in the nature of a Committee judgment reiterating the ECtHR’s settled case-law on the systemic problems in the detention of members of the judiciary.

MANAV AND OTHERS v. TÜRKİYE⁶³

THE FACTS

The case concerns the situation of 128 judges and prosecutors placed in pre-trial detention after 15 July 2016. The applicants were arrested and detained on allegations of membership of the organisation under Article 314 of the Turkish Criminal Code. The detention orders referred to the nature of the offence, the state of the evidence, the likely sentence prescribed for the offence and its inclusion among the “catalogue offences”. Grounds such as use of the ByLock messaging system, movements on Bank Asya accounts and possession of “F”-serial-number United States dollars were used as evidence in the files. The applicants’ challenges to the detention decisions and their individual applications to the Constitutional Court proved fruitless, and most of the applicants were convicted in the course of the proceedings.

⁶³ Manav and Others v. Türkiye, no. 56211/19 and 127 other applications, 12 November 2024.

THE VIOLATIONS

The ECtHR examined the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the general and abstract references in the detention orders to Article 100 of the Code of Criminal Procedure and to "the evidence in the file" were insufficient to establish a reasonable suspicion that the persons concerned had committed an offence. It emphasised that allegations such as ByLock use or membership of institutions affiliated with the organisation could not, without a concrete individualised analysis, constitute of themselves a "reasonable suspicion" for the purposes of detention. While taking into account the context of the state of emergency declared after 15 July, the Court found that the detention measures were not "strictly required by the exigencies of the situation" and that the domestic courts' reasoning remained abstract, and delivered a finding of violation.

OTHER ASPECTS OF THE JUDGMENT

The Court held unanimously that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who had claimed just satisfaction, with the exception of the applicants in applications nos. 59379/19, 60694/19, 63017/19, 63900/19, 64491/19, 65131/19, 503/20, 640/20, 2467/20, 3406/20, 5612/20, 5974/20, 7453/20 and 12837/20, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. In the light of the finding of a violation, it was considered unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention.

BAYSAL v. TÜRKİYE⁶⁴

THE FACTS

The applicant, while detained in the Silivri Penal Institution on a charge of membership of the organisation, alleged that his right to receive information and ideas had been violated on account of the refusal of the prison administration to hand over to him the English-language book *Kosovo: A Short History*, sent to him by his relatives. The administration withheld the book on the ground

64 Baysal v. Türkiye, no. 1162/20, 12 November 2024.

that, since it was not in Turkish and no staff were available to translate it, its content could not be inspected, and suggested that the applicant bear the costs of its translation. The applicant's objections before the enforcement judge and the assize court were dismissed, and the Constitutional Court likewise declared the application inadmissible as manifestly ill-founded. The book was handed over to the applicant approximately four years after the event.

THE VIOLATIONS

The ECtHR examined the refusal of the prison authorities to deliver the English-language book to the applicant under Article 10 of the Convention (freedom of expression — the right to receive information and ideas) and held that that provision had been violated. The Court found that the prison administration's inability to understand the content of the book did not correspond to any of the grounds for restriction laid down in the legislation, such as "endangering the security of the institution" or "obscene content". It was established that the relevant laws and regulations contained no provision permitting publications to be withheld solely on the basis of their language, and that the administrative decisions therefore rested on no legitimate ground "prescribed by law". Since the interference lacked any legal basis, the Court concluded that Article 10 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 10 of the Convention had been violated. As the applicant had made no claim for just satisfaction within the time-limit fixed by the Court, no award was made in that connection. The judgment is in the nature of a Committee judgment reiterating the Court's settled case-law on access to publications in penal institutions and the lawfulness of language-based restrictions.

KESKİN AND OTHERS v. TÜRKİYE⁶⁵

THE FACTS

The case concerns the situation of 131 applicants placed in pre-trial detention after 15 July 2016. The applicants, who were serving as judges or prosecutors at the material time, were detained as a result of criminal investigations. The detention orders put forward grounds such as the nature of the offence, the state of the evidence, its inclusion among the catalogue offences and the threat to public order arising from the attempted coup. In the investigation files, matters such as ByLock use, Bank Asya accounts, organisational publications, “F”-series United States dollars and witness statements were cited as the basis for suspicion. The applicants’ challenges to their detention and their individual applications to the Constitutional Court were dismissed, and most of them were convicted by the domestic courts of membership of a terrorist organisation.

THE VIOLATIONS

The ECtHR assessed the applicants’ detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the general and abstract references in the decisions ordering and continuing detention to Article 100 of the Code of Criminal Procedure and to “the evidence in the file” were insufficient to substantiate a reasonable suspicion that the persons concerned had committed an offence. It emphasised that allegations of ByLock use or of links with the organisation could not, without a concrete individualised analysis, constitute of themselves a “reasonable suspicion” for the purposes of detention. While accepting the context of the declared state of emergency, the Court found that the detention measures applied were not of a nature “strictly required” by the exigencies of the situation and that the reasoning remained abstract, and delivered a finding of violation.

OTHER ASPECTS OF THE JUDGMENT

The Court decided unanimously to join the applications and held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who

⁶⁵ Keskin and Others v. Türkiye, no. 36994/17 and 130 other applications, 12 November 2024.

had claimed just satisfaction, with the exception of the applicants in applications nos. 71046/17, 4083/18, 12241/18, 18301/18, 22189/18, 45562/18, 50312/18, 27657/19, 30378/19, 35096/19 and 35290/19, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. In the light of the finding of a violation, it was considered unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention. The judgment is in the nature of a Committee judgment reiterating the ECtHR's settled case-law on the systemic problems in the detention of members of the judiciary.

SERT AND OTHERS v. TÜRKİYE⁶⁶

THE FACTS

The case concerns the situation of 207 applicants placed in pre-trial detention after 15 July 2016. The applicants, who were serving as judges or prosecutors at the material time, were taken into custody and subsequently detained as a result of the criminal investigations initiated against them. The detention orders put forward general grounds such as the nature of the offence, the state of the evidence, its inclusion among the catalogue offences and the threat to public order arising from the attempted coup. In the investigation files, matters such as ByLock use, movements on Bank Asya accounts, subscriptions to certain publications, possession of "F"-series United States dollars or membership of YARSAV were cited as the basis for suspicion. The applicants' challenges to their detention and their individual applications to the Constitutional Court were dismissed, and most of them were convicted by the domestic courts of membership of a terrorist organisation.

THE VIOLATIONS

The ECtHR assessed the applicants' detention under Article 5 § 1 of the Convention and held that that provision had been violated. The Court found that the general and abstract references in the decisions ordering and continuing detention to Article 100 of the Code of Criminal Procedure and to "the evidence in the file" were insufficient to substantiate a reasonable suspicion that the persons concerned had committed an offence. It emphasised that allegations of ByLock use or of

⁶⁶ Sert and Others v. Türkiye, no. 15659/20 and 206 other applications, 3 December 2024.

affiliation with the organisation could not, without a concrete individualised analysis, constitute of themselves a “reasonable suspicion” for the purposes of detention. While accepting the context of the declared state of emergency, the Court found that the detention measures were not of a nature “strictly required” by the exigencies of the situation and that the reasoning remained abstract, and delivered a finding of violation.

OTHER ASPECTS OF THE JUDGMENT

The Court held that Article 5 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants who had claimed just satisfaction, with the exception of the applicants in applications nos. 17398/20, 21419/20, 32063/20, 39043/20, 41885/20, 47622/20, 51256/20, 51814/20, 41/21, 1386/21, 1969/21, 2000/21, 3082/21, 3454/21, 37266/21 and 39745/21, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. In the light of the finding of a violation, it was considered unnecessary to examine separately the complaints under the other paragraphs of Article 5 of the Convention.

KURTOĞLU KARACIK AND OTHERS v. TÜRKİYE⁶⁷

THE FACTS

The case concerns the situation of eight judges and prosecutors who, by decisions taken by the HSYK in 2014 and 2015, had their places of duty changed or were appointed to other cities without their consent. The applicants alleged that their right of access to a court had been denied, since their applications for re-examination and their objections against those appointment decisions had been dismissed by the HSYK and no judicial remedy whatsoever lay against those decisions. Although the appointment decisions in question were based on grounds such as “requirements of the service” and “family circumstances”, the applicants regarded the impossibility of subjecting these administrative acts to judicial review as an interference with their right to a fair trial.

⁶⁷ Kurtoğlu Karaca and Others v. Türkiye, no. 62622/15 and 7 other applications, 3 December 2024.

THE VIOLATIONS

The ECtHR examined the applicants' situation under Article 6 § 1 of the Convention and held that that provision had been violated. On the basis of the case-law it had established in its earlier *Bilgen v. Turkey* and *Eminağaoğlu v. Turkey* judgments, the Court found that the absence of an effective mechanism of judicial review against changes in the places of duty of members of the judiciary was incompatible with the safeguards designed to protect judicial independence and with the principle of the rule of law. The fact that the HSYK's administrative appointment decisions were not subject to any judicial review was characterised as a deficiency impairing the very essence of the applicants' right of access to a court.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that Article 6 § 1 of the Convention had been violated. By way of redress, the Court awarded each of the applicants, other than those in applications nos. 17398/20, 21419/20, 32063/20, 39043/20, 41885/20, 47622/20, 51256/20, 51814/20, 41/21, 1386/21, 1969/21, 2000/21, 3082/21, 3454/21, 37266/21 and 39745/21, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The applicant in application no. 1561/16, who had made no claim in respect of costs and expenses, was awarded 2,000 euros in respect of non-pecuniary damage only. The judgment is a Committee judgment reiterating the ECtHR's settled case-law on the absence of judicial review of the personal rights of members of the judiciary and of changes in their places of duty.

KEŞLER AND OTHERS v. TÜRKİYE⁶⁸

THE FACTS

The case concerns the applications of 172 judges and prosecutors placed in pre-trial detention within the scope of the investigations conducted against them after the events of 15 July. The grounds for the applicants' detention included the allegation of ByLock use, banking activities, subscriptions to certain publications, possession of "F"-series one-dollar banknotes and employment in institutions alleged to be connected with the Movement ("Cemaat"). The applicants

⁶⁸ Kesler and Others v. Türkiye, no. 41527/16 and 171 other applications, 3 December 2024.

submitted that the detention orders disclosed no concrete and reasonable suspicion that they had committed the offence charged, that the grounds for detention were inadequate, and that no effective judicial remedy existed for the review of the lawfulness of their detention. Their objections before the domestic courts and the Constitutional Court having proved fruitless, the applicants took the matter to the ECtHR.

THE VIOLATIONS

The ECtHR assessed the applications under Article 5 of the Convention (right to liberty and security) and held that Article 5 § 1 of the Convention had been violated. The Court found that the magistrates' courts, in their detention orders, had made general references to Article 100 of the Code of Criminal Procedure and to the documents in the file without specifying concretely why a reasonable suspicion existed that the applicants had committed the offence. The Court reiterated its settled case-law to the effect that ByLock use alone is not sufficient to constitute a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention, and emphasised that the witness statements and other facts relied on for the applicants' detention did not give rise to a suspicion based on a concrete and specific act. In conclusion, the Court held that even in the period following the events of 15 July the detention measure could not be regarded as a measure strictly required by the exigencies of the situation.

OTHER ASPECTS OF THE JUDGMENT

Proceeding from the finding of a violation of Article 5 § 1, the Court held that it was unnecessary to enter into the merits of the remaining complaints under Article 5 of the Convention (Article 5 §§ 3, 4 and 5). Upon the death, while the proceedings were pending, of Uğur Uzuntaş, the applicant in application no. 18710/20, the Court recognised the right of his wife, Sümeyra Uzuntaş, to pursue the case. The Court awarded each applicant (or, in the case of the deceased applicant, his wife on his behalf), with the exception of the applicant in application no. 30276/19, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The judgment is a Committee judgment consonant with the ECtHR's leading judgments — such as *Baş v. Turkey* and *Taner Kılıç v. Turkey* — concerning the judicial measures carried out in Türkiye in the period following the events of 15 July.

TAŞ AND OTHERS v. TÜRKİYE⁶⁹

THE FACTS

The case concerns the applications of 213 judges and prosecutors placed in pre-trial detention within the scope of the investigations conducted against them after the events of 15 July. The applicants were detained on various dates on the allegation that they were affiliated with the Movement (“Cemaat”), principally on the basis of allegations that they were ByLock users, that they had provided financial support, that they had worked in institutions connected with the Movement, that they had made social-media posts, or on the basis of witness statements. The applicants applied to the ECtHR, arguing that the detention orders did not rest on a concrete and reasonable suspicion, that the domestic courts had used stereotyped expressions in their decisions and failed to give sufficient reasons, and that no effective judicial remedy existed for the review of their detention.

THE VIOLATIONS

The ECtHR assessed the applicants’ situation under Article 5 of the Convention and held unanimously that Article 5 § 3 of the Convention had been violated. The Court found that the domestic courts, in their decisions ordering the continuation of the detention, had contented themselves with general and abstract references to Article 100 of the Code of Criminal Procedure, without carrying out any individualised examination of the applicants’ links with the Movement or of the suspicion of an offence. The ECtHR emphasised that — particularly having regard to the applicants’ periods of detention, which ranged from one year to four years and eight months — the justification of the risks of flight or of tampering with evidence in abstract terms was unacceptable even in the extraordinary conditions following the events of 15 July.

OTHER ASPECTS OF THE JUDGMENT

Together with the finding of a violation of Article 5 § 3, the ECtHR considered it unnecessary to examine separately the merits of the complaints under Article 5 § 1 (c) and the other paragraphs

⁶⁹ Taş and Others v. Türkiye, no. 41527/16 and 212 other applications, 17 December 2024.

of Article 5 of the Convention. The Court awarded those of the 213 applicants who had claimed just satisfaction 3,000 euros each to cover non-pecuniary damage and costs and expenses. The judgment is a Committee judgment reiterating that the detention practices pursued in Türkiye after the events of 15 July on allegations of membership of the Movement are contrary to the ECtHR's settled "relevant and sufficient reasons" case-law.

DENİZ AND OTHERS v. TÜRKİYE⁷⁰

THE FACTS

The case concerns the applications of 237 judges and prosecutors placed in pre-trial detention within the scope of the investigations conducted against them after the events of 15 July. The applicants were detained on various dates on the allegation that they were affiliated with the Movement ("Cemaat"), principally on the basis of allegations that they were ByLock users, that they had provided financial support, that they had worked in institutions connected with the Movement, that they had made social-media posts, or on the basis of witness statements. The applicants applied to the ECtHR, arguing that the detention orders did not rest on a concrete and reasonable suspicion, that the domestic courts had used stereotyped expressions in their decisions and failed to give sufficient reasons, and that no effective judicial remedy existed for the review of their detention.

THE VIOLATIONS

The ECtHR held that Article 5 § 3 of the Convention had been violated. The Court found that the domestic courts, in their decisions ordering the continuation of the detention, had contented themselves with general and abstract references to Article 100 of the Code of Criminal Procedure, without carrying out any individualised examination of the applicants' links with the Movement or of the suspicion of an offence. The ECtHR emphasised that — particularly having regard to the applicants' periods of detention, which ranged from one year to four years and eight months —

⁷⁰ Deniz and Others v. Türkiye, no. 43382/17 and 236 other applications, 17 December 2024.

the justification of the risks of flight or of tampering with evidence in abstract terms was unacceptable even in the extraordinary conditions following the events of 15 July.

OTHER ASPECTS OF THE JUDGMENT

Together with the finding of a violation of Article 5 § 3, the Court considered it unnecessary to examine separately the merits of the complaints under Article 5 § 1 (c) and the other paragraphs of Article 5 of the Convention. The Court awarded those of the 237 applicants who had claimed just satisfaction 3,000 euros each to cover non-pecuniary damage and costs and expenses. The judgment is a Committee judgment reiterating that the detention practices pursued in Türkiye after the events of 15 July on allegations of membership of the Movement are contrary to the ECtHR's settled "relevant and sufficient reasons" case-law.

VIII. JUDGMENTS DELIVERED IN 2025

DEMİRYÜREK AND OTHERS v. TÜRKİYE⁷¹

THE FACTS

The case concerns the situation of forty-two judges and prosecutors whose duties at the HSYK were terminated prematurely and arbitrarily upon the entry into force of Law no. 6524. The applicants alleged a violation of their right of access to a court under Article 6 § 1 of the Convention, submitting that they had no possibility of access to any court against the termination of their duties. Although the Constitutional Court annulled the relevant provision of Law no. 6524, the applicants were not reinstated in their former posts on the ground that the annulment could not be applied retrospectively; the individual-application route likewise proved fruitless owing to the Constitutional Court's lack of jurisdiction to review statutory instruments, whereupon the applicants sought redress before the ECtHR.

