



## Initial period of detention was lawful and applicant had failed to use remedy to challenge the three other periods

In its decision in the case of [Benli v. Turkey](#) (application no. 32471/06) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerns the lawfulness of the successive periods of detention imposed on Mr Benli.

The Court found that Mr Benli had not, until 19 November 2004 (the date of his release), been subjected to a period of detention exceeding the sanction provided for by domestic law. In addition, the publication of the new Criminal Code in the Official Gazette did not entitle him to a reduction of sentence or release on licence. As to the three other brief periods of detention, Mr Benli should have lodged with the domestic courts an application under section 1 of Law no. 466, but had failed to do so.

### Principal facts

The applicant, Mustafa Benli, is a Turkish national who was born in 1971 and lives in Istanbul.

In 1999 Mr Benli was sentenced to more than 12 years' imprisonment for membership of an armed organisation under Article 168 of the former Criminal Code. In October 2004 he asked to benefit from a more lenient penalty in accordance with the provisions of Article 314 of the new Criminal Code adopted by the Turkish Parliament in September 2004.

On 19 November 2004 Mr Benli was released, as the Assize Court had reduced his sentence. On the same day, after leaving the prison, Mr Benli was handed over to the gendarmes on the ground that four arrest warrants had previously been issued against him. He was released on 21 November 2004, the authorities having found that the warrants in question were no longer valid. Mr Benli was no longer a wanted man. He was subsequently arrested again twice, on 7 and 8 December 2004, and held for a few hours. Each time he was released on the same day, as the authorities found that the arrest warrants still appeared in the police registers as a result of a failure to cancel them.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 April 2005.

Relying on Article 5 § 1 (right to liberty and security), Mr Benli, who was released on 19 November 2004, argued that he should have been released on 26 September 2004 (date on which the new Criminal Code was adopted) or at the latest on 13 November 2004 (date of publication in the Official Gazette of Law no. 5252 governing the conditions of entry into force and implementation of the new Criminal Code). Under the same Article, Mr Benli complained, first, that he had been taken to the gendarmerie on 19 November 2004 and had not been released until 21 November 2004 and, secondly, that he had been deprived of his liberty again on 7 and 8 December 2004 on account of an error on the part of the authorities.

Relying on Article 5 § 4 (right to a prompt decision on the lawfulness of detention) and Article 13 (right to an effective remedy), he complained that no remedy was available to him for the purpose of asserting his right to liberty and security.

Relying on Article 6 § 1 (right to a fair trial), he also complained that the Assize Court lacked independence and impartiality.

The decision was given by a Chamber of seven, composed as follows:

Robert Spano (Iceland), *President*,  
Paul Lemmens (Belgium),  
Ledi Bianku (Albania),  
Işıl Karakaş (Turkey),  
Nebojša Vučinić (Montenegro),  
Jon Fridrik Kjølbro (Denmark),  
Stéphanie Mourou-Vikström (Monaco), *Judges*,

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 5 § 1

The Court noted that the Assize Court had upheld Mr Benli's request and on 19 November 2004 had ordered his release on licence. Mr Benli took the view that the order should have been made on the date of publication of the new Criminal Code.

The Court referred to its examination of the case of *Hıdır Durmaz v. Turkey (no. 2)* from 12 July 2011 and did not see any reason to reach a different conclusion here. As in that case, Mr Benli had been imprisoned, until 19 November 2004, as a result of a sentence imposed by a court. That period of detention had thus in principle been lawful. Subsequently, the publication of the new Criminal Code in the Official Gazette did not entitle him to any reduction of sentence or release on licence.

However, the legislature had adopted a statutory provision, applicable from 13 November 2004, which offered the possibility of suspending the enforcement of a sentence pending the entry into force of the new Criminal Code. It was on the basis of that text that the Assize Court had granted Mr Benli's request for release. Mr Benli had not therefore, until 19 November 2004, been subjected to a period of detention exceeding the sanction resulting from the application of domestic law. That detention had thus been lawful for the purposes of the Convention.

However, Mr Benli had been subjected to three other periods of detention. Between 19 and 21 November 2004 the detention had been the result of an administrative error, as the arrest warrants justifying the arrests had not been deleted from the police registers, even though Mr Benli was no longer a wanted man. The Court observed that Mr Benli could have used the compensatory remedy provided for by section 1 of Law no. 466, which was capable of entailing recognition of the alleged violation and an award of compensation. In addition, the unlawfulness of the relevant deprivation of liberty had been recognised by the domestic authorities, thus increasing Mr Benli's chances of success.

The Court thus found that Mr Benli should have brought a claim under section 1 of Law no. 466, but had failed to do so. It thus rejected his complaint on the ground of non-exhaustion of domestic remedies.

### Article 5 § 4 and Article 13

The Court observed that, until 19 November 2004, Mr Benli's detention had been the result of his criminal conviction and sentence in 1999. It was thus covered by Article 5 § 1 (a) of the Convention and Article 5 § 4 did not apply.

Subsequently, Mr Benli had been detained for about two days between 19 and 21 November 2004 and had been deprived of liberty for only a few hours between 7 and 8 December 2004. He had been released very quickly, before any judicial review of the legality of his detention. The Court found that in those circumstances it was unnecessary to examine the merits of Mr Benli's complaints. It further

observed that the domestic legal system provided a remedy capable of entailing his release from the impugned detention – under Article 91 § 5 of the Code of Criminal Procedure – but Mr Benli had not used that remedy.

#### Article 6 § 1

As to the alleged lack of independence and impartiality of the Assize Court, the Court did not note any appearance of a violation of the rights and freedoms guaranteed by the Convention. That complaint was therefore ill-founded and had to be rejected. As to the complaint about the delay in the decision to release him, the Court considered that this complaint was the same as that under Article 5.

*The decision is available only in French.*

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