



Judgments of 27 October 2020

The European Court of Human Rights has today notified in writing five judgments¹:

two Chamber judgments are summarised below;

separate press releases have been issued for three other Chamber judgments in the cases of *M.A. v. Belgium* (application no. 19656/18), *Reist v. Switzerland* (no.39246/15), and *Kılıçdaroğlu v. Turkey* (no.16558/18);

The judgments in French are indicated with an asterisk (*).

Alpergin and Others v. Turkey (application no. 62018/12)*

The applicants are 24 Turkish nationals. At the relevant time they were members and leaders of unions affiliated to the Confederation of Public Service Workers Union.

The case concerned the pre-trial detention of the applicants on suspicion of membership of an illegal organisation (the Union of Kurdish Communities, Koma Civakên Kurdistan (KCK)).

The applicants were arrested and taken into custody on different dates in 2012, on suspicion of membership of the PKK (Kurdistan Workers Party, an illegal armed organisation) as well as the KCK. The prosecutor's office questioned them, among other things, about their trade union activities and about some speeches they had made at demonstrations and meetings.

As a result of these interviews, the applicants were remanded in custody on the ground that the offence of which they were accused (membership of an illegal organisation) was one of those provided for in Article 100 § 3 of the Code of Criminal Procedure and that, in such situations, pre-trial detention was justified in the light of strong presumptions.

The applicants subsequently submitted applications for release, which were rejected until they were finally released in 2013. One of them (İzzettin Alpergin) lodged an application with the Constitutional Court, which was rejected in 2015.

Criminal proceedings were brought against the applicants in 2013. According to the file, these proceedings were pending before the Ankara Assize Court in November 2017.

Arguing that there had been no reason to place them in pre-trial detention, the applicants complained of a breach of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

Violation of Article 5 § 1

Just satisfaction: 5,000 euros (EUR) (non-pecuniary damage) and EUR 1,000 (costs and expenses) to Mr İzzettin Alpergin

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's 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. Under Article 28 of the Convention, judgments delivered by a Committee are final.

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

Ayetullah Ay v. Turkey (nos 29084/07 and 1191/08)

The applicant, Ayetullah Ay, is a Turkish national who was born in 1980 and is currently serving a sentence in Kırıkkale.

The case concerned criminal proceedings brought against him in connection with activities and attacks by the Kurdistan Workers' Party (PKK), an illegal organisation.

Mr Ay was taken into police custody in October 2004. Two indictments were filed against him, in February 2005 and January 2006, for seeking to destroy the unity of the Turkish State and to remove part of the country from the State's control.

The first indictment accused him of being involved in three incidents between June and September 2004: first, the killing of two police officers at a police checkpoint; second, an armed attack against a battalion command post in Hani; and third, forcing a farmer, M.Ç., to give him his mobile telephone and identity card. The investigating authorities had found the mobile's SIM card inside a telephone-operated bomb used by the PKK for an attempted attack during the Victory Day parade held in August 2004, while the mobile itself had allegedly been found in a search of the applicant's apartment in Istanbul following his being taken into custody.

The second indictment was brought in January 2006, following notes found on the applicant during a body search in prison, which led to a second search of his apartment, and the discovery of plastic explosives, bomb-making equipment and a handgun.

During the applicant's trial, in May 2006, the prosecutor referred to another mobile phone, purchased by the applicant using M.Ç.'s ID, and requested that the applicant also be convicted for the attempted bombing of the Victory Day Parade.

In April 2007 the trial court held that there was insufficient evidence in the case file to establish the applicant's guilt in the killing of the two police officers and the armed attack in Hani, but found him guilty as charged of the two incidents involving M.Ç.'s stolen telephone and ID and the other mobile phone and SIM card used in the attempted Victory Day attack. Among other evidence, the courts relied on the notes allegedly discovered during the prison body search and the second search of his apartment.

The applicant was sentenced to aggravated life imprisonment without the possibility of parole.

The applicant denied the accusations against him throughout the proceedings. In particular, in an appeal of January 2008, he argued that his conviction had been based on unilateral allegations that had failed to take into account his requests, objections, evidence and witnesses. He further contended that the judgment was ambiguous as it did not indicate with sufficient clarity whether he had also been found guilty in respect of the attempted Victory Day attack. In February 2008, the Court of Cassation upheld the trial court's judgment.

Mr Ay brought several complaints under Article 6 (right to a fair trial) of the Convention, essentially related to the way the evidence against him had been taken and examined. In particular he complained about allegedly flawed collection of evidence, the resulting use of such unreliable and, according to him, manufactured evidence, and the domestic courts' failure to use procedural safeguards vis-à-vis such evidence and to address his objections. He also alleged further unfairness because the grounds for the accusations against him had changed after the lodging of the indictments, without any opportunity for him to prepare an additional defence.

Violation of Article 6 §§ 1 and 3

Just satisfaction: EUR 5,500 (costs and expenses)

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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.