



Pre-trial detention of the mayor of a city in south-east Turkey was unjustified and breached his right to freedom of expression

The case concerned the initial and continued detention of a former mayor of Siirt, an urban area in south-east Turkey, on account of his activities and statements. The applicant had been elected in March 2014 as an opposition-party candidate. The authorities accused him of disseminating propaganda in favour of a terrorist organisation (PKK, Kurdistan Workers' Party; an illegal armed organisation) and of being a member of that organisation.

In today's **Chamber judgment**¹ in the case of [Tuncer Bakırhan v. Turkey](#) (application no. 31417/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 3 (right to liberty and security) of the European Convention on Human Rights, and

a violation of Article 10 (freedom of expression).

The Court noted that the applicant had been imprisoned for about two years and 11 months, of which more than two years and eight months were spent in pre-trial detention. It held that there had not been sufficient reasons to order the applicant's detention pending trial.

The Court also noted that the applicant had been the mayor of a city and elected to represent an opposition party. In the Court's view, the activities for which the applicant was criticised had been clearly political in nature. Having regard to the fundamental nature of free political debate in a democratic society, the Court could perceive no compelling reason justifying the seriousness of the measure in question. It considered that the fact of detaining the applicant, an elected representative of the people, for such a period on account of his political activities constituted an interference that was manifestly disproportionate to the legitimate aims pursued. It followed that the detention in question had not been necessary in a democratic society.

Principal facts

The applicant, Tuncer Bakırhan, is a Turkish national who was born in 1970. When the application was lodged, he was imprisoned in Bolu (Turkey).

At the local elections of 30 March 2014, Mr Bakırhan was elected mayor of Siirt, having stood as a candidate for the BDP party (*Barış ve Demokrasi Partisi*, "Peace and Democracy Party"). Following his placement in pre-trial detention, he was removed from his post. He was released on 11 October 2019.

The authorities accused Mr Bakırhan of disseminating propaganda in favour of a terrorist organisation (PKK) and of being a member of that organisation. In October 2019 he was sentenced to 10 years and 18 days' imprisonment by the Siirt Assize Court. The criminal proceedings against him are still pending.

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.

Complaints, procedure and composition of the Court

Relying on Article 5 § 3 (right to liberty and security), Mr Bakırhan complained about his pre-trial detention, which he considered to have been arbitrary.

Relying on Article 10 (freedom of expression), he complained that he had been placed and maintained in pre-trial detention on account of public statements made by him or for having attended certain gatherings.

The application was lodged with the European Court of Human Rights on 10 May 2019.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Carlo **Ranzoni** (Liechtenstein),
Valeriu **Grițco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Turkey),

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

Decision of the Court

[Article 5 § 3 \(right to liberty and security\)](#)

The Court noted that the magistrate's court had based its decision to order the applicant's initial detention not only on the activities of which he was accused, but also (a) on the nature of the offence of membership of an armed organisation (Article 314 § 2 of the Criminal Code) and the fact that this offence was one of the so-called "catalogue offences" (listed in Article 100 § 3 of the Code of Criminal Procedure), and (b), the risk of tampering with evidence and the existence of concrete evidence indicating that the suspect could abscond. The court held that detention appeared to be a proportionate measure at that stage, and that judicial supervision would be insufficient given that the minimal penalty in the event of conviction was five years' imprisonment.

The Court assessed the sufficiency of these reasons and noted, among other points, as follows. In a decision such as this, concerning the placement in pre-trial detention of the mayor of a city, and in the absence of specific factual or individual evidence, it was not convinced by the argument that the applicant was likely to abscond. Given that the prosecutor's office had filed its bill of indictment less than a month after the applicant's arrest, the Court was not convinced that a reason regarding the state of the evidence or a hypothetical risk of tampering with the evidence was such as to have justified the applicant's placement in pre-trial detention on 16 November 2016. Lastly, it noted that the domestic judicial authorities had (i) ignored the applicant's arguments to the effect that he was a mayor, had a permanent residence and had not been evading justice; and (ii) failed to give consideration to the possibility of imposing alternative measures to pre-trial detention or explained how such measures could not have been used in the applicant's situation. Thus, the reasons put forward by the magistrate's court contained no grounds for considering that the applicant's pre-trial detention had been imposed, in the light of his particular situation, as a measure of last resort, as required by the domestic law.

The Court found that there had not been sufficient reasons to order the applicant's detention pending trial. With regard to the decisions on the applicant's continued pre-trial detention, the Court saw no reason to depart from its findings concerning the initial pre-trial detention. In this connection, it considered it useful to emphasise that the burden of proof in these matters should

not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting his or her release. In addition, it was not established that the failure to observe the requirements set out above could be justified by the Turkish derogation. It followed that there had been a violation of Article 5 § 3 of the Convention on account of the lack of sufficient reasons for the applicant's initial and continued pre-trial detention.

Article 10 (freedom of expression)

The Court considered that the applicant's initial and continued pre-trial detention constituted an interference with the exercise of his right to freedom of expression. This interference had a legal basis, namely the provisions of the Criminal Code and the Code of Criminal Procedure, and it pursued legitimate aims (the protection of national security and public safety and the prevention of disorder and crime).

With regard to the necessity of the interference in a democratic society, the Court noted that the applicant had been mayor of a city, elected as the candidate of an opposition party. While freedom of expression was important for everybody, it was especially so for an elected representative of the people. He or she represented the electorate, drew attention to their preoccupations and defended their interests. Accordingly, breaches of the freedom of expression of an elected representative, such as the applicant, called for the closest scrutiny on the part of the Court.

The Court noted that the applicant had been imprisoned for about two years and 11 months, of which more than two years and eight months had been spent in pre-trial detention. In the Court's view, the activities for which the applicant had been criticised were clearly political in nature. Some of his statements could have been interpreted in several ways, given that there had been extreme tension at the relevant time in the city of which he had been mayor. As mayor, the applicant must have been aware of this circumstance. In this regard, it was crucially important that politicians should avoid making comments in their speeches liable to encourage a climate of social confrontation or to exacerbate an already explosive situation. However, regard being had to the fundamental nature of free political debate in a democratic society, the Court could perceive no compelling reason that could justify the seriousness of the measure complained of. It considered that the fact of detaining the applicant, an elected representative of the people, for such a period of time on account of his political activities constituted an interference that was manifestly disproportionate to the legitimate aims pursued by Article 10 of the Convention.

In consequence, the Court considered that the contested pre-trial detention had not been proportionate to the legitimate aims pursued and, accordingly, had not been necessary in a democratic society. Equally, the measure in question could not be said to have been strictly required by the special circumstances of the state of emergency. There had thus been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

The judgment 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.