



Pre-trial detention in the “Balyoz” investigation: another international body had already ruled on the applicants’ complaints

In its decision in the case of [Doğan and Çakmak v. Turkey](#) (applications nos. 28484/10 and 58223/10) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The case concerns the pre-trial detention of Mr Doğan and Mr Çakmak in the context of the *Balyoz* criminal investigation against them on charges of planning a military coup d’état between 2002 and 2003.

The Court found that the complaints submitted by Mr Doğan and Mr Çakmak were essentially the same as those submitted to the Working Group on Arbitrary Detention of the United Nations Human Rights Council, which had issued an opinion on this matter on 1 May 2013. Pointing out that the Convention excluded from the Court’s remit any application which had already been examined by an international body, the Court declared the applications inadmissible.

Principal facts

The applicants, Çetin Doğan and Cem Aziz Çakmak, are Turkish nationals who were born respectively in 1940 and 1963 and live in Istanbul (Turkey).

In 2010 the Istanbul public prosecutor’s office opened a criminal investigation against a number of presumed members of the criminal organisation “Balyoz”, who were all officers or civil servants connected with the armed forces. They were accused of planning a military *coup d’état* between 2002 and 2003 seeking the overthrow of the elected government.

Between 2010 and 2011 the Istanbul public prosecutor brought criminal proceedings against 365 individuals, including Mr Doğan and Mr Çakmak, accusing them of taking part in the plan. They denied the accusations. In particular, they challenged the authenticity of CDs produced in evidence by the public prosecutor, arguing that the digital material on which the accusations were supposed to be based had in fact been created or falsified in order to incriminate many army officers and justify their dismissal.

During the proceedings they were held in pre-trial detention. Mr Doğan was held for a total of one year, 10 months and 25 days, and Mr Çakmak for 18 months and 26 days. Their applications for release were rejected by the domestic courts.

In 2015 the applicants were acquitted by the Anadolu Assize Court, which found that the evidence in the file had been falsified. The court also decided to identify those presumed responsible for the forgery.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 26 May 2010 and 3 September 2010.

Relying on Article 5 § 4 (right to a speedy decision on the lawfulness of detention), Mr Doğan and Mr Çakmak complained that they had not been able to challenge effectively the lawfulness of their pre-trial detention, alleging that the courts had denied their requests for release, in breach of the equality of arms principle.

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

Robert **Spano** (Iceland), *President*,
 Işıl **Karakaş** (Turkey),
 Julia **Laffranque** (Estonia),
 Valeriu **Griţco** (the Republic of Moldova),
 Marko **Bošnjak** (Slovenia),
 Ivana **Jelić** (Montenegro),
 Arnfinn **Bårdsen** (Norway),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 5 § 4 (right to a speedy decision on the lawfulness of detention)

On 1 May 2013 the Working Group on Arbitrary Detention of the United Nations Human Rights Council issued an opinion (no. 6/2013) on the subject of 250 individuals – including Mr Doğan and Mr Çakmak – who were held in pre-trial detention in connection with the “*Balyoz*” investigation.

The Court noted that the complaints submitted to it by Mr Doğan and Mr Çakmak were essentially the same as those which had led to opinion no. 6/2013.

In that connection, the Court pointed out that Article 35 § 2 (b) of the Convention, which sought to avoid multiplying international procedures in the same cases, excluded the admissibility of an application which had previously been examined by an international body. That rule applied regardless of the date on which those proceedings had started, the key factor being the prior existence of a decision on the merits at the time the Court examined the case.

The Court also noted that the UN Working Group had found in its opinion that the depriving of Mr Doğan and Mr Çakmak of their liberty had been arbitrary as it was at odds with Articles 9 and 14 of the International Covenant on Civil and Political Rights and Articles 9, 10 and 11 of the Universal Declaration of Human Rights.

Consequently, given that the facts, the parties and the complaints were the same, the Court rejected the applications in accordance with Article 35 § 2 (b) of the Convention.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.