



Arbitrary detention on suspicion of belonging to a criminal organisation

In today's two **Chamber** judgments¹ in the cases of [Mergen and Others v. Turkey](#) (applications nos. 44062/09, 55832/09, 55834/09, 55841/09 and 55844/09) and [Ayşe Yüksel and Others v. Turkey](#) (nos. 55835/09, 55836/09 and 55839/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

The cases concerned the arrest, placement in police custody and pre-trial detention of members of the Association for Supporting Contemporary Life (*Çağdaş Yaşamı Destekleme Derneği* – ÇYDD – an association that awards grants to students, especially with the aim of promoting education for girls) on suspicion of belonging to a criminal organisation called Ergenekon, whose presumed members were accused of having engaged in activities aimed at overthrowing the Government by force and violence, and of planning a military coup.

The Court found in particular that the Government had not provided any evidence of a link between the applicants themselves and the *Ergenekon* organisation. It therefore held that the interpretation and application of the legal provisions relied on by the domestic authorities had been so unreasonable as to render the applicants' deprivation of liberty unlawful and arbitrary.

Principal facts

The applicants, Tijen Mergen, Şükriye Varlık, Perran Yorgancıgil, Belkıs Bağ and Nursel Gültür (case of *Mergen and Others*) and Ayşe Yüksel, Halime Filiz Meriçli and Fatma Nur Gerçel (case of *Ayşe Yüksel and Others*), are Turkish nationals who were born in 1959, 1947, 1950, 1949, 1950, 1958, 1952 and 1946 respectively and live in Istanbul (Turkey).

On 12 April 2009 the Istanbul Assize Court ordered a search of the homes and workplaces of individuals suspected of belonging to the illegal organisation Ergenekon, whose presumed members were accused of having engaged in activities aimed at overthrowing the government by force and violence, and of planning a military coup.

On 13 April 2009 the homes and/or workplaces of Ms Mergen, Ms Varlık, Ms Yorgancıgil, Ms Bağ, Ms Gültür, Ms Yüksel, Ms Meriçli and Ms Gerçel were searched, together with branch offices of the Association for Supporting Contemporary Life (ÇYDD), an association founded in 1989 that was attached to the principle of secularism and promoted education for girls, awarding grants to schoolchildren and university students and seeking, on a political level, to implement the principles of Mustafa Kemal Atatürk.

During the searches the applicants were informed that they were accused of being members of the illegal Ergenekon organisation. They were taken into police custody on the same day.

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.

At the time of the events, Ms Mergen was a member of the board of directors of the media group Doğan Medya Grubu, which provided financial support for the “Daddy, send me to school” campaign run by the ÇYDD; Ms Varlık, Ms Yorgancıgil and Ms Bağ had at some point chaired one of the branches of the ÇYDD; Ms Gültür worked for the association as a volunteer; Ms Yüksel was a professor of public health at the University of Van and a director of the ÇYDD; and Ms Meriçli and Ms Gerçel were respectively a professor of pharmacy and a lawyer, and were members of the ÇYDD’s executive board.

During questioning at the police station, Ms Mergen was asked about the ÇYDD’s activities, and in particular about other suspects in the Ergenekon criminal investigation. The police officers mentioned the names of 250 individuals suspected of having links with the illegal Ergenekon organisation and asked her whether she knew them. Ms Mergen stated that she had known one of the individuals concerned while at university but had had no contact with that person for years; she added that she knew five of the other individuals named by the police as they worked for the ÇYDD and she had known them from the “Daddy, send me to school” campaign. Ms Varlık, Ms Yorgancıgil, Ms Bağ and Ms Gültür availed themselves of their right to remain silent. On 15 April 2009 Ms Mergen, Ms Varlık, Ms Yorgancıgil, Ms Bağ and Ms Gültür were questioned by the public prosecutor, in particular about the eligibility criteria for students wishing to obtain support from the association and about any information they could provide on other suspects in the Ergenekon investigation. The public prosecutor ordered their release later that day, after the questioning. On 2 November 2010 the public prosecutor’s office discontinued the proceedings, finding that there was no evidence that they were members of an illegal organisation.

Ms Yüksel, Ms Meriçli and Ms Gerçel were questioned by the public prosecutor on 16 April 2009, in particular about the ÇYDD’s activities and the eligibility criteria for students wishing to obtain support from it. The public prosecutor informed them that he had evidence against them, in the form of an anonymous e-mail reporting them and documents entitled “Ergenekon” and “Lobi” setting out the strategy of the Ergenekon organisation as regards non-governmental organisations and the role of the latter in planning a coup. Ms Yüksel, Ms Meriçli and Ms Gerçel were unable to inspect the evidence in the file on the investigation as it was classified. On 17 April 2009 a judge of the Istanbul Assize Court ordered the release of Ms Meriçli and Ms Gerçel and placed Ms Yüksel in pre-trial detention. She was released on 24 April 2009 after the Istanbul Assize Court allowed an appeal by her.