THE VIOLATIONS

The ECtHR examined the applicants' situation under Article 6 § 1 of the Convention and held that that provision had been violated. Reiterating its findings in the earlier *Kartal v. Türkiye* judgment, the Court found that depriving the applicants — who had an arguable right not to have their terms of office terminated arbitrarily — of any possibility of judicial review of that state of affairs was incompatible with the principle of the rule of law. The ECtHR emphasised that the failure to operate a mechanism of judicial review against the termination of administrative duties was a deficiency impairing the very essence of the right of access to a court.

OTHER ASPECTS OF THE JUDGMENT

Holding that Article 6 § 1 of the Convention had been violated, the ECtHR awarded each applicant 7,800 euros in respect of non-pecuniary damage by way of redress. In addition, the claims for costs and expenses of those applicants who submitted supporting documents were allowed within the framework of certain criteria. By this judgment the Court once again confirmed its

⁷¹ Demiryürek and Others v. Türkiye, no. 55005/14 and 41 other applications, 14 January 2025.

settled case-law on the absence of judicial review of the arbitrary termination of the administrative terms of office of members of the judiciary, and rejected the Government's objections of non-exhaustion of domestic remedies and lack of victim status.

ÖZOĞLU AND OTHERS v. TÜRKİYE⁷²

THE FACTS

The case concerns the situation of four applicants arrested and detained on different dates within the scope of the investigations conducted against them after the events of 15 July. The applicants applied to the ECtHR, complaining that the length of their detention was unreasonably excessive, that the domestic courts had repeated the same grounds in their decisions without carrying out a concrete and individualised assessment, and that they had experienced delays in the review of their detention. In addition, the applicant in application no. 10299/19 alleged a violation under Article 5 § 4 of the Convention on the ground that the detention-review proceedings before the Constitutional Court did not satisfy the requirement of “speediness”.

THE VIOLATIONS

The ECtHR assessed the situation of the four applicants under Article 5 § 3 of the Convention (right to trial within a reasonable time or to release pending trial) and held unanimously that that provision had been violated. The Court found that the domestic courts, in their decisions ordering the continuation of the applicants' detention, had put forward the general expressions in Article 100 of the Code of Criminal Procedure and the nature of the offence as stereotyped grounds, without carrying out any concrete and current risk analysis capable of justifying the lengthy periods of detention. Furthermore, in application no. 10299/19, a violation was found — with reference to the *Kavala v. Türkiye* judgment — on the ground that the detention-review proceedings before the Constitutional Court did not satisfy the speediness requirement of Article 5 § 4.

72 Özoğlu and Others v. Türkiye, no. 10299/19, 16 January 2025.

OTHER ASPECTS OF THE JUDGMENT

By way of redress, the ECtHR awarded 5,300 euros in respect of non-pecuniary damage to the applicant in application no. 10299/19, 6,500 euros each to the applicants in applications nos. 38468/20 and 45118/22, and 5,100 euros to the applicant in application no. 55458/20. It further awarded each applicant 250 euros in respect of costs and expenses. The judgment is a Committee judgment reiterating that the practices of prolonged detention applied in Türkiye in the period following the events of 15 July are contrary to the ECtHR's settled case-law.

OLCAY AND OTHERS v. TÜRKİYE⁷³

THE FACTS

The case concerns the situation of thirty administrative judges whose memberships of the Council of State were terminated prematurely and arbitrarily upon the entry into force of Law no. 6723 after the events of 15 July. The applicants alleged that their right of access to a court under Article 6 § 1 of the Convention had been denied, since no judicial remedy existed by which they could challenge their removal from office. By the legislation in question, the terms of office of many members of the Council of State were terminated and new appointments were made in their place; the applicants, however, were not among those reappointed in that process. The Constitutional Court declared one of the applications inadmissible as manifestly ill-founded, while the other applicants did not pursue the individual-application route, on the ground that the Constitutional Court had no jurisdiction at the material time to review statutory provisions.

THE VIOLATIONS

The ECtHR assessed the applicants' situation under Article 6 § 1 of the Convention and held unanimously that that provision had been violated. With reference to its earlier *Sözen v. Türkiye* judgment, the Court found that the inability of the applicants — who had an arguable right not to have their memberships of the Council of State terminated arbitrarily — to gain access to any court capable of reviewing the lawfulness of that measure was incompatible with the principle of the

⁷³ Olcay and Others v. Türkiye, no. 59481/16 and 29 other applications, 11 February 2025.

rule of law. The ECtHR emphasised that reforms carried out in the judicial system could not justify the exemption from judicial review of arbitrary interferences with judges' terms of office.

OTHER ASPECTS OF THE JUDGMENT

Holding that Article 6 § 1 of the Convention had been violated, the ECtHR awarded each applicant 3,000 euros in respect of non-pecuniary damage by way of redress. In addition, the claims for costs and expenses of those applicants who duly submitted supporting documents were allowed within the framework of certain criteria. By this judgment the Court once again reiterated its settled case-law on the absence of judicial review of the premature termination by statute of the terms of office of members of the judiciary, and rejected the Government's objections of incompatibility *ratione materiae* and non-exhaustion of domestic remedies.

BENLİ AND OTHERS v. TÜRKİYE⁷⁴

THE FACTS

The case concerns six applicants serving as rapporteur judges and chief inspectors within the HSYK or the Ministry of Justice who, by Law no. 6723 and decisions of the HSYK, were removed from their posts and appointed to other cities without their consent. The applicants alleged that their right of access to a court under Article 6 § 1 of the Convention had been denied, since any judicial remedy against those appointment and removal measures was closed to them. The Plenary of the HSYK dismissed the applicants' requests for re-examination of the removal decisions and stated that those decisions were final and that no application lay to any other administrative or judicial authority.

THE VIOLATIONS

The ECtHR assessed the applications under Article 6 § 1 of the Convention and held unanimously that that provision had been violated. The Court found that the applicants had an arguable right not to have their terms of office terminated arbitrarily, but had no access to any independent court capable of reviewing the lawfulness of that measure. The ECtHR emphasised

⁷⁴ Benli and Others v. Türkiye, no. 59262/15 and 5 other applications, 11 February 2025.

that the absence of an effective mechanism of judicial review against changes in the places of duty of members of the judiciary was incompatible with the principles of judicial independence and the rule of law. The Court further rejected, with reference to the *Sözen v. Türkiye* judgment, the Government's objections to the effect that "the applicants had no right of access to a court".

OTHER ASPECTS OF THE JUDGMENT

By way of redress, the ECtHR awarded five applicants 2,500 euros each in respect of non-pecuniary damage and costs and expenses, and the remaining applicant 2,000 euros in respect of non-pecuniary damage. Together with the finding of a violation, the Court rejected the applicants' claims in respect of pecuniary damage for want of a causal link with the violation found. The judgment is a Committee judgment reiterating the ECtHR's settled case-law on the absence of judicial review of the personal rights of members of the judiciary and of changes in their places of duty.

TOSUN AND OTHERS v. TÜRKİYE⁷⁵

THE FACTS

The case concerns the situation of eighty-four applicants whose duties at the Court of Cassation were terminated prematurely and arbitrarily upon the entry into force of Law no. 6723 after the events of 15 July. The applicants alleged that their right of access to a court under Article 6 § 1 of the Convention had been denied, since any judicial remedy by which they could challenge their removal from office was closed to them. By the legislation in question, the terms of office of many members of the Court of Cassation were terminated and new appointments were made in their place; the applicants, not being among those reappointed, were appointed as judges to other courts. The Constitutional Court declared the individual applications of some of the applicants inadmissible, while others did not pursue the individual-application route on grounds of lack of jurisdiction.

⁷⁵ Tosun and Others v. Türkiye, no. 62216/16, 11 February 2025.

THE VIOLATIONS

The ECtHR assessed the applications under Article 6 § 1 of the Convention and held that that provision had been violated. With reference to its earlier *Sözen v. Türkiye* judgment, the Court found that the applicants — who had an arguable right not to have their memberships of the Court of Cassation terminated arbitrarily — had no access to any independent court capable of reviewing the lawfulness of that measure. The ECtHR emphasised that the failure to operate a mechanism of judicial review against the arbitrary termination of the terms of office of members of the judiciary by legislative or executive acts was incompatible with the principles of judicial independence and the rule of law.

OTHER ASPECTS OF THE JUDGMENT

Holding that Article 6 § 1 of the Convention had been violated, the ECtHR awarded the applicants non-pecuniary damages and costs and expenses by way of redress. The Court rejected the claims in respect of pecuniary damage, on the ground that there was no causal link between the violation found and the pecuniary losses alleged by the applicants. As to the amounts, the Court awarded **3,000 euros** in respect of non-pecuniary damage to the great majority of the applicants. Under the head of costs and expenses, payments in differing amounts were ordered according to the supporting documents submitted. The judgment is a Committee judgment reiterating the ECtHR's settled case-law on the absence of judicial review of the personal rights and terms of office of members of the judiciary.

ELİBOL AND OTHERS v. TÜRKİYE⁷⁶

THE FACTS

The case concerns the applications of fifty-one judges and prosecutors placed in pre-trial detention after 15 July. The applicants were arrested and detained on a charge of membership of an armed terrorist organisation, on suspicion of belonging to the organisation considered to be behind the attempted coup. The applicants applied to the ECtHR, alleging that the detention orders

⁷⁶ Elibol and Others v. Türkiye, no. 59648/16 and 49 other applications, 4 March 2025.

disclosed no concrete and reasonable suspicion that they had committed the offence charged, that the domestic courts had disregarded the procedural safeguards afforded to members of the judiciary under domestic law, that no relevant and sufficient reasons had been given in the decisions ordering and continuing detention, and that no effective judicial remedy existed against that process. Some applicants also raised complaints concerning the lawfulness of the searches carried out at their homes.

THE VIOLATIONS

The ECtHR examined the applicants' situation under Article 5 of the Convention and held unanimously that Article 5 § 1 of the Convention had been violated, on the ground that the applicants' initial detention had not been effected in accordance with a procedure prescribed by law. With reference to its earlier *Baş v. Turkey* and *Turan and Others v. Turkey* judgments, the Court emphasised that the detention measure applied — even in the period following the events of 15 July — could not be regarded as a measure strictly required by the exigencies of the situation. The Court cited as grounds for the violation the inadequacy of the legal basis of the detention decisions and the disregard of the procedural safeguards afforded to members of the judiciary.

OTHER ASPECTS OF THE JUDGMENT

Together with the finding of a violation of Article 5 § 1, the ECtHR considered it unnecessary to examine the merits of the remaining complaints under Articles 5 and 8 of the Convention. By way of redress, the Court awarded each applicant a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. It further rejected the applicants' claims in respect of pecuniary damage for want of a causal link with the violation found. The judgment is a Committee judgment reiterating the ECtHR's settled case-law on the judicial measures carried out in Türkiye in the period following the events of 15 July.

AMIROV v. AZERBAIJAN⁷⁷

THE FACTS

The applicant, a member of an opposition political party in Azerbaijan and the financial director of a newspaper, was taken into custody on charges of “violating the rights of citizens under the pretext of religious rites” and “inciting social or religious hatred”, within the scope of the investigations launched after the attempted coup in Türkiye. Certain religious books and CDs found in the applicant’s car were cited as the basis for the charges, and the domestic courts ordered the continuation of his detention in reliance on those materials. The applicant applied to the ECtHR, arguing that his detention rested on no concrete evidence whatsoever and had been effected for political motives.

THE VIOLATIONS

The ECtHR found that the evidence relied on for the detention (the books and CDs) did not give rise to an objective and reasonable suspicion that the applicant had engaged in unlawful activities. Noting that the elements required by the definitions of the offences in domestic law (such as the “public” dissemination of the material) were not made out in the case, the Court held that the arrest and detention were unlawful under Article 5 § 1 of the Convention and that the right to liberty and security of person had accordingly been violated. (The applicant’s complaint concerning the presumption of innocence was found to be manifestly ill-founded, and his complaint under Article 18 of the Convention was declared inadmissible for non-exhaustion of domestic remedies.)

OTHER ASPECTS OF THE JUDGMENT

The Court emphasised that the books found in the applicant’s car were not banned in Azerbaijan and that mere possession of those materials did not, of itself, constitute any element of an offence. It was established that the domestic courts, when ordering detention, had not concretely examined the materials in the file and had contented themselves with general statements. The

⁷⁷ Amirov v. Azerbaijan, no. 55642/16, 11 March 2025.

Court reiterated that, for the protection of the Convention system, detention must always rest on objective and verifiable evidence. The applicant was awarded 7,500 euros in respect of non-pecuniary damage and 1,500 euros in respect of costs and expenses.

ATÇA AND ÇELEBİ v. TÜRKİYE⁷⁸

THE FACTS

Searches were carried out at the family homes of the applicants — one a public prosecutor, the other a judge — in breach of the immunity provisions protected by section 88 of Law no. 2802 on Judges and Prosecutors, and certain items were seized. The applicants applied to the ECtHR, arguing that their arrest and the searches of their homes were unlawful and that their defence rights had been violated on account of the restriction of their access to the investigation file. The applicants were acquitted at the conclusion of the proceedings.

THE VIOLATIONS

The ECtHR found that the national authorities had interpreted the concept of *in flagrante delicto* broadly, on the sole basis of an allegation of membership of a terrorist organisation, in the absence of any concrete criminal act. Concluding that the search, carried out notwithstanding the safeguards in Law no. 2802, was not foreseeable and was not “in accordance with the law” within the meaning of Article 8 of the Convention, the Court held that the right to respect for private and family life had been violated. The complaints under Article 5 § 4 concerning the restriction of access to the investigation file were, on the other hand, rejected as manifestly ill-founded, on the ground that the applicants had had sufficient information during questioning and had been able to defend themselves.

OTHER ASPECTS OF THE JUDGMENT

The Court reiterated that the inviolability of the homes of judges and prosecutors may be restricted only in situations of *in flagrante delicto* falling within the jurisdiction of the assize courts, and stated that in the instant case that condition had been interpreted broadly and abused. The

78 Atça and Çelebi v. Türkiye, nos. 25280/19 and 36151/19, 13 May 2025.

applicants' claims in respect of pecuniary damage were rejected for want of a causal link between the violation and the damage; each applicant was awarded 2,000 euros in respect of non-pecuniary damage. The first applicant was further awarded 1,000 euros in respect of costs and expenses, while the corresponding claim of the second applicant was rejected for failure to submit supporting documents.

KACIR AND OTHERS v. TÜRKİYE⁷⁹

THE FACTS

Various applications by the applicants (thirty-seven persons) concerning violations experienced during their pre-trial detention were joined and examined together by the Court. The majority of the applications concern the alleged inadequacy of the conditions of detention, in particular on account of severe overcrowding, under Article 3 of the Convention. Certain applicants also complained, on various grounds, of a violation of Article 8 of the Convention. One applicant complained of the considerable distance between his place of detention and the place where his family resided. Three applicants complained that the national authorities had not permitted their school-age children to visit them at weekends. One applicant complained of the electronic recording and storage of his private correspondence on the National Judiciary Informatics System (UYAP) during his detention.

THE VIOLATIONS

The ECtHR, examining the applications jointly, ruled as follows:

Article 3 of the Convention (inhuman or degrading treatment): The Court held that the prohibition of ill-treatment had been violated in respect of all the applicants, other than Abdulvaris Altun and Turgut Ergitürk, as regards the periods of detention during which they had less than 3 square metres of personal living space.

Article 8 of the Convention (right to respect for private and family life):

⁷⁹ Kacir and Others v. Türkiye, no. 9587/19 and 36 other applications, 10 June 2025.

The right to respect for the family life of **Adnan Şimşek** was violated on account of the refusal, without any concrete assessment, of his request for transfer to a prison close to his family.

The arbitrary refusal, on grounds of capacity, of the requests of **Davut Şen, Abdulvaris Altun and Turgut Ergitürk** to see their children at weekends violated their right to respect for family life.

The recording of the private correspondence of **Fatih Ensaroğlu** on the UYAP system violated his right to respect for the confidentiality of his private life, there being no lawful basis for the measure.

OTHER ASPECTS OF THE JUDGMENT

The Court applied a refined methodology in calculating living space in penal institutions, excluding sanitary facilities and exercise yards. Notwithstanding the notice of derogation lodged by Türkiye under Article 15 of the Convention, it was concluded that the measures in question were not “strictly required” by the conditions of the state of emergency. The Court allowed the claims in respect of non-pecuniary damage in amounts varying between 1,000 and 3,000 euros according to the applicants’ situations, and further ordered the payment of costs and expenses in respect of certain applicants.

ÖZDEMİR v. TÜRKİYE⁸⁰

THE FACTS

The case concerns the seizure by the prison administration of letters sent to the applicant — detained in Çanakkale Prison on a charge of membership of a terrorist organisation — by his wife. The prison administration refused to hand over the letters to the applicant on the grounds that the documents enclosed with the first letter were not in the nature of official documents and their content could not be verified, and that the second letter contained a copy of the documents that had been seized. The applicant’s objections before the enforcement judge and the assize court

80 Özdemir v. Türkiye, no. 38351/20, 10 June 2025.

proved fruitless, and the Constitutional Court likewise declared the application inadmissible as manifestly ill-founded.

