



Breach of the right to presumption of innocence in a pending investigation into drug trafficking

In today's Chamber judgment in the case of [Ürfi Çetinkaya v. Turkey](#) (application no. 19866/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights concerning the allegation that Mr Çetinkaya's state of health was incompatible with detention;

a violation of Article 5 § 3 (right to liberty and security) of the European Convention on account of the excessive duration of Mr Çetinkaya's detention; and

a violation of Article 6 § 2 (presumption of innocence).

The case notably concerned the infringement by the authorities of Ürfi Çetinkaya's right to be presumed innocent on account of a press release issued by the Gendarmerie General Command referring to him by name and describing him as an "international drug trafficker". The Court criticised in particular the use of the term "international drug trafficker", which had been used in an unqualified manner to describe Mr Çetinkaya in the press release and which had been reproduced without qualification by certain newspapers,

Principal facts

The applicant, Ürfi Çetinkaya, is a Turkish national who was born in 1949 and lives in Kocaeli (Turkey).

In March 2003 Mr Çetinkaya was accused by an informer of having spearheaded an international heroin-trafficking network since his release from custody on medical grounds. Accordingly, the Istanbul public prosecutor's office decided to open a judicial investigation into drug trafficking by an organised gang.

On 5 November 2003, following a telephone-tapping and surveillance operation concerning Mr Çetinkaya, the Istanbul drugs squad seized more than half a tonne of heroin. Officers from the drugs squad arrested the applicant the same day. On 9 November 2003 he appeared before a judge and was remanded in custody.

In the context of another set of proceedings, a suspect who had been arrested mentioned in his statement that he had acquired 128 kg of heroin from the applicant's organisation.

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

On 5 December 2003, in connection with a seizure of heroin, the Gendarmerie General Command issued a press release which described the applicant as an "international drug trafficker" and stated that the investigation was pending.

The whole case received extensive coverage in the national media.

The applicant remained in custody on the basis of orders issued by the Istanbul Assize Court for his continuing pre-trial detention in the context of the proceedings under consideration, in view of the ongoing strong suspicion of his guilt and the nature and seriousness of the drugs offence.

The case is still pending before the Tenth Division of the Istanbul Assize Court.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 5 § 3 (right to liberty and security), the applicant alleged that his detention was incompatible with his state of health and amounted to ill-treatment. He also complained of the excessive duration of his detention. Relying on Article 6 § 2 (presumption of innocence), he alleged that the authorities had breached his right to be presumed innocent.

The application was lodged with the European Court of Human Rights on 17 May 2004.

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

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),

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

Decision of the Court

Article 3

The Court noted that the applicant suffered from the very severe after-effects of gunshot wounds and was paraplegic. He was obliged to use a wheelchair in prison, making his daily life difficult.

Regarding the period of detention that had begun in 2003 and was the subject of the application, the Court observed that none of the doctors treating the applicant throughout his detention had taken the view that he needed to be admitted to hospital or suggested that his state of health was incompatible with detention. There was nothing in the applicant's medical file to indicate that his condition had deteriorated during his detention. The Court considered that the applicant's situation did not constitute one of the exceptional cases in which a prisoner's state of health was wholly incompatible with his continuing detention. Furthermore, the authorities were alert to the applicant's condition and there were no grounds for asserting that they had not provided him with the appropriate medical care.

The Court accepted that the severity of the applicant's sensory and motor disorders might make it more difficult for him to meet some of his personal needs. It observed in that regard that the applicant was assisted by his fellow prisoners. He had never complained of a lack of assistance or alleged that it was inadequate, nor had he requested permission from the prison authorities to have a carer. Lastly, the Court observed that, should the applicant's state of health worsen, the rules allowed him to apply for release on health grounds.

The Court concluded that neither the applicant's state of health nor the distress he claimed to be experiencing had attained the threshold of severity required to constitute a breach of the right protected by Article 3 of the Convention.

Article 5 § 3

Mr Çetinkaya's detention had commenced on 5 November 2003, when he had been taken into police custody, and continued to date. On 26 February 2007 he had been sentenced to 15 years' imprisonment by the Adana Assize Court.

The Court pointed out that the periods to be taken into consideration were from 5 November 2003 to 27 February 2007 and from 30 September 2008 to the present day. The period of detention between 26 February 2007 and 30 December 2008 corresponded to the serving of a sentence.

In the instant case the total period of detention was over seven years and nine months.

It was clear from the case file that the domestic courts had ordered the applicant's continued detention on the basis of the ongoing existence of serious indications as to his guilt. However, those circumstances could not in themselves justify keeping him in detention over such a lengthy period. In the Court's view, the reasons given by the trial court judges could not be said to have been "relevant" and "sufficient".

The Court held that there had been a violation of Article 5 § 3 of the Convention.

Article 6 § 2

In a press release issued on 5 December 2003 by the Gendarmerie Command, the authorities had stated that the case was linked to "the international drug trafficker Ürfi Çetinkaya", while at the same time saying that the investigation was in progress.

The Court observed that the applicant had never been convicted of drug trafficking and that this was precisely the offence of which he was accused in the context of various sets of judicial proceedings, including those relating to the drugs seizure of 6 November 2003 mentioned in the press release.

The Court criticised the use of the term "international drug trafficker", which had been used in an unqualified manner to describe Ürfi Çetinkaya in the press release. That description, which had been reproduced without qualification by certain newspapers, had been in breach of the principle of presumption of innocence.

The courts to which the applicant had applied had rejected all his requests to be granted a right of reply in the newspapers.

The Court therefore held that there had been a violation of Article 6 § 2 of the Convention concerning the presumption of innocence.

Just satisfaction (Article 41)

The court awarded the applicant the sum of 10,000 euros (EUR) in respect of non-pecuniary damage.

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.