



## Harshness of the conviction and detention of a minor following his participation in a demonstration and throwing stones at the police

In today's **Chamber judgment**<sup>1</sup> in the case of **Gülcü v. Turkey** (application no. 17526/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights**

The case concerned in particular the conviction and detention of a minor for two years for membership of the PKK (Kurdish Workers' Party), an illegal armed organisation, after he participated in a demonstration held in Diyarbakır in July 2008 and threw stones at police officers. He was also convicted of disseminating propaganda in support of a terrorist organisation and resistance to the police.

The Court first of all noted that, even if Mr Gülcü had been convicted of an act of violence against police officers, there was nothing to suggest that when joining the demonstration, he had had any violent intentions. Furthermore, it took issue with the fact that the domestic courts had failed to provide any reasons for his conviction of membership of the PKK or of disseminating propaganda in support of a terrorist organisation. Moreover, it also noted the extreme severity of the penalties – a total of seven years and six months' imprisonment – imposed on Mr Gülcü, only 15 years old at the time of the incident, sentences that he partly served for a period of one year and eight months, after having been detained pending trial for almost four months. The Court therefore concluded that, given Mr Gülcü's young age, the harshness of the sentences imposed was disproportionate to the legitimate aims of preventing disorder and crime and the protection of the rights and freedoms of others.

### Principal facts

The applicant, Ferit Gülcü, is a Turkish national who was born in 1992 and lives in Diyarbakır (Turkey).

In July 2008 Mr Gülcü, then aged 15, was arrested and remanded in custody when identified in a video recording throwing stones at the police during a demonstration which had taken place in Diyarbakır to protest about the conditions of detention of Abdullah Öcalan, the leader of the PKK.

In the ensuing domestic proceedings he accepted that he had chanted the slogan 'Long live President Öcalan' and had thrown stones at the police when they intervened, but stated that he had no connection with the PKK and had only been caught up in the crowd during the demonstration. He was however subsequently convicted in November 2008 by the Diyarbakır Assize Court of membership of the PKK, disseminating propaganda in support of a terrorist organisation and resistance to the police.

Mr Gülcü, who spent three months and 20 days in custody before being convicted, was given a total prison sentence of seven years and six months in respect of all of the charges. He served part of that

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

sentence, namely one year and eight months, before being released in July 2010 when it was decided to re-assess his case in view of certain amendments to the law in favour of juvenile offenders.

His case was thus re-assessed by Diyarbakır Juvenile Court which, in a judgment of December 2012, acquitted him of the charge of membership of a terrorist organisation, but convicted him of disseminating propaganda in support of a terrorist organisation, participation in a demonstration and resistance to and obstruction of the security forces. The pronouncement of the criminal convictions was suspended on the condition that he did not commit another offence within the next three years.

## Complaints, procedure and composition of the Court

Mr Gülcü complained about his conviction for having participated in a demonstration and alleged that the combined sentence imposed on him had been disproportionate. The case was examined under Article 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 16 March 2010.

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

Julia **Laffranque** (Estonia), *President*,  
 Işıl **Karakaş** (Turkey),  
 Nebojša **Vučinić** (Montenegro),  
 Valeriu **Griţco** (the Republic of Moldova),  
 Ksenija **Turković** (Croatia),  
 Jon Fridrik **Kjølbro** (Denmark),  
 Georges **Ravarani** (Luxembourg),

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

## Decision of the Court

Firstly, even if Mr Gülcü had been convicted of an act of violence against police officers, there was nothing to suggest that when joining the demonstration, he had had any violent intentions; nor was there anything in the case file to suggest that the organisers of the demonstration had intended anything other than a peaceful assembly. The Court therefore accepted that Mr Gülcü could enjoy the protection of Article 11 of the Convention.

Furthermore, even if he had been released from prison in July 2010 and the Juvenile Court's judgment was more favourable to him than the Assize Court's original judgment against him, Mr Gülcü had nonetheless been deprived of his liberty for more than two years pending the criminal proceedings against him, without there ever having been any acknowledgment or redress for the alleged breach of his right to freedom of assembly. The re-assessment of his convictions and sentences had not therefore made Mr Gülcü lose his victim status.

As a result, the Court considered that Mr Gülcü's criminal convictions for membership of the PKK, dissemination of propaganda in support of that organisation and resistance to the police, as well as his prison sentences and detention for two years, had constituted an interference with his right to freedom of assembly. Moreover, that interference had had a legal basis and it had pursued the legitimate aim of preventing disorder and crime and the protection of the rights and freedoms of others.

However, the Court took issue with the Assize Court's failure to provide reasons either for Mr Gülcü's conviction of membership of the PKK or for finding him guilty of disseminating

propaganda in support of a terrorist organisation, in breach of the procedural safeguards inherent in Article 11 to provide reasons for an interference with the right to freedom of association and assembly. It reiterated in that connection that the obligation to provide reasons for a decision was an essential procedural safeguard under Article 6 § 1 (right to a fair trial) of the Convention to show parties that their arguments have been heard, giving them the possibility of objecting or appealing against the decision, and serving to justify to the public why a particular judicial decision had been made.

Moreover, the Court noted the extreme severity of the penalties for membership of the PKK and dissemination of propaganda – a total of four years, eight months and 20 days' imprisonment – imposed on Mr Gülcü, only 15 years old at the time of the incident. The domestic courts had, however, failed to take his young age into consideration both when remanding him in custody and when passing sentence. Nor did the Government argue that alternative methods to detention had been considered first or that Mr Gülcü's detention had been used only as a last resort, in accordance with its obligations under both domestic law and a number of international conventions (most notably, Article 37 of the UN Convention on the Rights of the Child and General Comment No. 10 (2007), according to which the arrest, detention or imprisonment of a child can be used only as a measure of last resort and for the shortest appropriate period of time).

As to the part of the sentence imposed for the stone-throwing incident (namely, two years, nine months and ten days), the Court accepted that the authorities had broader discretion ("a wider margin of appreciation") when examining the need for an interference with the Article 11 rights of those involved in such reprehensible acts. However, given Mr Gülcü's age, the harshness of the sentence imposed could not be considered proportionate to the legitimate aims pursued, namely preventing disorder and crime and the protection of the rights and freedoms of others.

The Court therefore concluded that Mr Gülcü's criminal convictions for membership of the PKK, dissemination of propaganda in support of the PKK and resistance to the police as well as the prison sentences imposed on him and his detention for two years, had not been "necessary in a democratic society".

#### Just satisfaction (Article 41)

Mr Gülcü did not submit a claim for just satisfaction within the time-limit and the Court therefore considered that there was no call to make an award on that account.

*The judgment is available only in English.*

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