THE VIOLATIONS

The ECtHR assessed the applicant's situation under Article 8 of the Convention (right to respect for correspondence) and held that that provision had been violated. While accepting that it is an ordinary and reasonable requirement for prison administrations to take measures of control over prisoners' correspondence, the Court found that the reasons given for the seizure of the letters in question were not "relevant and sufficient". The ECtHR emphasised that the national authorities had provided no concrete explanation as to how the content of the letters would disturb order or lead to the commission of an offence, that this amounted to an arbitrary interference, and that no proper balance had been struck between the competing interests.

OTHER ASPECTS OF THE JUDGMENT

Together with the finding of a violation, the Court made no award of pecuniary or non-pecuniary damages, as the applicant had submitted no claim for just satisfaction. Rejecting the Government's preliminary objections alleging the absence of significant disadvantage, non-exhaustion of domestic remedies and abuse of the right of application, the Court clarified the finding of a violation under Article 8 in line with its settled case-law (*Halit Kara v. Türkiye*).

ŞİMŞEK v. TÜRKİYE⁸¹

THE FACTS

The case concerns the situation of the applicant, who was dismissed from his employment under a legislative decree after the events of 15 July and brought an action for reinstatement. The applicant stated that he had been dismissed from his job at a private company without any reason being given and without any explanation or investigation. In the proceedings brought by the applicant, the domestic courts did not examine the grounds for the suspicion of his connection with the Movement ("Cemaat"); the Gaziantep Regional Court of Appeal dismissed his action without

81 Şimşek v. Türkiye, no. 60639/20, 10 June 2025.

any individualised assessment, merely noting that he had been dismissed pursuant to a legislative decree.

THE VIOLATIONS

The Court assessed the applicant's situation under Article 6 § 1 of the Convention (right to a fair trial / right to a reasoned decision) and held that that provision had been violated. The Court found that the domestic courts had failed to discharge their obligation to give reasons in their decisions and had not addressed the relevant and significant arguments raised by the applicant. Emphasising that court decisions must not consist of "automatic or stereotyped" expressions, the ECtHR characterised the failure to provide adequate reasoning concerning the applicant's dismissal process as a procedural deficiency.

OTHER ASPECTS OF THE JUDGMENT

Holding that Article 6 § 1 of the Convention had been violated, the ECtHR awarded the applicant 2,000 euros in respect of non-pecuniary damage and 250 euros in respect of costs and expenses by way of redress. The applicant's remaining complaint under Article 8 of the Convention was declared inadmissible by the Court. The judgment is a Committee judgment reiterating the importance of the right to a reasoned decision in judicial proceedings and the courts' obligation to carry out an individualised examination.

AKARSU v. TÜRKİYE⁸²

THE FACTS

The case concerns the excessive length of the proceedings before the Constitutional Court brought by the applicant, whose term of office as a member of the Court of Cassation was terminated prematurely pursuant to Law no. 6723. The applicant applied to the ECtHR, arguing that the proceedings, which lasted approximately seven years, one month and seventeen days,

82 Akarsu v. Türkiye, no. 9118/24, 10 July 2025.

were incompatible with the “reasonable time” principle laid down in Article 6 § 1 of the Convention.

THE VIOLATIONS

The ECtHR assessed the applicant’s situation under Article 6 § 1 of the Convention (right to a fair trial / right to a hearing within a reasonable time) and held unanimously that that provision had been violated. Taking into account criteria such as the complexity of the case, the conduct of the parties and the nature of the dispute, the Court found that there was no justification capable of accounting for the total length of proceedings lasting more than seven years at a single level of jurisdiction at national level. Assessing the Government’s arguments concerning the state of emergency, the Constitutional Court’s caseload and the pandemic period, the Court emphasised that the period in question was excessive and did not satisfy the “reasonable time” requirement.

OTHER ASPECTS OF THE JUDGMENT

Holding that Article 6 § 1 of the Convention had been violated, the ECtHR awarded the applicant 4,000 euros in respect of non-pecuniary damage by way of redress. Noting that no compensation had previously been paid before the Constitutional Court, the Court held that payment of that sum in respect of the violation found was equitable. The judgment is a Committee judgment reiterating the ECtHR’s settled case-law on the length of proceedings.

TÜZEMEN AND OTHERS v. TÜRKİYE⁸³

THE FACTS

The case concerns the situation of 117 judges and prosecutors detained on different dates within the scope of the investigations conducted against them after the events of 15 July. The applicants were detained on allegations of membership of a terrorist organisation; the detention orders cited ByLock use, witness statements, social-media posts, Bank Asya transactions and links with educational institutions as grounds. The applicants applied to the ECtHR, arguing that the detention orders did not rest on a concrete reasonable suspicion, that the domestic courts had used

83 Tüzemen and Others v. Türkiye, no. 66683/16 and 116 other applications, 8 July 2025.

stereotyped expressions in their decisions and failed to give sufficient reasons, and that no effective judicial remedy existed for the review of their detention.

THE VIOLATIONS

The ECtHR assessed the applicants' situation under Article 5 of the Convention and held unanimously that Article 5 § 1 of the Convention had been violated, on the ground that the applicants' initial detention had not been effected in accordance with a procedure prescribed by law. With reference to its earlier *Baş v. Turkey* and *Turan and Others v. Turkey* judgments, the Court emphasised that the detention measure applied — even in the period following the events of 15 July — could not be regarded as a measure strictly required by the exigencies of the situation. The ECtHR further stated that the ByLock use relied on as the basis for the detention of some of the applicants was not, of itself, sufficient to constitute a “reasonable suspicion”, and that the other evidence in the files (social-media posts, bank accounts, one-dollar banknotes and the like) could likewise not give rise to a reasonable suspicion in the absence of independent and corroborating elements.

OTHER ASPECTS OF THE JUDGMENT

Together with the finding of a violation of Article 5 § 1, the ECtHR considered it unnecessary to examine separately the merits of the remaining complaints under Articles 5 and 8 of the Convention. As to compensation, the Court awarded each of the applicants, with the exception of the applicants in applications nos. 69572/17, 82344/17, 24217/19, 44360/19, 22579/21 and 51815/21, a total of 5,000 euros in respect of non-pecuniary damage and costs and expenses. The applicants' claims in respect of pecuniary damage were rejected for want of a causal link with the violation found. The judgment is a Committee judgment reiterating the ECtHR's settled case-law on the judicial measures carried out after the events of 15 July.

DEMİRHAN AND OTHERS v. TÜRKİYE⁸⁴

THE FACTS

The *Demirhan and Others* case encompasses the legal situations and claims of 239 applicants convicted of membership of an armed organisation under Article 314 § 2 of the Turkish Criminal Code, within the scope of the widespread criminal investigations conducted at national level after the events of 15 July. The convictions of these persons — alleged to have established a hierarchical and organic link with the Movement (“Cemaat”) — were based almost entirely on technical findings that they had used the encrypted messaging application known as “ByLock” through their personal devices or telephone lines. Relying on the case-law of the higher courts to the effect that the application had been designed exclusively as a covert institutional means of communication among the members of the structure in question, the domestic courts accepted the mere fact of downloading the application and connecting to its server as conclusive evidence, sufficient of itself to establish the offence, regardless of the true nature and content of the communications. In addition to the allegation of ByLock use, elements such as movements on Bank Asya accounts, membership of trade unions or associations, employment in closed-down institutions, school enrolments, call records (HTS data), social-media posts and witness statements also featured in the applicants’ files. The domestic courts, however, deemed the mere downloading and use of the application sufficient for the constitution of the elements of the offence, without awaiting the entry into the case file of the substantive parts of the detailed ByLock assessment reports containing the decrypted message contents. The convictions handed down by the first-instance assize courts became final after passing through the ordinary appellate channels before the regional courts of appeal and the Court of Cassation; the individual applications subsequently lodged with the Constitutional Court were then declared inadmissible on summary grounds, without any in-depth examination of the merits, in line with that court’s stance endorsing the established practice of the higher judiciary.

⁸⁴ Demirhan and Others v. Türkiye, no. 1595/20 and 238 other applications, 22 July 2025.

THE VIOLATIONS

The ECtHR joined the 239 applications in a single set of proceedings, as they presented entirely identical structural elements as to their subject-matter, and first addressed the Government's defence based on the state-of-emergency exception under Article 15 of the Convention. While accepting that the period following the events of 15 July constituted a public emergency threatening the life of the nation and that the notification procedures had been complied with, the Court held that the severe limitations imposed in the proceedings on the right to a fair trial and on the principle of legality were not strictly required by the exigencies of the situation. On the merits, the ECtHR stated that it maintained in full the legal framework laid down by the Grand Chamber in its leading *Yüksel Yalçınkaya v. Türkiye* judgment, and that no new argument or fact had been presented in the instant case warranting any departure from those findings. The Court noted that, although ByLock use is not, in criminal-law terms, directly a material element of the offence of membership of an armed organisation, the "uniform and global" approach adopted by the domestic courts resulted in the mere existence of the application being automatically equated with an intention to join the hierarchy. It found that these convictions — established on the basis of objective (strict) liability, without the mental element of the offence, namely the intent to participate knowingly and willingly in the activities of the organisation, being proved by individualised and convincing evidence — clearly violated the principle of no punishment without law enshrined in Article 7 of the Convention. Furthermore, the Court held, by a majority, that the right to a fair trial under Article 6 § 1 of the Convention had also been violated, since throughout the criminal proceedings the applicants were not afforded the opportunity to challenge effectively the key digital data and the server-derived ByLock data adduced against them, to verify their accuracy, or to conduct their defence in conformity with the principle of equality of arms, while the domestic courts founded their decisions on stereotyped formulae and left unanswered defence arguments material to the merits. Since the fundamental systemic problems had been resolved under these two Articles, it was considered unnecessary to examine separately the merits of the applicants' complaints under the other Articles of the Convention concerning liberty, respect for private life, and freedom of belief, expression and association.

OTHER ASPECTS OF THE JUDGMENT

As regards the application of Article 41 of the Convention, the ECtHR explained that its primary role as an international human rights court is not to operate like a domestic tort mechanism and to compensate in full each individual pecuniary or non-pecuniary loss, but that its essential mission is to deliver judgments of a public character setting human rights standards across Europe. In accordance with this principled approach, and in full fidelity to the *Yüksel Yalçınkaya* case-law, it was held unanimously that the findings of structural violations under Articles 6 and 7 of the Convention constituted in themselves sufficient and just satisfaction for the non-pecuniary damage sustained by the applicants. The Court reiterated that, with a view to eliminating the consequences of the violations and securing restitution, the applicants have the right to request the reopening of their criminal proceedings in domestic law under the relevant provisions of the Code of Criminal Procedure, and that this avenue would constitute the most appropriate form of redress. As to costs and expenses, the Court, considering that although the case had been lodged before the *Yalçınkaya* judgment it pointed to a recurrent and standard structural problem arising from the uniform practices of the Turkish judicial system, assessed that it would not be equitable to award additional lawyers' fees, charges or costs in follow-up applications of this kind, and rejected all the claims for costs. In the separate opinions appended to the judgment, one judge — while fully concurring in the majority's findings of violation on the merits and its approach to non-pecuniary damage — dissented from the majority on the question of costs, finding the wholesale rejection of the lawyers' fees and litigation expenses which the applicants had necessarily incurred in seeking justice before the domestic courts and in Strasbourg to be incompatible with the Convention system and the principles of just satisfaction. The Turkish judge on the panel, by contrast, stated that he maintained in full the legal grounds set out in his dissenting opinion in the Grand Chamber's *Yalçınkaya* judgment and his submissions on the nature of the ByLock application, and voted against the findings of violation on the merits under both Article 6 and Article 7.

THE FACTS

The application concerns the prolonged exposure to passive smoking of the applicant — who suffers from asthma and diabetes — in the Silivri L-Type Penal Institution. Stating that his chronic condition had worsened owing to the dense cigarette smoke in the cell in which he was held, the applicant requested the prison administration and the enforcement judge to transfer him to another, non-smoking cell. Those requests were refused on grounds of pandemic-period restrictions and logistics. After the refusals, however, two separate official reports drawn up by the medical board of the prison hospital confirmed that the applicant suffered from allergic asthma and recommended that he be accommodated in a strictly non-smoking environment. Notwithstanding this, and although it undertook to reassess the situation when conditions changed, the administration continued to hold the applicant in a smoking cell for one year and seven months, until his release.

THE VIOLATIONS

The ECtHR examined the application under Article 3 of the Convention (prohibition of degrading treatment). The Government's objection of non-exhaustion of domestic remedies, based on the failure to bring a full-remedy administrative action, was rejected on the ground that that remedy is not effective in respect of complaints concerning prison conditions. On the merits, while finding the precautionary measures of the early pandemic period reasonable, the Court found fault with the prison administration's complete disregard, for a year, of the vital recommendations contained in the official medical reports which it had itself commissioned. Having regard to the fact that the non-smoking alternative cell in the institution — in which detainees held in the Movement ("Cemaat") cases could be accommodated — was below capacity and available, the submissions that a transfer was impossible were found unconvincing. In conclusion, the ECtHR

85 Güngöray v. Türkiye, no. 33975/21, 26 August 2025.

held unanimously that the continued exposure of the applicant to cigarette smoke, contrary to the medical reports, violated Article 3 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

In line with the finding of a violation of Article 3 of the Convention, the ECtHR allowed the applicant's claims for compensation in part. The applicant was awarded 3,000 euros in respect of non-pecuniary damage and 1,000 euros in respect of costs and expenses. The judgment is a Committee judgment confirming the ECtHR's settled standards of protection concerning conditions of detention in penal institutions and the obligation to protect prisoners from passive smoking.

DEMİRHAN v. TÜRKİYE⁸⁶

THE FACTS

The application concerns the excessive length of the proceedings for the review of the lawfulness of the detention of a police chief detained in September 2014, and the deficiencies in the mechanism of judicial review. Following the non-enforcement of the release decisions given in his favour by the İstanbul 32nd Criminal Court of First Instance, the applicant lodged an individual application with the Constitutional Court on 11 May 2015. The Constitutional Court, however, determined that application only after a period exceeding three years and seven months, on 12 December 2018. The applicant brought the matter before the ECtHR, arguing that the constitutional-review proceedings he had initiated against his deprivation of liberty had not been conducted speedily.

THE VIOLATIONS

The Court examined the applicant's allegations under Article 5 § 4 of the Convention (right to a speedy decision on the lawfulness of detention) and held unanimously that that provision had been violated. The Court reiterated that it applies very strict standards requiring that the review of detention be carried out "speedily" where a person's liberty is restricted. In the instant case, it was

⁸⁶ Demirhan v. Türkiye, no. 47065/15, 25 September 2025.

emphasised that the length of the proceedings before the Constitutional Court, exceeding three years and seven months, could in no way be regarded as speedy within the meaning of the Convention. Assessing the Government's submissions concerning the state-of-emergency period, the ECtHR noted that the applicant had applied to the Constitutional Court one year and two months before the declaration of the state of emergency, and that the high court had delivered its decision five months after the state of emergency was lifted. It was accordingly held that the delay in question could not be justified by the special conditions of the emergency period.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR declared the application admissible, finding that Article 5 § 4 of the Convention had been violated on account of the Constitutional Court's failure to carry out the review of the lawfulness of the detention speedily. Referring to its settled case-law in leading cases such as *Kavala v. Türkiye* and *Altınok v. Türkiye*, the Court awarded the applicant, by way of redress, a total of **500 euros** to cover non-pecuniary damage and costs and expenses.

GÜR AND BEDİR v. TÜRKİYE⁸⁷

THE FACTS

The case concerns the situation of two research assistants who were dismissed from public service under Legislative Decree no. 689, issued under the state of emergency after 15 July, and whose passports were cancelled as a direct extension of that measure. The applicants, who were among the signatories of the "Academics for Peace" petition, were serving respectively in the Department of Sociology of Muğla Sıtkı Koçman University and in the Faculty of Law of Dicle University. Although, following their dismissal, both applicants were admitted to doctoral or research programmes at respected universities abroad (Georgia State University and the University of Nantes) and were awarded scholarships, they were unable to leave the country and take up their studies owing to the cancellation of their passports and the administrative annotation entered in their records. The legal battles waged against the passport cancellations before the

⁸⁷ Gür and Bedir v. Türkiye, nos. 58806/18 and 2153/19, 30 September 2025.

administrative courts and the Constitutional Court proved fruitless; the Constitutional Court rejected the complaints without examining the merits, on the grounds that effective administrative and judicial remedies had not been exhausted or that the complaints were manifestly ill-founded. The applicants' passport restrictions were lifted at a later stage, as a result of decisions of the administrative commission and the courts, after lengthy periods of one year and six months and three years respectively, and their passports regained validity. The applications lodged with the State of Emergency Commission against the dismissal decisions were rejected, and the annulment actions brought against those decisions remained pending before the domestic courts.

