



Violation in lengthy pre-trial detention and prison sentences for involvement in non-violent, albeit disruptive, courthouse protest

In today's **Chamber judgment**¹ in the case of [Ekrem Can and Others v. Turkey](#) (application no. 10613/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 and 3 (c) (right to a fair trial/right to legal assistance of own choosing) of the European Convention on Human Rights in respect of three of the applicants; and

a violation of Article 11 (freedom of assembly and association) in respect of all the applicants.

The case concerned the applicants' convictions for having staged a protest in a courthouse, during which they chanted slogans, displayed a banner, threw leaflets around, and locked themselves in one of its corridors, thereby leading to the cancellation of some of the hearings scheduled for that day. They were all sentenced to one year and eight months' imprisonment, with additional convictions and sentences for some for being members of an armed terrorist organisation and/or possessing and using explosive materials, despite there being no evidence of any violent intention on their part and no weapons or any other dangerous material found on them at the time of their arrest.

The Court found, in particular, that there was no justification for the particularly severe prison sentences on account of their behaviour at the courthouse. In addition, their pre-trial detention had been overly long. Although sanctions for their actions might have been warranted, such lengthy prison sentences had been disproportionate. The interference with their right to freedom of assembly had not been "necessary in a democratic society".

The Court also found that the domestic courts' failure to examine the conditions surrounding the alleged waiver of three of the applicants' right to a lawyer while in police custody – and the use that had been made of evidence given in the absence of a lawyer to convict them – had rendered the trial as a whole unfair.

Principal facts

The applicants are fifteen Turkish nationals who were born between 1978 and 1985 and live in Istanbul, Tekirdağ, Edirne and Kocaeli.

On the morning of 18 November 2003, they and eight other individuals entered the corridor of the third floor of the Sultanahmet Courthouse in Istanbul, where the registries and hearing rooms of several courts were located. The group began chanting slogans concerning the fact that Abdullah Öcalan was being held in isolation in İmralı Prison.

Some members of the group closed the door to the corridor and barred themselves in it by toppling and placing metal cupboards behind the door. They then hung a large banner from one of the windows and threw leaflets outside. The banner read: "A democratic solution to the Kurdish problem; İmralı Prison must be shut down" (*"Kürt sorununa demokratik çözüm, İmralı Cezaevi"*).

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.

kapatılsın”), and “Youth Initiative for Social Peace” (“*Toplumsal Barış için Gençlik Girişimi*”). The leaflets contained critical remarks concerning the policies of the governing Justice and Development Party. Nobody was injured and nothing damaged. The protest lasted for about an hour until the police broke in and arrested them.

At the start of their custody, all but one of the applicants chose to give statements without a lawyer present. Two exercised their right to remain silent. The printed statements indicated that they were suspected of, amongst other things, acting on behalf of the PKK (the Workers’ Party of Kurdistan), an illegal organisation. All those who answered questions acknowledged that they had wilfully participated in the protest following decisions made by the PKK council. Many also acknowledged that they had taken part in other protests organised in support of the PKK.

Two of the applicants subsequently met with lawyers. Two days later, they had to take part in a photo “identity parade” (*fotoğraftan teşhis*) and, with one further applicant, in a reconstruction of events (*yer gösterme*) without the assistance of a lawyer. They acknowledged that, on previous occasions, they had thrown Molotov cocktails at police vehicles, stones at public buses, and had attacked a bank.

According to medical reports, all but three of the applicants presented signs of physical trauma, either at the beginning or at the end of their custody.

That same month, the applicants gave statements to the public prosecutor in the presence of their lawyers and were questioned by a judge of the Istanbul State Security Court. All but one of the applicants contested the version of events and the additional offences to which they had confessed when interviewed by the police. The lawyers of four of the applicants stated that they had not been allowed to be with their clients during the police interviews or during the reconstruction. At the end of the questioning by the judge, all of the applicants were placed in pre-trial detention.

The following month, the Istanbul public prosecutor filed a bill of indictment and charged four of the applicants principally with being members of a terrorist organisation and possessing and using explosive materials, and the rest of the applicants with aiding and abetting a terrorist organisation. In addition, they were all charged with “interrupting public services through coercion, distortion or the commission of unlawful acts”.

