



THE *ŞAHİN ALPAY VS. TURKEY* AND *MEHMET HASAN ALTAN VS. TURKEY* JUDGMENTS: A (MAYBE MORE ILLUSORY THAN REAL) TURNING POINT IN THE ODYSSEY OF THE COMPLAINTS AGAINST TURKISH EMERGENCY MEASURES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

The essay deals with the complaints against Turkish emergency measures, before the European Court of human rights.

Since the failed *coup d'État* of the 15th July 2016, the Turkish government has established the state of emergency, resorting to art. 15 of the European Convention on human rights and to art. 4 of the International Covenant on civil and political rights. These norms allow States to temporarily suspend the protection of several fundamental rights, in order to face and overcome a situation of public danger, threatening the life of the nation. In such a legal context, the Turkish government has enacted several emergency measures against individuals potentially linked to the terrorist organisation, which is supposed to be responsible for the failed *coup*.

So, several individuals concerned by these measures have appealed directly to the European Court of human rights, claiming compensation for the violation of their fundamental rights under the European Convention. However, the Court has rejected these complaints because of non-exhaustion of domestic remedies (art. 35 of the European Convention). Indeed, it has highlighted the necessity of a previous appeal before the Turkish Constitutional Court and/or before the domestic Inquiry commission on the state of emergency measures, even though they both do not seem to offer sufficient guarantees of independence from the government and do not seem to be able to effectively remedy to the breaches due to emergency measures.

However, the recent judgments of the European Court, issued on the cases *Şahin Alpay vs. Turkey* and *Mehmet Hasan Altan vs. Turkey*, seem to constitute a sort of turning point in such a trend. Indeed, the Court has ascertained the violation of conventional rights by Turkish emergency measures for the first time ever. In particular, it has stressed that the extraordinary pre-trial detention of the victims has breached their right to personal liberty and security (art. 5 of the Convention) and their right to freedom of expression (art. 10 of the Convention). However, the assessment developed by the European Court seems to be based essentially on the findings of the domestic Constitutional Court. This means that the European Court has not departed from its strict interpretation of the rule of previous exhaustion of domestic remedies. Nevertheless, such judgments may foreshadow a future, more careful international control over Turkish emergency measures.