THE VIOLATIONS

The ECtHR joined the applications in a single judgment on account of their similarity as to subject-matter and rejected all of the Government's preliminary objections concerning the lack of ratification of the Protocol, the loss of victim status and the non-exhaustion of domestic remedies. On the merits, the Court found that the passport-cancellation measure directly prevented the applicants from taking up their academic work abroad and that this state of affairs, producing a serious impact on their professional and private lives, constituted an interference with the right to respect for private life under Article 8 of the Convention. Reviewing the lawfulness of the interference, the ECtHR, referring to its leading judgment in *Telek and Others v. Türkiye*, noted that the provisions of the legislative decrees relied on for the passport restriction did not explain on account of which concrete acts a link with a terrorist organisation was imputed to the individuals concerned, and contained no minimum legal safeguards (such as limits of duration and conditions) against arbitrary application. Holding that in this respect the restriction did not satisfy the requirement of "lawfulness", was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention, and that even the special conditions of the state of emergency did not render so severe a measure strictly necessary, the Court held unanimously that **Article 8 of the Convention had been violated.**

The Court further characterised the applicants' prolonged deprivation — as a result of the unlawful cancellation of their passports — of the opportunity to pursue doctoral studies at the foreign higher-education institutions to which they had been admitted as an unforeseeable

restriction of the right to education. Emphasising that the findings on lawfulness and arbitrariness under Article 8 applied equally to this complaint, the Court held that **the right to education enshrined in Article 2 of Protocol No. 1 to the Convention had also been violated**. It was considered unnecessary to examine separately the merits of the applicants' remaining allegations concerning the right to a fair trial and the right to an effective remedy.

OTHER ASPECTS OF THE JUDGMENT

In its assessment under Article 41 of the Convention (just satisfaction), the ECtHR accepted that the cancellation of the passports for a considerable period had caused the applicants non-pecuniary damage of a degree that could not be remedied by the finding of a violation alone. The Court accordingly awarded each applicant 2,600 euros in respect of non-pecuniary damage. As regards costs and expenses, having regard to the receipts and retainer agreements submitted and to the nature of the legal steps taken, it awarded each applicant 1,000 euros in respect of the costs of the proceedings. The judgment is one of those which record the unlawfulness of the damage done to the rights to private life and education through the restriction of the freedom of travel of academic staff during the state of emergency, and which consolidate the ECtHR's standards of protection in this field.

BUDAK AND OTHERS v. TÜRKİYE⁸⁸

THE FACTS

The case concerns the legal proceedings of ninety-four applicants arrested and detained on different dates within the scope of the criminal investigations conducted after the events of 15 July on the allegation that they were affiliated or in contact with the Movement ("Cemaat"). In the judicial decisions depriving the applicants of their liberty and continuing their detention, various allegations were adduced as evidence, such as using ByLock, having movements on Bank Asya accounts, participating in certain protests or making social-media posts, possessing an "F"-serial-number one-dollar banknote, and working in or being members of closed-down institutions. The

⁸⁸ Budak and Others v. Türkiye, no. 26831/17 and 93 other applications, 14 October 2025.

competent judicial authorities reasoned the detention orders with general stereotyped formulae — encompassing the nature of the offence charged, its inclusion among the catalogue offences, the state of the evidence and the risk of flight — without carrying out any individualised concrete assessment. All of the individual applications lodged by the applicants with the Constitutional Court, arguing under their right to liberty and security that there was no reasonable suspicion that they had committed an offence, were declared inadmissible by the high court without examination of the merits.

THE VIOLATIONS

The ECtHR reaffirmed, with reference to its earlier *Akgün* and *Taner Kılıç* judgments, that ByLock use — which constituted the principal basis of the applicants’ detention — is not, of itself, sufficient to establish a “reasonable suspicion” that an offence has been committed within the meaning of Article 5 § 1 (c) of the Convention. The Court held that the other additional grounds relied on besides ByLock (Bank Asya accounts, the enrolment of children in certain schools, social-media activities and the like) are, as a rule, indirect elements benefiting from a presumption of lawfulness and cannot, of themselves, give rise to a reasonable suspicion unless supported by concrete evidence showing that the individual intentionally participated in criminal activities. The domestic courts’ practice of ordering detention merely by general references to the wording of Article 100 of the Code of Criminal Procedure, without setting out concrete evidence and verifiable material, was found contrary to statutory safeguards. Although the period in which the events occurred and the state-of-emergency restrictions were taken into account as a contextual factor, it was established that these broad and disproportionate measures could not be characterised as measures strictly required by the exigencies of the situation. On this basis, the ECtHR held that Article 5 § 1 of the Convention had been violated on account of the unlawfulness of the applicants’ initial detention. It was considered unnecessary to examine separately the merits of the remaining complaints under Article 5 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

The Court awarded each of the applicants, with the exception of the applicants in applications nos. 8565/18, 43864/18, 19141/19, 22748/19 and 30860/19 on the list, 5,000 euros to cover jointly non-

pecuniary damage and the costs and expenses of the proceedings. The applicants' claims in respect of pecuniary damage arising from dismissal from employment or loss of earnings were rejected on the ground that there was no direct causal link with the violation found.

ÇETİN AND OTHERS v. TÜRKİYE⁸⁹

THE FACTS

The case concerns the legal proceedings of 137 applicants who were arrested on different dates after the events of 15 July on suspicion of membership of the Movement ("Cemaat") and remained in pre-trial detention for periods ranging from one year to four years and five days. In ordering the continuation and extension of the applicants' detention, the judicial authorities listed as evidence elements such as witness statements, social-media posts, possession of publications, employment in or membership of closed-down institutions, financial support, participation in meetings and communication with senior executives. The detention orders were reasoned with general and abstract expressions — the inclusion of the offence charged among the catalogue offences, the state of the evidence and the risk of flight — without any individualised concrete assessment. All of the individual applications lodged by the applicants with the Constitutional Court in the course of this process were declared inadmissible.

THE VIOLATIONS

The Court reiterated that, for decisions continuing detention to be lawful, the relevant and sufficient reasons given must not be abstract, general or stereotyped. In the instant case, it was found that the domestic courts had made template references to the statutory presumptions relating to catalogue offences or to the evidence in the file, had provided no individualised examination, and had failed to give sufficient reasons capable of justifying the lengthy periods for which the applicants remained in detention. While the period in which the events occurred and the notice of derogation under the state of emergency were accepted as contextual factors, it was held that the failure to comply with statutory safeguards could not be justified by the urgency of

⁸⁹ Çetin and Others v. Türkiye, no. 30185/17 and 136 other applications, 14 October 2025.

the situation. On this basis, the ECtHR held that Article 5 § 3 of the Convention had been violated on account of the absence of sufficient reasons in the decisions ordering and continuing detention. It was considered unnecessary to examine separately the merits of the allegation that there was no reasonable suspicion of an offence, or of the remaining complaints under Article 5.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR awarded 3,000 euros in respect of the applicants' non-pecuniary damage and costs and expenses. No sum was awarded to those applicants who had not submitted claims within the prescribed time-limits, and the applicants' claims in respect of pecuniary damage were likewise rejected. The judgment is a Committee judgment confirming the ECtHR's settled standards of protection concerning the safeguarding of the right to liberty and security of person even in periods of emergency, and the obligation to individualise the grounds for detention.

BALIKÇI AND OTHERS v. TÜRKİYE⁹⁰

THE FACTS

The case encompasses the complaints of eighty-six applicants who were arrested in the period following 15 July on the allegation that they belonged to the hierarchy of the Movement ("Cemaat") and remained in pre-trial detention for lengthy periods. The domestic courts relied, as grounds for the decisions ordering and continuing detention, on matters such as ByLock use, movements on Bank Asya accounts, membership of closed-down associations or trade unions, and witness statements. Rather than establishing concretely the link between that evidence and the charge, however, the judicial authorities resorted to restricting liberty with template and stereotyped expressions, relying on the inclusion of the offence charged among the "catalogue offences". All of the individual applications submitted by the applicants to the Constitutional Court against the judicial decisions were rejected by the high court with summary statements, without examination of the merits.

⁹⁰ Balıkçı and Others v. Türkiye, no. 3038/18 and 85 other applications, 18 November 2025.

THE VIOLATIONS

The Court accepted the difficulties brought about by the state-of-emergency period, and by the notice of derogation lodged in that connection, as contextual factors. It emphasised nonetheless that, in order for protective measures to retain their lawfulness, decisions restricting personal liberty cannot rest on abstract grounds and must necessarily involve an individualised review. Since the lengthy periods for which the applicants remained in detention had not been explained by the domestic courts with convincing and sufficient arguments, the ECtHR held unanimously that Article 5 § 3 of the Convention (the right to a reasoned decision on detention) had been violated. It was considered unnecessary to examine separately the allegation that there was no reasonable suspicion of an offence, or the remaining complaints under Article 5.

OTHER ASPECTS OF THE JUDGMENT

Applying the principle of just satisfaction under Article 41 of the Convention, the ECtHR found that this violation, arising from structural deficiencies, had caused the applicants direct non-pecuniary damage. Accordingly, each of the applicants who had submitted a claim for just satisfaction to the Court within the statutory time-limit, and whose status was marked “Granted” in the appended list, was awarded a lump sum of **3,000 euros** to cover non-pecuniary damage and all costs and expenses of the proceedings. No compensation was provided for those who applied out of time or whose claims appeared on the list as “Not granted”, and the claims in respect of pecuniary damage were rejected.

ÖZTÜRK AND OTHERS v. TÜRKİYE⁹¹

THE FACTS

The case encompasses the legal situation of five members of the judiciary on whom disciplinary penalties were imposed on different dates by the Council of Judges and Prosecutors (HSK). The applicants complained of the absence in domestic law of any effective judicial remedy against these administrative disciplinary decisions taken by the HSK. Arguing that their right to

91 Öztürk and Others v. Türkiye, no. 40572/19 and 4 other applications, 27 November 2025.

seek justice had been restricted because the Council's decisions were kept closed to judicial review, the applicants brought the matter before the European Court of Human Rights.

THE VIOLATIONS

The Court reiterated the principle that, for civil servants to be excluded from the protection of the Convention, national law must expressly exclude access to a court and that exclusion must be justified on objective grounds in the State's interest. Referring to the legal standards laid down in the leading cases previously decided — *Bilgen*, *Eminağaoğlu* and *Oktay Alkan* — the ECtHR emphasised that the bond of loyalty between members of the judiciary and the State differs from that of classic civil servants who implement the policies of the executive. Having regard to the strong public interest in safeguarding judicial independence and the rule of law, it was found that the exemption from judicial review of Council decisions concerning the employment, appointment or disciplinary conditions of judges and prosecutors pursued no legitimate aim. Finding that this structural absence of review impaired the very essence of the right of access to a court, the ECtHR held that the right to a fair trial (access to a court) guaranteed by Article 6 § 1 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The Court awarded each applicant 2,000 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, an award of 250 euros was made only to the first applicant, who was duly represented by counsel and submitted supporting documents; no costs were provided for the other applicants.

SAYINYİĞİT AND OTHERS v. TÜRKİYE⁹²

THE FACTS

The case concerns the legal proceedings of three applicants whose employment contracts were terminated on suspicion of affiliation or contact with the Movement ("Cemaat") and who brought actions for reinstatement. The applicants submitted that they bore no concrete fault capable of

⁹² Sayinyiğit and Others v. Türkiye, no. 53256/19 and 2 other applications, 11 December 2025.

justifying their dismissal and that their employers had put forward no concrete incident capable of serving as a ground for termination. The domestic courts dismissed the reinstatement actions brought by the applicants, reasoning their dismissals by reference to lists sent by the State-of-Emergency Bureau or to the grounds of suspicion entertained by the employer. The applicants' central submissions — that the employer's grounds of suspicion be examined and the allegations proved by concrete evidence — were disregarded by the domestic courts. The decisions contained no individualised assessment of the applicants and did not explain the nature of the information indicating a link with the organisation. The individual applications lodged with the Constitutional Court at the end of the process were likewise dismissed.

THE VIOLATIONS

The Court reiterated the obligation, as a requirement of the principle of the proper administration of justice, that court decisions set out adequately and intelligibly the reasons on which they are based. That obligation requires the courts to give a specific and express answer to the parties' essential and decisive arguments capable of directly affecting the outcome of the proceedings. Moreover, in cases of interference with rights protected by the Convention, the Court reviews whether the domestic courts' decisions rest on automatic or stereotyped reasoning. In the instant case, the ECtHR found that the domestic courts had fallen into a structural failure in the reasoning of their decisions and had in no way answered the highly important, essential allegations raised by the applicants. It was concluded that, as a result of these judgments — constructed with automatic formulae, without any individual and concrete review — the applicants' right to a reasoned decision had not been protected. In this context, the ECtHR held that the right to a fair trial (reasoned decision) guaranteed by Article 6 § 1 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

The Court awarded each applicant 2,000 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, it awarded 250 euros (per application) to each of the three applicants who were duly represented by counsel.

EMRE v. TÜRKİYE⁹³

THE FACTS

The case concerns the refusal of the request of the applicant, who was in prison, to be transferred to a penal institution closer to Edirne, where his family resided. The applicant, convicted on a charge of membership of the Movement (“Cemaat”) and held in the Kırşehir E-Type Penal Institution, applied for a transfer, stating that his wife and two children lived in Edirne. In his application he explained that, in order to visit him, his family were obliged to travel forty to forty-five hours by bus, with connections, and that this situation placed a heavy burden on his children’s psychological wellbeing. The Directorate General of Prisons and Detention Houses of the Ministry of Justice refused the transfer request on the grounds that the prisons requested were full and that the applicant was not considered suitable in view of the type of his offence. The applicant’s objections to that decision before the enforcement judge and the assize court were dismissed, the administration’s grounds being found justified; at the final stage, the individual application to the Constitutional Court was likewise declared inadmissible without examination of the merits.

THE VIOLATIONS

While accepting that the placement of remand and convicted prisoners in particular prisons is an administrative power, the Court reiterated that prisoners’ right to maintain their family ties must necessarily be taken into account in that process. Emphasising that geographical distance directly affects family relationships, the ECtHR stated that the national authorities, when assessing transfer requests, must strike an individualised balance of interests encompassing the individual’s personal situation and the concrete difficulties faced by his family members. In the instant case, it was found that the domestic authorities had not discussed at all, in the reasoning of their decisions, the travel conditions — exceeding 850 kilometres — which the applicant’s family were obliged to endure. It was further observed that alternative solutions, such as increased telephone entitlements

93 Emre v. Türkiye, no. 2412/21, 16 December 2025.

or extended visits, had not been considered even if a transfer was impossible. The refusal of the request on template grounds such as capacity and type of offence, without an individualised review, was not accepted as a necessary and proportionate interference in a democratic society, and it was held that Article 8 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

In its assessment of the just-satisfaction provisions laid down in Article 41 of the Convention, the ECtHR found that the applicant had submitted no claim for pecuniary or non-pecuniary damages within the statutory time-limits fixed by the Court. Recalling the principle, under the ECtHR's settled rules of procedure, that no sum can be awarded of the Court's own motion in respect of claims not made in time, no compensation or costs of the proceedings were awarded to the applicant. The judgment is a Chamber judgment consolidating the ECtHR's standards on the protection of the family life of prisoners in penal institutions, the consideration of geographical proximity as a criterion of the right, and the obligation to examine concrete personal circumstances in administrative refusal decisions instead of using stereotyped expressions.

BOZYOKUŞ AND OTHERS v. TÜRKİYE⁹⁴

THE FACTS

The case encompasses the allegations and legal situations of 132 applicants convicted of the offence of membership of an armed terrorist organisation within the scope of the widespread criminal investigations conducted at national level after 15 July 2016. The applicants' criminal convictions were based decisively by the Turkish judicial authorities on the technical finding that they had used the encrypted messaging application known as "ByLock" through their personal devices or telephone lines. The domestic judicial authorities relied on the rulings of the higher courts to the effect that the ByLock application was used exclusively by the organisation. Within this framework, the domestic courts accepted the mere fact of connection to the server — without examining the true nature, purpose or content of the communications — as evidence sufficient of

⁹⁴ Bozyokuş and Others v. Türkiye, no. 39586/20 and 131 other applications, 16 December 2025.

itself to establish the offence of membership of an organisation laid down in Article 314 § 2 of the Turkish Criminal Code.

In addition to the allegation of ByLock use, the case files also contained decrypted message transcripts supporting the existence of the application, confessions or witness statements. In respect of some applicants, further elements were submitted to the files in addition to the ByLock data, such as movements on Bank Asya accounts, membership of closed-down trade unions, associations or foundations, records of entry into and exit from the country, the use of other encrypted communication programmes such as KakaoTalk or Eagle, call records (HTS data), social-media posts, and residence in houses or dormitories of an organisational nature. The domestic courts, however, entered convictions directly on the basis of the mere existence of the application, without awaiting the decrypted message contents or the original transcripts of the detailed ByLock identification and assessment reports. Those first-instance judgments became final after passing through the ordinary appellate channels, and the individual applications lodged with the Constitutional Court were rejected on summary grounds, without examination of the merits, in line with that court's established practice of endorsement.

