European Court of Human Rights: Mehmet Hasan Altan v. Turkey and Şahin Alpay v. Turkey

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On 20 March 2018, the European Court of Human Rights (ECtHR) delivered two important judgments in cases brought by two prominent journalists detained in Turkey after the attempted coup d'état of 15 July 2016. In both cases it found a violation of the journalists' right to freedom of expression. The ECtHR clarified that the existence of a "public emergency threatening the life of the nation" cannot serve as a pretext for limiting the freedom of political debate, which is at the very core of the concept of a democratic society. Even in a state of emergency the Contracting States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness." The ECtHR is of the opinion that the pre-trial detention and the criminal prosecution of the journalists will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices in Turkey.

Mehmet Hasan Altan is an economics professor and a journalist in Turkey. Prior to the attempted military coup of 15 July 2016, he presented a political discussion programme on Can Erzincan TV, a television channel that was closed down following the adoption of Legislative Decree no. 668, issued on 27 July 2016 in connection with the state of emergency that was declared by the Government on 20 July 2016. Şahin Alpay is a journalist who had been working for the daily newspaper Zaman, which was viewed by the Turkish government as the principal publication medium of the so-called "Gülenist" network. Zaman was also closed down in a move arising from the declaration of the state of emergency in Turkey. In the years leading up to the attempted coup, both Mehmet Hasan Altan and Şahin Alpay had been known for their critical views of the Government's policies. Both journalists had been arrested and held in pre-trial detention since the summer of 2016. They were charged, on the basis of articles written by them and their public statements, with attempting to overthrow the constitutional order, the Turkish Grand National Assembly and the Government by force and violence, and of committing offences on behalf of a terrorist organisation (without actually being members of it). Mehmet Hasan Altan was sentenced on 16 February 2018 by the Istanbul Assize Court to aggravated life imprisonment for attempting to overthrow the constitutional order.

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However, the Turkish Constitutional Court in the meantime found that the journalists' initial and continued pre-trial detention could not be regarded as a necessary and proportionate interference in a democratic society and that their pre-trial detention could have a chilling effect on freedom of expression and freedom of the press, in so far as it had not been based on any concrete evidence (see IRIS 2018-3/31). The Istanbul Assize Court has rejected the judgments of the Constitutional Court, and both journalists remained in prison. While the proceedings were still pending, both journalists lodged a complaint with the ECtHR alleging the violation of their rights under Article 5 (right to liberty and security), Article 10 (right to freedom of expression) and Article 18 (limitation on the use of restrictions on rights) of the European Convention of Human Rights (ECHR). The journalists were supported in their claims by the Council of Europe Commissioner for Human Rights, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and by a range of non-governmental organisations acting jointly, such as "Article 19", the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, the International Federation of Journalists, the International Press Institute and Reporters Without Borders.

Apart from finding a breach of Article 5 § 1 of the ECHR (specifically, the arbitrary pre-trial detention of the journalists, given that there had been a lack of reasonable suspicion that they had committed the criminal offences that they were charged with), the ECtHR came to the conclusion that the journalists' right to freedom of expression had been violated by the Turkish authorities. The ECtHR pointed to a general problem in Turkey concerning the interpretation of anti-terrorism legislation by prosecutors and the competent courts, as journalists have often been subjected to severe measures such as detention for addressing matters of public interest. According to the ECtHR, views expressed that do not constitute incitement to violence and do not justify the commission of terrorist acts or cannot be interpreted as likely to encourage violence by instilling deep-seated and irrational hatred towards specified individuals should not be restricted with reference to the aims set out in Article 10 § 2 − namely the protection of territorial integrity or national security or the prevention of disorder or crime.

The ECtHR recognises in particular the difficulties facing Turkey in the aftermath of the attempted military coup, as the coup attempt and other terrorist acts have clearly posed major threats to Turkey's vulnerable democracy. However, the ECtHR considers that one of the principal characteristics of democracy is the possibility it offers of resolving problems through public debate, and that democracy thrives on freedom of expression. In this context, it considers that criticism of governments and the publication of information regarded by a country's leaders as endangering national interests should not attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organisation, attempting to overthrow the Government or the constitutional order, or disseminating terrorist propaganda. Moreover, even where

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such serious charges have been brought, pre-trial detention should only be used as an exceptional measure of last resort when all other measures have proved incapable of fully guaranteeing the proper conduct of proceedings: the pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure entailing deprivation of liberty will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices. Therefore, the ECtHR concluded that there had been a violation of Article 10 ECHR in both cases. Only the ad hoc national judge, Judge Ergül dissented, justifying the interferences with the journalists rights on the basis of the state of emergency after the attempted military coup and the severe danger posed to the democratic constitutional order, public security and respect for human rights, amounting to a threat to the life of the Turkish nation within the meaning of Article 15 ECHR (derogation in times of emergency). He also referred to certain media in Turkey that have played a significant role in legitimising the actions that gave rise to the "despicable attempted military coup by manipulating public opinion".

Judgment by the European Court of Human Rights, Second Section, case of Mehmet Hasan Altan v. Turkey, Application no. 13237/17, 20 March 2018

https://hudoc.echr.coe.int/eng?i=001-181862

Judgment by the European Court of Human Rights, Second Section, case of Şahin Alpay v. Turkey, Application no. 16538/17, 20 March 2018

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