On 25 November 2010 the public prosecutor decided to bring criminal proceedings against eight members of the ÇYDD, including Ms Yüksel, Ms Meriçli and Ms Gerçel, accusing them in particular of securing grants for students who supported the PKK (Workers’ Party of Kurdistan) terrorist organisation with a view to placing them in the service of the Ergenekon organisation, and of seeking to arrange meetings between students receiving ÇYDD grants and young army officers in order to obtain secret information relating to State security. In a judgment of 2 October 2015 the Anadolu Assize Court acquitted all the members of the ÇYDD and the other defendants, on the grounds that they had not committed any offence and that part of the evidence had been forged.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security) of the Convention, Ms Mergen, Ms Varlık, Ms Yorgancıgil, Ms Bağ, Ms Gültür, Ms Yüksel, Ms Meriçli and Ms Gerçel complained that there had been no evidence of any plausible reasons for suspecting them of belonging to an illegal organisation, or of any grounds for taking them into police custody. Ms Yüksel also complained about her pre-trial detention for the same reasons.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Ms Varlık also complained about the conditions in which she had been held in police custody. Under Article 5 § 2 (right to be informed promptly of any charge) and Article 6 (right to a fair hearing), she alleged that

she had not been informed of the reasons for taking her into police custody. Lastly, relying on Article 6 § 2 (presumption of innocence), she complained that there had been a breach of the principle of presumption of innocence on account of photographs taken of her while in police custody.

The applications were lodged with the European Court of Human Rights on 11 August 2009 (Ms Mergen) and 8 October 2009 (Ms Varlık, Ms Yorgancıgil, Ms Bağ, Ms Gültür, Ms Yüksel, Ms Meriçli and Ms Gerçel).

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

Julia **Laffranque** (Estonia), *President*,
 Işıl **Karakaş** (Turkey),
 Paul **Lemmens** (Belgium),
 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

Article 5 § 1 (right to liberty and security)

The Court observed, in the light of the Government's observations and the material in the case file, that the suspicions against the applicants appeared to be based on acts relating, firstly, to work they had carried out together with certain defendants in the Ergenekon case on behalf of or in collaboration with the ÇYDD association and, secondly, to their involvement in certain political demonstrations. The Court also noted that the ÇYDD was a lawful organisation which was still carrying on its activities.

The Court was not persuaded by the Government's argument that the applicants' deprivation of liberty had been compatible with Article 5 § 1 of the Convention in that they had links with the ÇYDD association, some of whose members and leaders were named in the reference documents concerning the Ergenekon organisation; the Government had not provided any evidence of a link between the applicants themselves and the Ergenekon organisation.

In addition, the Court found that the allegations that certain members of the ÇYDD association were also part of an illegal organisation – and as regards the case of *Ayşe Yüksel and Others*, that one of the students receiving a grant from the association was suspected of being a member of another illegal organisation – could not be regarded as sufficient to satisfy an objective observer that the applicants themselves might have committed the offence of belonging to an illegal organisation. The Court further noted that on 2 October 2015 the Istanbul Assize Court had acquitted all the members of the ÇYDD association against whom criminal proceedings had been brought, holding that they had not committed any offence.

Accordingly, the Court considered that the interpretation and application in the present case of the legal provisions relied on by the domestic authorities had been so unreasonable as to render the deprivation of liberty of Ms Mergen, Ms Varlık, Ms Yorgancıgil, Ms Bağ, Ms Gültür, Ms Yüksel, Ms Meriçli and Ms Gerçel unlawful and arbitrary. It therefore held in both judgments that there had been a violation of Article 5 § 1 of the Convention.

Other Articles

The Court rejected the other complaints raised by Ms Varlık under Article 3, Article 5 § 2 and Article 6 § 2 as being manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the following sums to the applicants:

2,000 euros (EUR) each to Ms Mergen, Ms Varlık, Ms Yorgancıgil, Ms Bağ and Ms Güler in respect of non-pecuniary damage;

EUR 4,000 each to Ms Meriçli and Ms Gerçel in respect of non-pecuniary damage; and

EUR 6,000 to Ms Yüksel in respect of non-pecuniary damage.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.