When the applicants gave evidence in April 2004, they submitted that they had originally planned to make a press statement in front of the courthouse, but that they had gone into the building because it was raining. All those who had given statements to the police retracted them, asserting that they had been subjected to pressure or ill-treatment while in police custody. Moreover, one denied any affiliation with the PKK and denied the charges, reiterating that he had become caught up in the protest merely by accident.

In August 2005, the trial court ordered the release of all but the four applicants charged with being members of a terrorist organisation and using explosive materials.

The Istanbul Assize Court delivered its judgment in December 2006 and found all the applicants guilty of “interrupting public services through coercion, distortion or the commission of unlawful acts”, and sentenced each of them to one year and eight months’ imprisonment on that account. In addition, the four applicants who had been kept in detention were found guilty of being members of an armed terrorist organisation, and were each sentenced to an additional six years and three months for their actions within the courthouse and certain other activities recorded in their statements and during the reconstruction, such as procuring new members for the PKK and throwing Molotov cocktails. Moreover, the trial court gave a further conviction to three of those four on counts of possessing and using explosive materials and awarded fines and additional terms of up to eight years and four months’ imprisonment. All other applicants were also found guilty of aiding and abetting an armed gang, and were sentenced to a further three years and nine months’ imprisonment.

In March 2009, following an appeal by the applicants, the Court of Cassation upheld some of the convictions but quashed the one-year-and-eight-month conviction and sentence of all the applicants and the convictions of three applicants for possessing and using explosive materials; after which the case file was accordingly remitted to the trial court.

The applicants lodged their application with the European Court while the proceedings were still pending before the trial court.

On 30 June 2010 the Istanbul Assize Court once again convicted and sentenced all the applicants to one year and eight months' imprisonment. It also convicted one of the applicants on two counts of using explosive materials, and sentenced him to an additional ten months' imprisonment. Two applicants were similarly convicted and sentenced to an additional five months each for throwing Molotov cocktails.

In April 2012 the Court of Cassation upheld the first-instance court's judgments.

Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the European Convention, the applicants complained that they had been intimidated for exercising their right to freedom of peaceful assembly and for making a press statement. They also complained under Article 6 §§ 1 (right to a fair hearing) and 3 (c) (right to legal assistance of own choosing) that they had not been allowed to benefit from legal assistance when being questioned by the police during the preliminary investigation stage.

The application was lodged with the European Court of Human Rights on 3 February 2010.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
 Carlo **Ranzoni** (Liechtenstein),
 Branko **Lubarda** (Serbia),
 Pauliine **Koskelo** (Finland),
 Jovan **Ilievski** (North Macedonia),
 Gilberto **Felici** (San Marino),
 Saadet **Yüksel** (Turkey),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

Decision of the Court

Article 11 taken with Article 10

The Court noted that, as a result of the protest, a number of civilians and court officials had been confined for approximately one hour inside the offices and hearing rooms and had been affected by the tear gas that the police had used when dealing with the incident. Moreover, the protest had negatively impacted the orderly provision of judicial services, an essential public service. However, there had been no violent intent or violent conduct on the part of the applicants.

The Court reiterated that a peaceful demonstration should not, in principle, be subject to the threat of a criminal sanction and notably to deprivation of liberty. In this case, the Court could not discern, including from the domestic courts' decisions, any justification for sentencing each of the applicants to such a particularly severe prison sentence on account solely of their behaviour at the courthouse. Although sanctions for the applicants' actions might have been warranted by the demands of public order, such lengthy prison sentences had not been proportionate to the aims pursued. In addition,

all the applicants had been held in pre-trial detention for a very long period – at least one year, eight months and fourteen days.

The Court found, therefore, that the interference with their right to freedom of assembly had not been “necessary in a democratic society”. There had accordingly been a violation of Article 11.

Article 6 §§ 1 and 3 (c)

The Court found, in particular, that the domestic courts’ failure to examine the conditions surrounding the alleged waiver of three of the applicants’ right to a lawyer while in police custody and the use that had been made of evidence given in the absence of a lawyer to convict them, without observing the necessary procedural safeguards, had rendered the trial as a whole unfair.

There had therefore been a violation of Article 6 §§ 1 and 3 (c) in respect of three of the applicants.

Just satisfaction (Article 41)

The Court held that Turkey was to pay each applicant 7,500 euros (EUR) in respect of non-pecuniary damage for the violation found under Article 11 and EUR 2,000 jointly in respect of costs and expenses.

The judgment is available only in English.

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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.