THE VIOLATIONS

The Court joined the 132 applications in a single set of proceedings, as they presented entirely identical structural and legal problems as to their subject-matter. In its examination of the merits, the Court first addressed the Government's submissions that an individual assessment should be carried out according to the specific circumstances of each case and that a wide variety of additional evidence existed besides ByLock. The ECtHR stated that it maintained in full the legal framework laid down by the Grand Chamber in *Yüksel Yalçınkaya v. Türkiye* and that no new argument had been presented in the instant case warranting any departure from those findings. The Court noted that, although ByLock use is not, in criminal-law terms, directly a material element of the offence of membership of an armed terrorist organisation, the uniform and global approach adopted by the domestic courts resulted in the mere existence of the application being automatically equated with an intention to join the hierarchy.

Even where the files of some applicants contained additional evidence indicating the continuity and intensity of their activities, the domestic courts' practice of accepting the ByLock finding as conclusive and automatic proof of guilt remained unchanged. It was established that these convictions — founded on the basis of objective (strict) liability, without the mental element of the offence, namely the intent to participate knowingly and willingly in the activities of the organisation, being proved by individualised evidence — clearly violated the principle of no punishment without law under Article 7 of the Convention. Furthermore, in view of the finding that the uniform and general approach adopted by the Turkish judiciary towards the ByLock evidence directly violated Article 7 of the Convention in the instant case, the Court considered it unnecessary to examine separately the admissibility and merits of the applicants' complaints under Article 6 § 1 of the Convention concerning the right to a fair trial, or of their other allegations of violations under Articles 5, 8, 9, 10, 11 and 14 of the Convention. In conclusion, within the framework of the structural considerations underlying the case, it was held that Article 7 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

As regards the application of Article 41 of the Convention, the ECtHR applied without alteration the principles and compensation methodology it had laid down in *Yüksel Yalçınkaya and Demirhan and Others*. The Court held that the finding of a structural violation under Article 7 of the Convention constituted in itself sufficient and just satisfaction for all the non-pecuniary damage sustained by the applicants. With a view to eliminating the consequences of the violation and securing restitution, the ECtHR reiterated that the applicants retain the right to request in domestic law the reopening of their criminal proceedings under Article 311 § 1 (f) of the Code of Criminal Procedure. The ECtHR noted that a retrial conducted in conformity with the conclusions and spirit of the judgment would, as a matter of principle, constitute the most appropriate and effective form of redress in systemic violations of this kind.

As to costs and expenses, the Court, considering that the case pointed to a recurrent and standard structural problem, assessed that it would not be equitable to award any sum under the

heads of lawyers' fees, charges or documentation costs in subsequent, follow-up applications of this kind, and rejected all of the applicants' claims for costs.

SEYHAN AND OTHERS v. TÜRKİYE⁹⁵

THE FACTS

The case concerns the situation of 852 applicants convicted of the offence of membership of an organisation within the scope of the investigations conducted after 15 July 2016. The applicants' convictions were based, as decisive evidence, on the finding that they had used "ByLock". The domestic courts accepted the mere use of the application as evidence sufficient of itself for the offence of membership of an organisation, without examining the content or purpose of the communications. In addition to the ByLock allegation, the files also contained additional elements such as movements on Bank Asya accounts, membership of closed-down institutions or trade unions, and witness statements. The courts nonetheless entered convictions directly, without awaiting the addition of the detailed ByLock identification reports to the case files; the individual applications lodged with the Constitutional Court were likewise rejected on summary grounds.

THE VIOLATIONS

The ECtHR stated that, even where the files contained additional evidence besides ByLock, the domestic courts' approach of accepting the mere application as conclusive and automatic proof of guilt vitiated the procedural framework of the trial. The failure to provide appropriate safeguards enabling the applicants to challenge the ByLock data effectively, and to ensure that the decisions were reasoned, was found incompatible with the very essence of the right to a fair trial. Notwithstanding the extraordinary conditions experienced, it was held that these limitations on the right to a fair trial could not be justified by the urgency of the situation under Article 15 of the Convention. On these considerations, the Court held unanimously that Article 6 § 1 of the Convention (right to a fair trial) had been violated; it considered it unnecessary to examine separately the complaints under Article 7 of the Convention and the other Articles.

⁹⁵ Seyhan and Others v. Türkiye, no. 57837/19 and 851 other applications, 16 December 2025.

OTHER ASPECTS OF THE JUDGMENT

The Court assessed that the finding of a violation under Article 6 § 1 of the Convention constituted in itself sufficient and just satisfaction for all the non-pecuniary damage sustained by the applicants in the instant case. With a view to securing restitution, it noted that the applicants have the possibility in domestic law of requesting the reopening of the proceedings under Article 311 of the Code of Criminal Procedure, and that this process would constitute the most appropriate form of redress. As to costs and expenses, since the case rested on a recurrent structural problem, no payment was ordered in respect of these follow-up applications and all of the applicants' claims for costs were rejected.

KARSLI AND OTHERS v. TÜRKİYE⁹⁶

THE FACTS

The case encompasses the situation of 1,436 applicants convicted of the offence of membership of an armed terrorist organisation within the scope of the criminal investigations launched after 15 July 2016. The applicants' criminal convictions were based by the domestic courts and judicial authorities, as decisive evidence, on the allegation that they had used the encrypted messaging application "ByLock". The national judicial organs assessed that the ByLock application had been designed for exclusive use and that the finding of use of the application was, of itself, sufficient for conviction of the offence of membership of an organisation.

In addition to the allegation of ByLock use, the case files also contained indirect elements such as movements on Bank Asya accounts, membership of closed-down associations, trade unions or foundations, social-media posts, call records (HTS data) and witness statements concerning employment in affiliated institutions. The domestic courts, however, entered convictions directly, without awaiting the addition to the case files of the decrypted message contents or the detailed ByLock identification and assessment reports, and without regard to the nature and content of the communications. The individual applications lodged with the Constitutional Court against those

⁹⁶ Karşı and Others v. Türkiye, no. 18693/20 and 1,435 other applications, 16 December 2025.

first-instance judgments were rejected by the high court on summary grounds, without examination of the merits.

THE VIOLATIONS

The Court joined the 1,436 applications in a single set of proceedings, as they presented entirely identical structural and legal problems as to their subject-matter. In its examination of the merits, the Court, recalling the legal framework it had laid down in *Yüksel Yalçınkaya v. Türkiye*, rejected the Government's submissions that an individual assessment should be carried out according to the specific circumstances of each case. The ECtHR stated that, even where the files contained additional evidence besides ByLock, the domestic courts' approach of accepting the mere application as conclusive and automatic proof of guilt vitiated the procedural framework of the trial.

It was established that this approach, which in effect imposed objective (strict) liability on ByLock users, was contrary to the principle of no punishment without law guaranteed by Article 7 of the Convention. Furthermore, the courts' failure to enable the applicants to challenge the ByLock data effectively, their failure to address the significant matters lying at the heart of the case, and their failure to give reasons for their decisions were found incompatible with the very essence of the procedural rights inherent in the right to a fair trial. While accepting the difficulties following 15 July as a contextual factor, the Court held that these limitations on the right to a fair trial could not be justified by the urgency of the situation under Article 15 of the Convention. On these considerations, the Court held unanimously that Article 7 of the Convention (no punishment without law) and Article 6 § 1 of the Convention (right to a fair trial) had been violated; it considered it unnecessary to examine separately the remaining complaints under Articles 5, 8, 9, 10, 11 and 14 of the Convention. ### OTHER ASPECTS OF THE JUDGMENT

The ECtHR assessed that the findings of violation of Articles 7 and 6 § 1 of the Convention constituted in themselves sufficient and just satisfaction for all the non-pecuniary damage sustained by the applicants in the instant case. With a view to eliminating the consequences of the violation and securing restitution, it noted that the applicants have the possibility in domestic law of requesting the reopening of their criminal proceedings under Article 311 § 1 (f) of the Code of

Criminal Procedure, and that this process would constitute the most appropriate form of redress. As to costs and expenses, the Court, on the ground that the case rested on a recurrent structural problem and was in the nature of a follow-up application, held that no sum was to be paid in respect of costs and expenses, and rejected the applicants' remaining claims for just satisfaction.

IX. JUDGMENTS DELIVERED IN 2026

İ.Ç. v. TÜRKİYE⁹⁷

THE FACTS

The applicant, who worked as a member of the teaching staff at a foundation university under an employment contract of indefinite duration, was dismissed in August 2016, on the basis of a suspicion that he had used ByLock, without his defence submissions being taken and without minimum procedural safeguards being afforded. Arguing that the dismissal was unjustified and devoid of any valid ground, the applicant brought a civil action before the Ankara Labour Court claiming severance and notice pay. The defendant university administration defended the dismissal on the basis of a confidential letter received from the Council of Higher Education (YÖK) stating that the applicant was a ByLock user, but did not submit a copy of that letter to the court. The Ankara Labour Court dismissed the action without gathering any additional information, documents or technical data concerning the accuracy and certainty of the ByLock allegation, rejecting without reasons the applicant's requests to scrutinise those allegations, to see the evidence and to challenge it; the applicant, for whom the appellate route was closed owing to the small amount in dispute, lodged an individual application with the Constitutional Court, which was likewise declared inadmissible by a summary decision.

THE VIOLATIONS

The ECtHR found that, although the dispute was heard before a civil court and did not directly involve a criminal charge, dismissal on an accusation of links with a terrorist organisation, and the imputation of disloyalty towards one's employer, were of a nature to produce extremely grave consequences for the applicant's career, amounting to a lifelong deprivation of rights. The domestic court's acceptance of the employer's abstract allegation as conclusive, without its accuracy and veracity being established, its refusal to gather the decisive evidence, and its failure to afford the applicant an effective opportunity to challenge the ground of dismissal created a serious

⁹⁷ İ.Ç. v. Türkiye, no. 4806/19, 13 January 2026.

procedural imbalance undermining the principles of equality of arms and adversarial proceedings. Against the Government's derogation defence relating to the state-of-emergency period, the ECtHR emphasised that the relevant provisions of the legislative decrees did not expressly exclude judicial review of the measures taken, that the minimum judicial safeguards against arbitrariness and the principle of the rule of law must be preserved even in periods of emergency, and that the restrictions imposed exceeded the limits strictly required by the situation. Accordingly, the Court held that Article 6 § 1 of the Convention (right to a fair trial) had been violated on account of the failure to satisfy the requirements of a fair hearing; the complaint under the right to respect for private life (Article 8) was declared inadmissible on the ground that it had not been duly raised before the Labour Court in domestic law.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR held that the finding of a violation of the right to a fair trial afforded in itself sufficient and just satisfaction for all the non-pecuniary damage the applicant might have sustained. The Court noted that, following this judgment, the applicant has the possibility in domestic law of securing the reopening of the criminal or civil proceedings under Article 375 § 1 (i) of the Code of Civil Procedure, and that this process would, as a matter of principle, constitute the most appropriate form of redress. As regards costs and expenses, since the applicant submitted no invoice, receipt or detailed statement of services — beyond the bar association's scale of fees — in respect of the lawyers' fees paid or payable to his representative in the proceedings before the Court, his claim was rejected in its entirety on the ground that the reality of the expenditure could not be documented.

ALTINTOP AND OTHERS v. TÜRKİYE⁹⁸

THE FACTS

The case comprises the complaints of twenty-nine applicants — held as remand or convicted prisoners in various prisons within the scope of the terrorism investigations conducted after 15

⁹⁸ Altintop and Others v. Türkiye, no. 39386/20 and 28 other applications, 20 January 2026.

July 2016 — concerning the restriction by the administration of weekend visits and telephone conversations. The applicants submitted that they were unable to maintain their family ties because weekend meetings with their children, who were at school on weekdays, were prevented. The enforcement judges dismissed the objections lodged against the restriction decisions, relying on prison capacity, staff shortages and security grounds and noting that the legislation permitted visits only during working hours; the assize courts upheld those decisions. At the final stage, the Constitutional Court likewise declared the applications inadmissible without examining the merits, on the ground that there was no violation of a constitutional right. In addition, the applicant in application no. 7331/21 also complained of the systematic recording and storage on UYAP (the National Judiciary Informatics System) of all private letters he received and sent in prison.

THE VIOLATIONS

Referring to the principles laid down in the previously decided *Subaşı and Others* case, the Court found fault with the prison administrations' prohibition of weekend visits on grounds of mere capacity and administrative convenience, without regard to prisoners' right to respect for their family life and their relationships with their children. It was found that the domestic courts, in reviewing those restrictions, had likewise failed to strike an individualised balance of interests conforming to Convention standards. On the ground that the application of the national legislation afforded no adequate protection against arbitrary interference and was not necessary in a democratic society, the Court held that Article 8 of the Convention (right to respect for private and family life) had been violated in respect of all the applicants. Furthermore, as regards the complaint concerning the recording of letters on the UYAP system, the Court, referring to *Nuh Uzun and Others*, found that the legal basis did not satisfy the Convention criteria of foreseeability and lawfulness, and concluded that Article 8 had also been violated in respect of application no. 7331/21 in the context of freedom of correspondence.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR rejected the claims in respect of pecuniary damage for want of a causal link between the violations found and the pecuniary losses alleged. The Court awarded each applicant 1,500 euros in respect of the non-pecuniary damage sustained.

As regards costs and expenses, it awarded 500 euros per application to the eleven applicants who submitted proper retainer agreements, invoices or authority-to-act documents (applications nos. 39386/20, 45125/20, 50078/20, 51478/20, 52064/20, 52247/20, 55566/20, 322/21, 7205/21, 14491/21 and 33568/21); no costs allowance was granted to the other applicants, who submitted no documents.

KANDEMİR v. TÜRKİYE⁹⁹

THE FACTS

The case concerns the termination, during the state-of-emergency period after 15 July, of the employment contract of the applicant, who worked as an accountant at the Informatics and Information Security Advanced Technologies Research Centre (BİLGEM) within the Scientific and Technological Research Council of Türkiye (TÜBİTAK). The applicant's contract was terminated without compensation in August 2016, on the basis of "suspicions" concerning him, invoked in the light of the Council's strategic importance and considerations of national security. The applicant brought an action for reinstatement before the Gebze Labour Court, arguing that the dismissal was improper. The defendant, TÜBİTAK, presented as the objective basis of the suspicion the fact that the former managers who had recruited the applicant were the subject of criminal proceedings for offences such as intercepting official encrypted telephones, espionage and irregular recruitment, and that they were fugitives. The Labour Court found that there was no concrete accusation against the applicant, but, having regard to the nature of the structure that had infiltrated the Council and to BİLGEM's highest level of military/cryptographic security clearance, concluded that the relationship of trust between the parties had been damaged. On that basis, the court reclassified the dismissal from one for "just cause" to one for "valid cause" giving rise to a right to compensation, and dismissed the action; that judgment was upheld by the Court of Cassation. The applicant's individual application to the Constitutional Court was likewise found manifestly ill-founded.

99 Kandemir v. Türkiye, no. 30906/19, 3 February 2026.

THE VIOLATIONS

The Court noted that it viewed with understanding the security sensitivities of employers in strategic and sensitive institutions and their inability to tolerate even the slightest suspicion. It emphasised, however, that this does not remove the domestic courts' obligation to carry out an effective judicial review in order to prevent arbitrariness. The ECtHR found fault with the domestic courts' acceptance — although the burden of proof lay on the employer — of indirect facts, such as the criminal files concerning third parties (the former managers) or general administrative irregularities within the Council, as a source of suspicion directly against the applicant.

It was found that the judicial decisions contained no sufficient reasoning setting out in detail how a concrete link between those indirect elements and the applicant had been established, and how they had objectively severed the bond of trust in the employment relationship. As against the Government's derogation defence relating to the state-of-emergency period, the Court stated that Legislative Decree no. 667 contained no provision excluding judicial review, that minimum judicial safeguards and the principle of the rule of law must be preserved even in periods of emergency, and that the shortcomings relating to a fair hearing could not therefore be justified by reliance on Article 15. On these considerations, the ECtHR held, by five votes to two, that Article 6 § 1 of the Convention (right to a fair trial) had been violated. The complaints concerning respect for private life and the right to work (Article 8), and the lack of reasoning in the Constitutional Court's decision, were declared inadmissible for non-exhaustion of domestic remedies and lack of substantiation.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention (just satisfaction), the ECtHR rejected the claim in respect of pecuniary damage, on the ground that no direct causal link could be established between the procedural violation found and the loss of income alleged by the applicant. The Court assessed that the finding of a violation of the right to a fair trial constituted in itself sufficient and just satisfaction for all the non-pecuniary damage the applicant might have sustained. By way of redress for the consequences of the violation, it reiterated that the applicant has the possibility, following this judgment, of requesting the reopening of the proceedings in domestic law (under

Article 375 § 1 (i) of the Code of Civil Procedure), and that this is, as a matter of principle, the most appropriate avenue of redress. Furthermore, as the applicant had made no claim for costs and expenses before the Court, no additional sum was awarded under that head. The judgment includes a joint partly dissenting opinion of Judges Paczolay and Yüksel, who did not join in the finding of a violation, having regard to the degree of military secrecy attaching to TÜBİTAK from the standpoint of national security, the flexible evidentiary standard in the Constitutional Court's case-law, and the fact that the dismissal had been upheld as being for a "valid cause" with compensation payable.

KAYA AND OTHERS v. TÜRKİYE¹⁰⁰

THE FACTS

The case encompasses the legal proceedings of four members of the high judiciary whose terms of office were terminated prematurely by the entry into force of Law no. 6723 while they were serving as members of the Court of Cassation or the Council of State. The Grand National Assembly of Turkey adopted Law no. 6723, which reorganised the chambers and the numbers of members of the high courts within the framework of the transition to a three-tier judicial system upon the establishment of the regional courts of appeal. The provisions of that law, which entered into force in July 2016, terminated the terms of office of all members of the Court of Cassation and the Council of State, with a few exceptions. The HSYK of the time made new appointments of members to those courts; the applicants, who were not reappointed, were assigned as judges to lower courts. The applicants complained of the absence in domestic law of any effective judicial mechanism to which they could have recourse against the premature and arbitrary termination of their terms of office.

THE VIOLATIONS

The Court referred to its leading *Sözen v. Türkiye* judgment, delivered in respect of another member of the high judiciary whose term of office was terminated under the same law. The ECtHR

100 Kaya and Others v. Türkiye, no. 3715/17 and 3 other applications, 10 February 2026.

found that this structural absence of review — which prevented the genuine and serious dispute concerning the applicants’ arguable right not to have their terms of office terminated prematurely and arbitrarily from being examined before a national judicial forum — impaired the very essence of the right of access to a court. Notwithstanding the Government’s considerations relating to a comprehensive judicial reform and the characteristics of the emergency period, the Court held that the complete exclusion of judicial review could not be justified, and held that the right of access to a court guaranteed by Article 6 § 1 of the Convention had been violated.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention (just satisfaction), the ECtHR rejected the claims in respect of pecuniary damage, on the ground that there was no direct causal link between the procedural violation found and the future salary losses asserted by the applicants. By way of redress for the grievance suffered, the Court held on an equitable basis that the respondent State was to pay each applicant 3,000 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, awards of 520 euros to the first applicant and 580 euros to the fourth applicant — who duly submitted retainer agreements, receipts and postal invoices — were made; no costs were provided for the other applicants, who submitted no supporting documents.

YAMAN AND OTHERS v. TÜRKİYE¹⁰¹

THE FACTS

The case concerns the legal situation of seventy-seven applicants detained on different dates after 15 July 2016. In ordering the applicants’ detention and its extension, the national judicial organs relied on various elements such as ByLock use, movements on Bank Asya accounts, participation in meetings (“sohbet” gatherings), staying in houses, membership of trade unions, associations or foundations, social-media posts, witness statements and dismissal from public service. In making these decisions restricting liberty, the judicial authorities concerned referred to the gravity of the offence charged and its inclusion among the “catalogue offences” in Article 100

101 Yaman and Others v. Türkiye, no. 58473/17, 17 March 2026.

of the Code of Criminal Procedure, and reasoned the state of the evidence in the file and the risks of flight and of tampering with evidence in general terms, without any concrete and individualised examination. The applicants' objections to the detention decisions were dismissed by the domestic courts, and their individual applications to the Constitutional Court were declared inadmissible; in the course of this process, the great majority of the applicants were convicted by the first-instance courts of membership of the organisation.

THE VIOLATIONS

Referring to its *Baş v. Turkey* and *Taner Kılıç v. Turkey* judgments, the Court reiterated that the mere downloading or use of ByLock cannot, of itself, constitute a “reasonable suspicion” within the meaning of Article 5 § 1 (c) of the Convention that the person concerned has committed an offence. Noting that the other acts referred to in the decisions (a Bank Asya account, sending children to lawful schools, social-media posts, communication with other persons, and the like) are presumptively lawful activities, the ECtHR found that such elements cannot provide a legal basis for detention unless concrete evidence is produced showing that the person knowingly and willingly participated in the criminal aims of the organisation. Not regarding as sufficient the judicial authorities' practice of ordering deprivation of liberty by repeating the wording of the statute and the state of the file in general terms without setting out concrete facts, the Court — although taking full account of the state-of-emergency context following the attempted coup and of the notice of derogation — assessed that the detention measures applied exceeded the limits strictly required by the situation, and held that Article 5 § 1 of the Convention had been violated (absence of reasonable suspicion); it considered it unnecessary to examine separately the remaining complaints under Articles 5 § 1, 5 § 3 and 5 § 4 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR rejected the claims in respect of pecuniary damage, on the ground that no direct causal link could be established between the procedural violation found and the losses of income or pecuniary damage asserted by the applicants. In order to redress the grievance suffered, the Court awarded each of the remaining applicants — excluding the five applicants who made no claim for just satisfaction or failed to submit their claims within

the statutory time-limit (applications nos. 32878/18, 36495/18, 45451/19, 55482/19 and 17953/21) — a lump sum of 5,000 euros to cover jointly their non-pecuniary damage and the costs and expenses of the proceedings.

ÖZTÜRK v. TÜRKİYE¹⁰²

THE FACTS

The case concerns the punishment of the applicant, a convicted prisoner held in the Menemen Closed Penal Institution, on account of a telephone conversation with his wife, who was also in prison, and the ensuing judicial proceedings. In a telephone conversation on 12 March 2019 with his wife, who was detained in prison like himself, the applicant responded to his wife's words "God willing, none of them will die without living through what they have made us live through" with the reply "They cannot even die, God willing, dog breed". As a result of the disciplinary investigation initiated against him on account of those statements, the prison disciplinary board imposed a penalty of five days' confinement in a cell for the offence of "insulting or threatening prison officials", on the grounds that the applicant had deliberately breached the rules, set a bad example to other prisoners and endangered the security of the institution. The applicant's objection to that penalty before the enforcement judge was dismissed on the ground that prisoners are under an obligation to comply with the enforcement regime; the assize court upheld that decision, stating that the applicant had impugned the honour and dignity of the prison officers. Finally, the individual application lodged with the Constitutional Court was likewise rejected as manifestly ill-founded, on the ground that there was no violation of a constitutional right.

THE VIOLATIONS

The ECtHR found that the national authorities had been unable to explain, with concrete and convincing reasons, how these words uttered in a private telephone conversation between spouses could be characterised as a threat or insult directed at prison officials, how they set a bad example to other prisoners, or in what way they endangered the security of the institution. It was established

102 Öztürk v. Türkiye, no. 50205/20, 17 March 2026.

that the domestic courts had acted on stereotyped formulae, entirely disregarding the applicant's personal situation and the private context in which the statement was shared, and had failed to strike a fair balance of interests, conforming to Convention standards, between the right to freedom of expression and the legitimate aim of maintaining order. On these considerations, the ECtHR held that Article 10 of the Convention (freedom of expression) had been violated, since the reasons given were not relevant and sufficient and the restriction was not necessary in a democratic society.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR awarded the applicant 1,000 euros in respect of the non-pecuniary damage caused to him by the violation found. Examining the applicant's claims in respect of the costs and expenses of the proceedings, the Court found the retainer agreement and the detailed fee statement submitted to be reasonable in part, and awarded the applicant **500 euros** in respect of the documented expenditure, declining the remaining claims for costs unsupported by documentation.

GÜRMEŖ v. TÜRKiYE¹⁰³

THE FACTS

The applicant, a teacher within the Ministry of National Education dismissed by Legislative Decree no. 672 of 1 September 2016, was reinstated in his post by decision of the State of Emergency Commission of 7 July 2020. Following his reinstatement, the administration paid the salary entitlements for the period of his unemployment into his bank account in a lump sum on 27 August 2020. On 26 October 2020 the applicant requested a detailed breakdown of the payment and, after receiving the forty-nine-month account statement the same day, submitted a petition to the administration claiming the accrued interest on the unpaid salaries, the salary increases arising from grade and step advancement, and additional entitlements such as supplementary teaching fees. The administration rejected those claims the same day; the date on which the decision was formally served on the applicant, however, became a matter of dispute — the Government

103 Gürmen v. Türkiye, no. 34365/22, 17 March 2026.

maintained that service had been effected by hand on 26 October 2020, while the applicant argued that the decision had been delivered to him on 24 December 2020. On 24 December 2020 the applicant brought an action before the Uşak Administrative Court for an examination of the merits of the administration's refusal; the court, however, treating the date of the bank transfer of 27 August 2020 as the starting-point of the action and relying on the administration's unproven assertion as to the date of service, dismissed the action as having been brought outside the statutory sixty-day time-limit, and that judgment was upheld in the proceedings before the regional administrative court and the Constitutional Court.

THE VIOLATIONS

The ECtHR found that, where administrative acts are not formally served, the time-limit for bringing an action must begin to run from the moment when the person concerned is fully apprised of the nature and consequences of the act; that a lump-sum bank transfer involving complex elements and interest calculations was not sufficient for the applicant fully to understand the underpayments; and that the domestic courts, in fixing the starting date of the action at 27 August 2020 by a strict interpretation, had not discussed at all in their reasoning the settled criteria in domestic law or the applicant's arguments. Secondly, the Court found fault with the domestic courts' acceptance of the administration's abstract assertion as true — although the file contained no official record or signature showing that the refusal decision had been served by hand — thereby placing the entire burden of the procedural uncertainty on the applicant. The imputation to the applicant of the error arising from the administration's failure to effect service by official and verifiable means, and the courts' failure to give reasons in response to the objections on that point, prevented a fair balance from being struck. In conclusion, holding that such a strict and disproportionate application of the time-limit rules impaired the very essence of the right of access to a court, the Court held unanimously that Article 6 § 1 of the Convention (right of access to a court) had been violated.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention (just satisfaction), the ECtHR rejected the applicant's claim in respect of pecuniary damage, on the ground that no direct causal link could be established

between the violation of the right of access to a court and the allegedly underpaid past salaries and interest (pecuniary damage). In order to redress the loss of rights and the non-pecuniary grievance occasioned by the dismissal of the action on procedural grounds, the Court awarded the applicant 1,500 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, since the applicant submitted no receipt, invoice or any supporting official document relating to the lawyers' fees and expenditure he claimed to have incurred in the proceedings before the Court, his claim for costs and expenses was rejected by the ECtHR on the ground that actual payment of the expenses could not be proved.

ÇAKAR AND OTHERS v. TÜRKİYE¹⁰⁴

THE FACTS

The case concerns the legal situation of sixteen applicants detained after 15 July 2016. In ordering the applicants' detention and the extension of their detention, the national judicial organs relied on matters such as ByLock use, movements on Bank Asya accounts, participation in meetings ("sohbet" gatherings), staying in houses, employment in or membership of trade unions, associations, foundations or institutions closed down by legislative decree, social-media posts, call records (HTS data) and witness statements. In making these decisions restricting liberty, the judicial authorities concerned referred to the gravity of the offence charged and its inclusion among the "catalogue offences" in Article 100 of the Code of Criminal Procedure, reasoned the state of the evidence in the file and the risks of flight and of tampering with evidence in general and abstract terms without any concrete and individualised examination, and, in the decisions extending detention, took into account — without reasons — the time already spent in prison. The applicants' objections to the detention decisions were dismissed by the domestic courts, their individual applications to the Constitutional Court were declared inadmissible, and in the course of this process the great majority of the applicants were convicted by the first-instance courts of membership of the organisation.

104 Çakar and Others v. Türkiye, no. 2541/19 and 15 other applications, 17 March 2026.

THE VIOLATIONS

The ECtHR found that, although the existence of reasonable suspicion is a prerequisite for the continuation of detention, the judicial authorities had been unable to present in their decisions, through an individualised analysis going beyond abstract, general and stereotyped formulae, the reasons justifying that suspicion and the reasons why alternative measures would be insufficient. Stating that the presumptions of detention laid down in domestic law for “catalogue offences” conflict directly with Article 5 § 3 of the Convention and that systems of mandatory or automatic detention give rise to violations of rights, the ECtHR — although taking full account of the state-of-emergency context following the attempted coup and of the notice of derogation — emphasised that, particularly in view of the lengthy periods of detention of at least one year in each case, the unreasoned restrictions of liberty exceeded the limits strictly required by the situation. On these considerations, the Court held that Article 5 § 3 of the Convention (the right to a reasoned decision on detention) had been violated, since the national authorities had been unable to give relevant and sufficient reasons in their decisions ordering and extending detention; in the light of that finding of violation, it considered it unnecessary to examine separately the merits and admissibility of the complaint under Article 5 § 1 (c) of the Convention (absence of reasonable suspicion) and of the remaining complaints under Article 5.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR rejected all claims in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found — unreasoned detention — and the losses of income or pecuniary damage asserted by the applicants. In order to redress the grievance suffered, the Court awarded each of the remaining applicants who submitted claims — excluding the two applicants who made no claim for just satisfaction or failed to submit their claims to the Court within the statutory time-limit (applications nos. 4720/20 and 44838/20) — a lump sum of 3,000 euros to cover jointly their non-pecuniary damage and the costs and expenses of the national and international judicial proceedings.

THE FACTS

The case of *Şaban Yasak v. Türkiye*, decided before the Grand Chamber, concerns a conviction for membership of an armed terrorist organisation entered within the scope of the mass investigations conducted after 15 July 2016. The applicant, a university student at the material time, was charged on a wide range of cumulative allegations: holding positions within the Movement (“Cemaat”) such as “regional student supervisor” (BTM) and “senior regional student supervisor” (BBTM); conducting educational activities under the pseudonyms “Recep” or “Şaban”; coordinating student houses and dormitories; mentoring students; organising “sohbet” gatherings; depositing money at Bank Asya; and having his social-security contributions paid by a company affiliated with the Movement. Brought before the Çorum Assize Court under the indictment drawn up by the Çorum Chief Public Prosecutor’s Office, the applicant retracted the statements he had given to the police and the interrogating judge on the ground that they had been made under duress, and argued that he was entirely unaware of the alleged ultimate aims, that he had come into contact with this structure in pursuit of lawful education and accommodation, and that he had participated in no concrete act of violence. The first-instance court nonetheless sentenced the applicant to seven years and six months’ imprisonment under Article 314 § 2 of the Turkish Criminal Code, relying on the abstract statements of witnesses benefiting from the “effective remorse” regime (Y.B., A.B. and others), on movements on his Bank Asya account and on call records (HTS data), and noting that the offence charged fell within the “catalogue offences” of Article 100 § 3 of the Code of Criminal Procedure and that he had been involved through continuous, intensive and diverse acts. In the proceedings before the court of appeal, the Court of Cassation and the Constitutional Court, the applicant’s allegations of lack of an impartial trial, of denial of an effective challenge to the evidence and of unjust punishment were dismissed on the merits and the conviction became final; the applicant applied to the ECtHR, stating that during the enforcement of his sentence he was subjected to grievances at the Çorum L-Type Prison such as

105 *Yasak v. Türkiye* [GC], no. 17389/20, 5 May 2026.

severe overcrowding, inadequate hygiene, restricted access to clean water and sleeping on a mattress on the floor for long periods.

THE VIOLATIONS

The Grand Chamber of the ECtHR definitively rejected all of the Government's preliminary objections alleging abuse of the right of application and non-exhaustion of domestic remedies, and made findings of great significance on the merits of the case. Examining Article 7 of the Convention (the principle of no punishment without law) — the most fundamental guarantee of substantive criminal law, which cannot be suspended under any circumstances, including a state of emergency — the Court found that the domestic courts had in no way subjected the applicant's "intent to commit an offence" to a concrete and individualised assessment. Emphasising that the principle of personal fault and responsibility is paramount in criminal law, and that educational and civic activities falling within lawful periods (2011–2014), well before the structure was declared a terrorist organisation, cannot be turned directly into evidence of an offence on the assumption that the person knew of that structure's alleged aims, the Grand Chamber found that the domestic courts had not established an objective mental link capable of satisfying an impartial observer. Condemning as a practice of imposing status-based objective liability the automatic characterisation of the applicant's employment at a lawful educational institution, or his role in civilian student coordination, as "directing/membership of a terrorist organisation" without any functional link being established with the structure's covert military or bureaucratic wings, the ECtHR — stating that this structural deficiency could in no way be justified by Türkiye's legislative-decree regimes or by the state-of-emergency derogations under Article 15 of the Convention — held, by eleven votes to six, that Article 7 of the Convention (the principle of no punishment without law) had been violated. Secondly, the Court examined the physical conditions of the applicant's detention at Çorum Prison under Article 3 of the Convention (prohibition of inhuman and degrading treatment) and, regarding as a process of attrition exceeding the minimum threshold of human dignity the fact that — the prison being operated at many times its statutory capacity — the applicant was condemned for a total of fourteen months to sleep on the floor in the communal living areas of the dormitory, that his areas of privacy were destroyed, and that he was

systematically deprived of sleep through exposure to uninterrupted lighting and noise throughout the night, held, by nine votes to eight, that Article 3 of the Convention (prohibition of inhuman treatment) had been violated.

OTHER ASPECTS OF THE JUDGMENT

In its assessment under Article 41 of the Convention, the Grand Chamber rejected all of the applicant's claims in respect of pecuniary damage, on the ground that no direct, documentable causal link could be established between the grave violations found and the concrete losses of income of 44,550 euros asserted by the applicant in relation to his imprisonment and his subsequent asylum in Germany. As regards the violation of Article 7 of the Convention — one of the most fundamental guarantees of criminal law — the Court held that the finding of a violation constituted in itself sufficient and just satisfaction for the non-pecuniary damage sustained by the applicant, citing as its reason the fact that the applicant has before him the possibility of requesting the reopening of the proceedings in domestic law under Article 311 § 1 (f) of the Code of Criminal Procedure and of having the wrongful conviction entirely set aside in conformity with the conclusions and spirit of this judgment. By contrast, in order to redress the concrete physical and mental suffering caused by his exposure, during his deprivation of liberty, to degrading prison conditions contrary to Article 3 of the Convention, the Court awarded the applicant 2,800 euros net in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, the official legal-services agreements, statements of lawyers' fees and travel expenses submitted by the applicant in respect of the complex international proceedings and hearings both at the Chamber stage and before the Grand Chamber were found reasonable, and a total of **9,050 euros** was awarded to the applicant in respect of costs.

TOPUZ v. TÜRKİYE¹⁰⁶

THE FACTS

Metin Topuz, who worked as a DEA assistant at the United States Consulate General in İstanbul, was taken into custody and detained in September 2017 within the scope of the investigations against the Movement (“Cemaat”). The decisions ordering and continuing his detention cited the applicant’s intensive communication traffic with 121 persons prosecuted on allegations of membership of the organisation and espionage, the nature of the offences and their inclusion among the “catalogue offences” in Article 100 § 3 of the Code of Criminal Procedure. The applicant maintained that those contacts were part of his interpreting and official duties within the DEA. The İstanbul 14th Assize Court, which in the course of the proceedings acquitted the applicant of the espionage allegations, sentenced him to eight years and nine months’ imprisonment for assisting a terrorist organisation, a judgment upheld by the Court of Cassation in June 2023. The application to the Constitutional Court was dismissed, and Topuz was released under judicial supervision in November 2023.

THE VIOLATIONS

The ECtHR rejected the Government’s preliminary objection that the compensation remedy had not been exhausted and declared the application admissible in respect of the grounds for detention, independently of the fair-trial complaints. On the merits, the Court found fault with the national authorities’ prolongation of the restrictions on liberty by repeating abstract, general and stereotyped formulae in the decisions ordering and extending detention. Stating that automatic presumptions of detention based on catalogue offences are incompatible with the Convention, and that the risks of flight and of pressure on witnesses must be substantiated by concrete facts, the ECtHR emphasised that, notwithstanding the state-of-emergency crisis following the attempted coup, the measures exceeded the limits strictly required by the situation. On these grounds, it held

106 Topuz v. Türkiye, no. 44240/18, 26 May 2026.

that Article 5§ 3 of the Convention (the right to a reasoned decision on detention) had been violated on account of the failure to give “relevant and sufficient” reasons in the decisions.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR awarded the applicant 3,000 euros in respect of the non-pecuniary damage occasioned by the violation found — unreasoned detention. The applicant’s claims in respect of pecuniary damage were rejected on the ground that no direct causal link with the violation could be established. Since the applicant submitted no claim for costs in due form supported by official documents — under the heads of lawyers’ fees, charges or postal expenses — in respect of the proceedings before the Court, no additional sum was awarded.

TUNCER ÇETİNKAYA v. TÜRKİYE¹⁰⁷

THE FACTS

The case of *Tuncer Çetinkaya v. Türkiye* concerns the detention, within the scope of the investigations conducted after the attempted coup of 15 July, of the applicant Tuncer Çetinkaya — a journalist who for many years worked for the closed-down *Zaman* newspaper, including at its Mediterranean Regional Office, and for various news agencies — and the restrictions on his freedom of expression. Following a “media network” report of the Antalya Police Directorate, a search was carried out at the applicant’s home in July 2016, in the course of which two books by Fethullah Gülen, two radio receivers capable of picking up police radio frequencies, Bank Asya receipts and mini-cassettes were seized; the applicant was taken into custody the same day and detained. As grounds for the detention, the prosecution and the Antalya 3rd Magistrate’s Court relied — as the basis for the offences of membership of a terrorist organisation and attempting to overthrow the constitutional order — on the opening of an account at Bank Asya, a lawful asset; on the lawful books found at his home; on his travels to the United States; on his social-media posts criticising the appointment of trustees to the *Zaman* newspaper (“The free press will not be silenced” and the like); and on his authorship of an article on the “Bizim Antalya” website

107 Tuncer Çetinkaya v. Türkiye, no. 79795, 16 June 2026.

addressing the crisis in the tourism sector and PKK/government policies. Upon the opening of the trial in March 2017, the Antalya 2nd Assize Court first ordered his release in the light of the state of the evidence; upon the prosecution's objection, however, based on a report subsequently added to the file indicating the presence of ByLock on the applicant's telephone, the applicant was detained anew in April. In April 2018 the assize court sentenced the applicant to seven years and six months' imprisonment for membership of an armed terrorist organisation, relying on the ByLock connections, the publications found at his home and his articles; that judgment was upheld and became final, while the individual application lodged with the Constitutional Court was dismissed in February 2018.

THE VIOLATIONS

The ECtHR, contrary to the Constitutional Court, stated that the ByLock data — which were not yet in the file on 26 July 2016, the date of the initial detention, and were submitted approximately eight months later — could not retrospectively justify the “reasonable suspicion” standard for the initial detention. Finding that the applicant's past professional activities at the *Zaman* newspaper, his holding of a salary account at Bank Asya — which was entirely lawful at the time — or the lawful publications at his home could not give rise, in the eyes of an impartial observer, to a suspicion of membership of a terrorist organisation, the ECtHR emphasised that his Facebook posts and his critical article on the tourism crisis contained no element inciting or glorifying violence or supporting the coup, and remained within the bounds of lawful freedom of expression protected by the Convention. While taking full account of Türkiye's state-of-emergency derogation, the ECtHR found that the detention measure, falling far below the statutory threshold of reasonable suspicion, had been applied wholly arbitrarily and could not be justified under Article 15 of the Convention either, and held that Article 5 § 1 of the Convention (unlawful detention for want of reasonable suspicion) and Article 5 § 3 (detention lacking sufficient reasons) had been violated. Secondly, the Court, noting that this unlawful detention imposed on account of journalistic activities and social-media criticism constituted a deterrent interference directly with the right to freedom of expression, and that this restriction, devoid of legal basis, could not be

regarded as necessary in a democratic society, held by six votes to one (with the dissenting opinion of Judge Yüksel) that Article 10 of the Convention (freedom of expression) had also been violated.

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR rejected the applicant's claim in respect of pecuniary damage, on the ground that no direct, concrete and verifiable causal link could be established between the violations found and the losses of income asserted in relation to his period of detention. In order to redress the profound non-pecuniary grievance and suffering caused to the applicant by his unjustified detention in the exercise of his profession as a journalist, the Court ordered the respondent State to pay the applicant 16,250 euros in respect of non-pecuniary damage. As regards the costs and expenses of the proceedings, the applicant's expenditure before the domestic courts and the official lawyers' invoices and postal receipts submitted in respect of his representation before the Court were accepted as fully documented and reasonable in amount, and a total of 4,406 euros was awarded to the applicant in respect of costs and expenses.

DÖNMEZ AND OTHERS v. TÜRKİYE¹⁰⁸

THE FACTS

The case concerns the applications of thirty-four applicants convicted of the offence of membership of a terrorist organisation (under Article 314 § 2 of the Turkish Criminal Code). The applicants' convictions rested fundamentally on their having used the encrypted messaging application known as "ByLock". The national judicial authorities and courts accepted that the ByLock application had been designed as a means of communication reserved exclusively for members of the Movement ("Cemaat"), and that the finding that the application had been used was therefore, of itself, conclusive and sufficient evidence for punishment for the offence of membership of an organisation. In the course of the proceedings, the domestic courts also added to their decisions ancillary evidence such as movements on Bank Asya accounts, membership of closed-down trade unions, associations or foundations, possession of organisational publications,

108 Dönmez and Others v. Türkiye, no. 24039/21 and 33 other applications, 23 June 2026.

social-media posts and witness statements. Indeed, in respect of some applicants, the mere finding that the application had been used was deemed sufficient for conviction, without awaiting the submission to the file of detailed identification and assessment reports on the nature of the communications conducted via ByLock and their decrypted content. The individual applications lodged by the applicants with the Constitutional Court against those convictions were dismissed by template decisions, without examination of the merits, with reference to the leading case-law of the Court of Cassation.

THE VIOLATIONS

The ECtHR remained faithful to the principles and findings of its *Yüksel Yalçınkaya v. Türkiye* and *Demirhan and Others v. Türkiye* judgments. The ECtHR found that the uniform approach of the Turkish courts — imputing an offence directly to everyone who used the ByLock application, regardless of content and purpose of use — imposed “objective liability” on individuals at the trial stage, and that this conflicted with the principle of no punishment without law, the most fundamental guarantee of criminal law. Even though the possibility could not be excluded that the applicants’ files might contain other intensive organisational activities capable of demonstrating a hierarchical link beyond ByLock, the national judiciary’s positioning of ByLock as an absolute and self-sufficient criterion of conviction was found unlawful. On these considerations, the Court held that Article 7 of the Convention (the principle of no punishment without law) had been violated, on the ground that the global punitive practice based on ByLock use undermined the principle of foreseeable law. In view of this finding of structural violation, it was considered unnecessary to examine separately the admissibility and merits of all of the applicants’ remaining complaints under Article 6 § 1 of the Convention (right to a fair trial) and under the provisions concerning liberty, correspondence, belief and the prohibition of discrimination (Articles 5, 8, 9, 10, 11 and 14).

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the ECtHR held that the finding of a violation constituted in itself sufficient and just satisfaction for the non-pecuniary damage the applicants claimed to have sustained. Following this finding of a violation of Article 7 of the Convention, the Court reiterated that the applicants have the right to request the reopening of the proceedings in domestic

law under Article 311 § 1 (f) of the Code of Criminal Procedure. It emphasised that the recommencement of the national proceedings in full conformity with the “conclusions and spirit” of this judgment would, as a matter of principle, constitute the most appropriate and effective form of redress for the losses of rights suffered. Finally, on the basis of the leading *Demirhan and Others* judgment, no award of costs of the proceedings or lawyers’ fees was considered necessary in favour of the applicants in respect of these follow-up applications coming before the Court in series, and all other claims for just satisfaction were rejected in their entirety.

ÇALI AND OTHERS v. TÜRKİYE¹⁰⁹

THE FACTS

The case concerns the applications of 264 applicants convicted, after 15 July 2016, of the offence of membership of an organisation (under Article 314 § 2 of the Turkish Criminal Code). The applicants’ convictions rested fundamentally on their having used “ByLock”. The domestic courts accepted that the ByLock application had been designed as a means of communication reserved exclusively for members of the Movement (“Cemaat”), and that the finding that the application had been used was therefore, of itself, conclusive and sufficient evidence for punishment for the offence of membership of an organisation. In the course of the proceedings, the domestic courts also added to their decisions ancillary evidence such as movements on Bank Asya accounts, membership of or employment in closed-down trade unions, associations or foundations, possession of publications, social-media posts, the use of other applications such as KakaoTalk or Eagle, call records (HTS data) and witness statements. Indeed, in respect of some applicants, the mere finding that the application had been used was deemed sufficient for conviction, without awaiting the submission to the file of detailed identification and assessment reports on the nature of the communications conducted via ByLock and their decrypted content. The individual applications lodged by the applicants with the Constitutional Court against those convictions were

109 Çalı and Others v. Türkiye, no. 21763/20 and 263 other applications, 23 June 2026.

dismissed by template decisions, without examination of the merits, with reference to the leading case-law of the Court of Cassation.

THE VIOLATIONS

Referring to its findings in *Yüksel Yalçınkaya v. Türkiye* and *Demirhan and Others v. Türkiye*, the ECtHR found that the domestic courts' approach to the ByLock evidence vitiated the procedural framework of the trial. Finding contrary to the very essence of procedural rights the domestic courts' failure to provide appropriate safeguards enabling the applicants to challenge effectively the ByLock data constituting the key evidence, their failure to examine the fundamental allegations forming the core of the case, and their failure to give adequate reasons for their decisions, the ECtHR emphasised that, notwithstanding the state-of-emergency crisis after 15 July, the restrictions on liberty and fair trial exceeded the limits strictly required by the situation. On these considerations, the Court held that Article 6 § 1 of the Convention (right to a fair trial) had been violated on account of the partial operation by the domestic courts of the global and uniform trial practice based on ByLock use; in view of the finding of a violation of the right to a fair trial, and of the fact that this finding opens the possibility of the reopening of the case in domestic law, it considered it unnecessary to examine separately the admissibility and merits of the complaint under Article 7 of the Convention (the principle of no punishment without law) and of all the remaining complaints concerning liberty, correspondence, belief and the prohibition of discrimination (Articles 5, 8, 9, 10, 11 and 14).

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the Court held that the finding of a violation constituted in itself sufficient and just satisfaction in respect of the non-pecuniary damage occasioned by the violation found. Following this finding of a violation of Article 6 § 1 of the Convention, the Court reiterated that the applicants have the right to request the reopening of the proceedings in domestic law under Article 311 § 1 (f) of the Code of Criminal Procedure. It emphasised that the recommencement of the national proceedings in full conformity with the "conclusions and spirit" of this judgment would, as a matter of principle, constitute the most appropriate and effective form of redress for the losses of rights suffered. Finally, on the basis of the leading *Demirhan and Others*

judgment, no award of costs of the proceedings or lawyers' fees was considered necessary in favour of the applicants in respect of these follow-up applications coming before the Court in series, and all other claims for just satisfaction were rejected in their entirety.

KILIÇARSLAN AND OTHERS v. TÜRKİYE¹¹⁰

THE FACTS

The case concerns the applications of 595 applicants convicted, after 15 July 2016, of the offence of membership of an organisation (under Article 314 § 2 of the Turkish Criminal Code). The applicants' convictions were based on their having used "ByLock". The domestic courts accepted that the ByLock application had been designed as an exclusive means of communication and that the finding that the application had been used was therefore, of itself, sufficient for punishment for the offence of membership of an organisation. In the course of the proceedings, the domestic courts also added to their decisions ancillary evidence such as movements on Bank Asya accounts, membership of or employment in closed-down trade unions, associations or foundations, possession of certain publications, social-media posts, call records (HTS data) and witness statements. Indeed, in respect of some applicants, the mere finding that the application had been used was deemed sufficient for conviction, without awaiting the submission to the file of detailed identification and assessment reports on the nature of the communications conducted via ByLock and their decrypted content. The individual applications lodged by the applicants with the Constitutional Court against those convictions were dismissed by template decisions, without examination of the merits, with reference to the leading case-law of the Court of Cassation.

THE VIOLATIONS

Referring to its findings in *Yüksel Yalçınkaya v. Türkiye* and *Demirhan and Others v. Türkiye*, the ECtHR found that the domestic courts' approach to the ByLock evidence fundamentally vitiated both the procedural and the substantive framework of the trial. Noting that the uniform approach of the Turkish courts — imputing an offence directly to everyone who used the ByLock application,

110 Kılıçarslan and Others v. Türkiye, no. 16243/18 and 594 other applications, 23 June 2026.

regardless of content and purpose of use — imposed “objective liability” on individuals at the trial stage, the ECtHR, emphasising that this conflicted with the principle of no punishment without law, the most fundamental guarantee of criminal law, held that Article 7 of the Convention (the principle of no punishment without law) had been violated. Furthermore, finding contrary to the very essence of procedural rights the failure to provide appropriate safeguards enabling the applicants to challenge effectively the ByLock data constituting the principal evidence, the failure to examine the fundamental allegations forming the core of the case, and the failure to give adequate reasons for the decisions, the Court, stating that the restrictions on the right to a fair trial exceeded the limits strictly required by the situation notwithstanding the state-of-emergency crisis following the attempted coup, held that Article 6 § 1 of the Convention (right to a fair trial) had also been violated. In view of these findings of structural violation, it was considered unnecessary to examine separately the admissibility and merits of all of the applicants’ remaining complaints concerning liberty, correspondence, belief and the prohibition of discrimination (Articles 5, 8, 9, 10, 11 and 14).

OTHER ASPECTS OF THE JUDGMENT

Under Article 41 of the Convention, the Court held that the finding of a violation constituted in itself sufficient and just satisfaction in respect of the non-pecuniary damage occasioned by the violations found. Following this finding of violations of Articles 7 and 6 § 1 of the Convention, the Court reiterated that the applicants have the right to request the reopening of the proceedings in domestic law under Article 311 § 1 (f) of the Code of Criminal Procedure. It emphasised that the recommencement of the national proceedings in full conformity with the “conclusions and spirit” of this judgment would, as a matter of principle, constitute the most appropriate and effective form of redress for the losses of rights suffered. Finally, on the basis of the leading *Demirhan and Others* judgment, no award of costs of the proceedings or lawyers’ fees was considered necessary in favour of the applicants in respect of these follow-up applications coming before the Court in series, and all other claims for just satisfaction were rejected in their entirety.

KILIÇ AND OTHERS v. TÜRKİYE¹¹¹

THE FACTS

The case concerns the applications of seventeen persons detained after 15 July. Some of the applicants were apprehended at border crossings while fleeing, while others were apprehended as fugitives, having failed to surrender despite arrest warrants issued against them; forged identity documents were seized in the searches. In their decisions ordering and extending detention, the national judicial organs relied on ByLock use, movements on Bank Asya accounts, employment in or membership of closed-down institutions, social-media posts, call records (HTS data) and witness statements. In making these decisions restricting liberty, the judicial authorities referred to the inclusion of the offence charged among the “catalogue offences” in Article 100 of the Code of Criminal Procedure, repeated the state of the evidence in the file and the risks of flight in general terms and, at the extension stages, took into account — without reasons — the time already spent in prison. The applicants’ objections were dismissed by the domestic courts and the Constitutional Court with template reasoning; in the course of the proceedings, the great majority of the applicants were convicted by the first-instance courts.

THE VIOLATIONS

Having regard to objective facts such as the applicants’ concrete attempts to flee at the moment of their apprehension, their fugitive status and their use of forged identity documents, the ECtHR found the individualised weight given by the domestic courts to the “risk of flight” in the initial detention decisions to be “relevant and sufficient” for the first stage of the investigation. It found, however, that in the subsequent extension decisions the domestic judiciary had repeated the initial grounds for detention verbatim in stereotyped formulae, had not reviewed by reference to concrete facts whether the risk of flight — which diminishes with the passage of time — still persisted at the later stages of the proceedings, and had rejected alternative measures such as judicial supervision in a merely formal manner. Emphasising that, although it took full account of Türkiye’s state-of-

111 Kılıç and Others v. Türkiye, no. 356/18 and 16 other applications, 23 June 2026.

emergency crisis following the attempted coup and its notice of derogation, the unreasoned prolongation of detention lasting at least one year in each case exceeded the limits strictly required by the situation, the ECtHR held that Article 5 § 3 of the Convention (the right to a reasoned decision on detention) had been violated in respect of all the applicants on account of the failure to give sufficient and convincing legal reasons in the decisions continuing detention; in the light of that finding of violation, it considered it unnecessary to examine separately the merits of the complaint under Article 5 § 1 (c) of the Convention and of the remaining complaints under Article 5.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected all claims in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found — the unreasoned extension of detention — and the losses of income or pecuniary damage asserted by the applicants. In order to redress the grievance suffered, the Court awarded each of the remaining fifteen applicants who submitted claims — excluding the two applicants who made no claim for just satisfaction or failed to submit their claims within the statutory time-limit (applications nos. 39888/18 and 20845/21) — a lump sum of 1,000 euros to cover jointly their non-pecuniary damage and the costs and expenses of the national and international judicial proceedings.

KARASU AND OTHERS v. TÜRKİYE¹¹²

THE FACTS

The forty-three applicants, most of them commissioned soldiers, privates and police officers, were apprehended on suspicion of participating in the attempted coup of 15 July and of membership of the organisation, and remained in pre-trial detention for periods ranging from two years to four years and six months. In their detention decisions, the domestic courts relied on concrete acts such as attacking strategic buildings including the TRT (the public broadcaster), the MİT (the National Intelligence Organisation) and Parliament, commanding military vehicles and

112 Karasu and Others v. Türkiye, no. 12589/18 and 43 other applications, 23 June 2026.

assisting the putschists. In their decisions, the judicial authorities referred to the inclusion of the offences charged among the “catalogue offences” in Article 100 § 3 of the Code of Criminal Procedure, reasoned the state of the evidence and the risks of flight and of tampering with evidence in general terms and, at the extension stages, took into account the time already spent in prison. The applicants’ objections and their individual applications to the Constitutional Court were dismissed; in the course of the proceedings, most of the applicants were convicted by the first-instance courts of the attempted coup or of membership of the organisation.

THE VIOLATIONS

The ECtHR found the initial grounds for detention “relevant and sufficient” for the duration of the state of emergency, in view of objective facts such as the applicants’ being members of the security forces who had directly participated in the attempted coup and the flight of their accomplices. It found, however, that in the extension decisions issued after the lifting of the state of emergency in July 2018 the domestic judiciary had automatically repeated stereotyped reasons, had not reviewed whether the risk of flight — which diminishes with time — persisted, and had rejected alternative measures in a merely formal manner. Noting that, having regard to the periods of detention lasting at least two years, the unreasoned restrictions after the state of emergency exceeded the limits strictly required by the situation, the Court held that Article 5 § 3 of the Convention (the right to a reasoned decision on detention) had been violated in respect of all the applicants, and did not examine separately the complaints under Article 5 § 4 of the Convention.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected all claims in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found — the unreasoned extension of detention — and any arguable pecuniary damage. In order to redress the grievance suffered, the Court awarded each of the applicants who submitted claims, without distinction, a lump sum of 2,000 euros to cover jointly their non-pecuniary damage and the costs and expenses of the national and international proceedings.

THE FACTS

Cafer Tekin İpek, the principal shareholder of the Koza İpek A.Ş. holding company, was detained in April 2016 in line with allegations, contained in reports of MASAK (the Financial Crimes Investigation Board), the KOM (the Anti-Smuggling and Organised Crime Department) and the SPK (the Capital Markets Board), of irregular money transfers, disguised transfers of profits, and manipulative anti-government broadcasting by the media outlets belonging to the holding. The Ankara 2nd Magistrate’s Court issued the initial decision restricting his liberty for the offences of breach of trust and membership of a terrorist organisation, citing the inclusion of the offences charged among the “catalogue offences” in Article 100 § 3 of the Code of Criminal Procedure, the severity of the sentence and the suspicion of flight. In the course of the investigation, a police finding that the applicant was a ByLock user was added to the file, and the Constitutional Court dismissed the individual application in September 2018 in reliance on that data; by an expert report of July 2019, however, it was conclusively established that the ByLock application had been used not by the applicant but by another accused. The applicant was convicted in January 2020; his sentence for breach of trust became final in April 2021, while the proceedings for membership of an organisation are still pending before the Court of Cassation.

THE VIOLATIONS

The ECtHR declared inadmissible the complaint under Article 5 § 1 (c) of the Convention (absence of reasonable suspicion), noting that the concrete findings of irregularity contained in the MASAK and SPK reports presented a lawful “reasonable suspicion” at the time of the initial detention. In its examination of the merits, however, the Court found fault with the national judiciary’s failure to carry out an individual risk analysis — taking refuge in the presumptions laid down by statute for “catalogue offences” — and with its repetition of the risk of flight in abstract, stereotyped template expressions throughout a detention exceeding three years. Emphasising that,

113 İpek v. Türkiye, no. 71299/16, 23 June 2026.

notwithstanding its regard for Türkiye's state-of-emergency derogation following the attempted coup, leaving the decisions unreasoned over so long a period of detention exceeded the limits strictly required by the situation, the ECtHR held that Article 5 § 3 of the Convention (the right to a reasoned decision on detention) had been violated on account of the failure to give "relevant and sufficient" reasons in the judicial decisions for the continuation of the restriction of liberty, and considered it unnecessary to examine separately on the merits the complaints concerning the reasonableness of the length of detention and the other procedural complaints.

OTHER ASPECTS OF THE JUDGMENT

The ECtHR rejected in its entirety the applicant's claim for 100,000 euros in respect of pecuniary damage, on the ground that no direct causal link could be established between the violation found — the unreasoned extension of detention — and the commercial losses of income asserted. In respect of the non-pecuniary grievance caused by the deprivation of liberty, the Court awarded the applicant 3,500 euros in respect of non-pecuniary damage and 500 euros in respect of the documented expenses of the legal proceedings.

X. TABLE OF THE ECHR ARTICLES VIOLATED AND THE DISTRIBUTION OF JUDGMENTS BY YEAR

Year	Decision Number	Number of Applicants	Total Compensation (EUR)	Article of the ECHR, Subject of Violation, and Number of Persons Violated (Annual / Grand Total)	Violations Issued (Number of Individuals)
2018	2	2	43,100	Article 5: Right to Liberty and Security (This Year: 2 / General: 4,107) Article 10: Freedom of Expression (This Year: 2 / Overall: 16)	Article 5: Mehmet Hasan Altan (1), Şahin Alpay (1) Article 10: Mehmet Hasan Altan (1), Şahin Alpay (1)
2019	1	1	10,000	Article 5: Right to Liberty and Security (This Year: 1 / Overall: 4,107)	Article 5: Alparslan Altan (1)
2020	3	12	174,000	Article 5: Right to Liberty and Security (This Year: 11 / Overall: 4,107) Article 6: Right to a Fair Trial (This Year: 1 / Overall: 3,650) Article 8: Respect for Private and Family Life (This Year: 1 / Overall: 157)	Article 5: Head (1), Sabuncu and others (10) Article 6: Cooked (1) Article 8: Cooked (1)
2021	11	438	2,351,605	Article 5: Right to Liberty and Security (This Year: 437 / General: 4,107) Article 8: Respect for Private and Family Life (This Year: 1 / Overall: 157) Article 10: Freedom of Expression (This Year: 8 / Overall: 16)	Article 5: Atilla Taş (1), Ahmet Hüsrev Altan (1), Murat Aksoy (1), Tercan (1), Akgün (1), Turan and others (427), Ilıcak No 2 (1), Bulaç (1), Şık (1), Öğreten and Kanaat (2) Article 8: Tercan (1) Article 10: Atilla Taş (1), Ahmet Hüsrev Altan (1), Murat Aksoy (1), Öğreten ve Kanaat (2), Yasin Özdemir (1), Ilıcak No 2 (1)
2022	12	565	2,707,060	Article 5: Right to Liberty and Security (This Year: 532 / General: 4,107) Article 8: Respect for Private and Family Life (This Year: 33 / Overall: 157) Article 10: Freedom of Expression (This Year: 1 / Overall: 16)	Article 5: Taner Kılıç 2 (1), Acar and others (50), Ulusoy and others (21), Bayram and others (108), Ataman and others (31), Geleş and others (70), Başer and Özçelik (2), Moral and others (32), Sevinç and others (135), Güngör and others (82) Article 8: Nuh Uzun and others (14), Subaşı and others (19) Article 10: Taner Kılıç 2 (1)
2023	18	599	2,290,436	Article 3: Prohibition of Ill-Treatment (This Year: 8 / Overall: 47) Article 5: Right to Liberty and Security (This Year: 558 / General: 4,107) Article 6: Right to a Fair Trial (This Year: 1 / Overall: 3,650) Article 7: No Crime or Punishment Without Law (This Year: 1 / Overall: 2,422) Article 8: Respect for Private and Family Life (This Year: 42 / Overall: 157) Article 10: Freedom of Expression (This Year: 2 / Overall: 16) Article 11: Freedom of Association (This Year: 1 / Overall: 1) Additional Protocol 1/M. 2: Right to Education (This Year: 3 / Overall: 3)	Article 3: Later and others (8) Article 5: Abdullah Kılıç (1), Ayvaz and others (131), Kılınçlı and others (13), Eriş and others (45), Kolay and others (284), Mecit and others (82), Karaca (1), Baransu (1) Article 6: Yüksel Yalçinkaya (1) Article 7: Yüksel Yalçinkaya (1) Article 8: Telek and others (3), Hallaçoğlu and others (3), Çaylı and Serli (2), Mehmet Demir (1), Canavcı and others (3), Burgaz and others (18), İlerde and others (11), Halit Kara (1) Article 10: Abdullah Kılıç (1), Uslu (1) Article 11: Yüksel Yalçinkaya (1) Additional Protocol 1 / Article 2: Telek and others (3)

Year	Decision Number	Number of Applicants	Total Compensation (EUR)	Article of the ECHR, Subject of Violation, and Number of Persons Violated (Annual / Grand Total)	Violations Issued (Number of Individuals)
2024	22	1.999	9,724,067	Article 5: Right to Liberty and Security (This Year: 1,917 / Overall: 4,107) Article 6: Right to a Fair Trial (This Year: 78 / Overall: 3,650) Article 8: Respect for Private and Family Life (This Year: 4 / Overall: 157) Article 10: Freedom of Expression (This Year: 2 / Overall: 16)	Article 5: Parıldak (1), Altun and others (23), Kuriş and others (26), Kaplan and others (223), Tanyaş and others (240), Manav and others (128), Keskin and others (131), Sert and others (207), Kesler and others (172), Taş and others (213), Deniz and others (237), Aydın Sefa Akay (1), Duymaz and others (314), Çinici (1) Article 6: Kartal (1), Gülcü and others (50), Sözen (1), Şişman and others (11), Kurtoğlu, Karacık and others (8), Kurkut and others (7) Article 8: Sil and others (3), Aydın Sefa Akay (1) Article 10: Parıldak (1), Baysal (1)
2025	28	3.368	3,054,566	Article 3: Prohibition of Ill-Treatment (This Year: 38 / Overall: 47) Article 5: Right to Liberty and Security (This Year: 493 / General: 4,107) Article 6: Right to a Fair Trial (This Year: 2,700 / Overall: 3,650) Article 7: No Crime or Punishment Without Law (This Year: 1,808 / Overall: 2,422) Article 8: Respect for Private and Family Life (This Year: 47 / Overall: 157)	Article 3: Kacır and others (35), İmrak and Yıldız (2), Güngöray (1) Article 5: Elibol and others (51), Amirov (1), Tüzemen and others (117), Mustafa Demirhan (1), Budak and others (94), Çetin and others (137), Balıkcı and others (86), Özoğlu and others (4), Atça and Çelebi (2) Article 6: Demiryürek and others (42), Olcay and others (30), Benli and others (6), Tosun and others (84), Şimşek (1), Akarsu (1), Demirhan and others (239), Öztürk and others (5), Sayinyiğit and others (3), Seyhan and others (852), Karslı and others (1436), Yıldırım (1) Article 7: Demirhan and others (239), Bozyokuş and others (133), Karslı and others (1436) Article 8: Özoğlu and others (4), Atça and Çelebi (2), Kacır and others (37), Özdemir (1), Gür and Bedir (2), Emre (1)
2026	18	1.074	511,606	Article 3: Prohibition of Ill-Treatment (This Year: 1 / Overall: 47) Article 5: Right to Liberty and Security (This Year: 156 / General: 4,107) Article 6: Right to a Fair Trial (This Year: 870 / Overall: 3,650) Article 7: No Crime or Punishment Without Law (This Year: 613 / Overall: 2,422) Article 8: Respect for Private and Family Life (This Year: 29 / Overall: 157) Article 10: Freedom of Expression (This Year: 2 / Overall: 16)	Article 3: Prohibition (1) Article 5: Çakar and others (16), Yaman and others (77), Tuncer Çetinkaya (1), Topuz (1), Kılıç and others (17), Karasu and others (43), İpek (1) Article 6: Gürmen (1), Kandemir (1), Kaya and others (4), İ.Ç. (1), Felemmez and others (4), Kılıçarslan and others (595), Çalı and others (264) Article 7: Prohibition (1), Kılıçarslan and others (595), Dönmez and others (17) Article 8: Altıntop and others (29) Article 10: Öztürk (1), Topuz (1)
TOTAL	114	8,056	€20,866,440	-	-

Summary of General Distribution by Item

Article of the ECHR	Decision Number	Total People
Article 3: Prohibition of Ill-Treatment	5 Decisions	47 people
Article 5: Right to Liberty and Security	63 Decisions	4,106 people
Article 6: Right to a Fair Trial	27 Decisions	3,650 people
Article 7: No Crime or Punishment Without Law	7 Decisions	2,422 people
Article 8: Right to Respect for Private and Family Life	21 Decisions	157 people
Article 10: Freedom of Expression	15 Decisions	16 people
Article 11: Freedom of Association	1 Decision	1 person
Additional Protocol 1/Article 2: The Right to Education	1 Decision	3 people