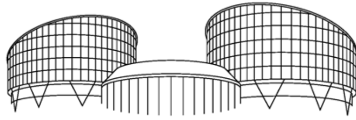

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 097 (2019)
19.03.2019

Grand Chamber Panel's decisions

At its last meeting (Monday 18 March 2019), the Grand Chamber panel of five judges decided to refer one case and to reject requests to refer 14 other cases[1].

The following case has been referred to the Grand Chamber of the European Court of Human Rights.

Selahattin Demirtaş v. Turkey (no. 2) (application no. 14305/17): which concerns the arrest and pre-trial detention of Mr Selahattin Demirtaş, who at the time of the events was one of the co-chairs of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party.

Referral accepted

Selahattin Demirtaş v. Turkey (no. 2) (application no. 14305/17)

The applicant, Selahattin Demirtaş, is a Turkish national who was born in 1973. When the chamber judgment was adopted he was still being held in pre-trial detention. He is currently being detained in Edirne (Turkey). At the material time, he was one of the co-chairs of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party. From 2007 onwards he was a member of the Turkish Grand National Assembly. Following parliamentary elections in November 2015, he was re-elected as an HDP member of parliament, and his term of office ended at the time of the June 2018 elections.

In September and October 2014, members of Daesh (Islamic State) launched an offensive on the Syrian town of Kobani, some 15 km from the Turkish border town of Suruç. Armed clashes took place between Daesh forces and the People's Protection Units (YPG), an organisation founded in Syria and regarded as a terrorist organisation by Turkey on account of its links with the PKK (the Workers' Party of Kurdistan). From 2 October 2014 onwards, a large number of demonstrations were held in Turkey and local and international NGOs called for solidarity with Kobani against the siege by Daesh. From 6 October 2014, the demonstrations became violent.

Previously, during late 2012 and January 2013, a peace process known as the "solution process" had been initiated with a view to finding a lasting, peaceful solution to the "Kurdish question". A series of reforms aimed at improving human rights protection were implemented. In February 2015 a ten-point reconciliation declaration, known as the "Dolmabahçe consensus", was presented to the public by a delegation of HDP members of parliament and the then Deputy Prime Minister.

The HDP achieved 13% of the vote in the June 2015 parliamentary elections, passing the threshold for representation in the National Assembly. The AKP, the ruling party, lost its majority in Parliament. On 20 July 2015 a terrorist attack apparently carried out by Daesh took place in Suruç, leaving 34 people dead and more than 100 injured. On 22 July 2015, in another terrorist attack in Ceylanpınar, two police officers were killed. The murders, allegedly committed by members of the PKK, resulted *de facto* in the end of the "solution process". The day after that attack, the PKK's leaders urged the people to arm themselves and to dig underground passages that could be used during armed clashes. They called for the proclamation of a political system of self-governance and

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

announced that all civil servants in the region would now be considered accomplices of the AKP and would risk being targeted. In November 2015 the HDP polled 10% of the vote in elections won by the AKP, which regained its majority in the National Assembly.

On 20 May 2016 the National Assembly passed a constitutional amendment whereby parliamentary immunity was lifted in all cases where requests for the lifting of immunity had been transmitted to the National Assembly prior to the date of adoption of the amendment. The amendment affected a total of 154 members of the National Assembly, including 55 from the HDP. On various dates, 14 HDP members of parliament, including Mr Demirtaş, and one from the CHP were placed in pre-trial detention as the subject of criminal investigations.

A total of 70 members of parliament applied to the Constitutional Court for a review of the constitutional amendment, arguing that it should be treated as a “parliamentary decision” taken under the Constitution to lift the immunity attaching to their status as members of parliament. The Constitutional Court unanimously rejected the application, finding that the case before it concerned a constitutional amendment in the formal sense of the term and not a parliamentary decision. It stated that the amendment in question could be reviewed in accordance with the procedure laid down in Article 148 of the Constitution, by which only the President of Turkey or one-fifth of the 550 members of the National Assembly could apply to the Constitutional Court for a review. Finding that this condition was not satisfied in the case before it, the Constitutional Court rejected the application.

Some 31 investigation reports, the vast majority concerning terrorism-related offences, were drawn up by public prosecutors in respect of Mr Demirtaş while he was serving as a member of parliament. Following the entry into force of the constitutional amendment, the Diyarbakır public prosecutor decided to join all the criminal investigations in a single file. On six occasions the competent public prosecutors issued summonses for Mr Demirtaş to give evidence; however, he failed to appear before the investigating authorities. On 4 November 2016 he was arrested at his home and taken into police custody. On the same day, assisted by three lawyers, he appeared before the public prosecutor and maintained that he had been arrested and taken into police custody on account of his political activities and on the orders of the President of Turkey. He stated on that occasion that he would not answer any questions relating to the accusations against him. The public prosecutor called for him to be placed in pre-trial detention for membership of an armed terrorist organisation and incitement to commit an offence.

On 8 November 2016 Mr Demirtaş lodged an objection against the order for his pre-trial detention, but it was dismissed.

On 11 January 2017 the public prosecutor filed a bill of indictment against Mr Demirtaş, charging him with forming or leading an armed terrorist organisation, disseminating propaganda in favour of a terrorist organisation, incitement to commit an offence, condoning crime and criminals, public incitement to hatred and hostility, incitement to disobey the law, organising and participating in unlawful meetings and demonstrations, and not complying with orders by the security forces for the dispersal of an unlawful demonstration. He sought a sentence of between 43 and 142 years’ imprisonment. On 22 March 2017, at the request of the Ministry of Justice on public-safety grounds, the Court of Cassation transferred the case to the Ankara Assize Court.

During the trial Mr Demirtaş argued that he had been detained for expressing his political opinions and denied committing any criminal offence. In the course of the investigation and the trial, he lodged more than 15 objections against his continued pre-trial detention. The national courts repeatedly extended his detention. The criminal proceedings are currently pending before the Ankara Assize Court.

On 17 November 2016 and 29 May 2018 Mr Demirtaş lodged individual applications with the Constitutional Court. The first was dismissed, while the second is still pending.

The application was lodged with the European Court of Human Rights on 20 February 2017.

Relying on Article 5 §§ 1 and 3 (right to liberty and security and right to trial within a reasonable time or release pending trial) of the European Convention on Human Rights, the applicant complains that his initial pre-trial detention and its continuation were arbitrary; that the duration of his pre-trial detention has been excessive; and that the relevant judicial decisions contained no reasons other than mere citation of the grounds for detention provided for by law and were worded in abstract, repetitive and formulaic terms. Relying on Article 5 § 4 (right to speedy review of the lawfulness of detention), the applicant complains that his lack of access to the investigation file prevented him from effectively challenging the order for his pre-trial detention. He submits that the proceedings before the Constitutional Court did not comply with the Convention requirement of “speediness”. In addition, he complains that his pre-trial detention amounts to a violation of Article 3 of Protocol No. 1 (right to free elections) to the Convention. Relying on Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5 § 3, he contends that he was detained for expressing critical opinions about the political authorities and argues in that regard that the purpose of his pre-trial detention was to silence him. The applicant also alleges a violation of Article 10 (freedom of expression) and Article 34 (right of individual petition).

In its Chamber judgment of 20 November 2018, the European Court of Human Rights held, unanimously, that there had been no violation of Article 5 § 1 (right to liberty and security), a violation of Article 5 § 3 (right to be brought promptly before a judge) of the Convention, and no violation of Article 5 § 4 (right to a speedy review of the lawfulness of detention) of the European Convention on Human Rights. The Chamber accepted in particular that Mr Demirtaş had been arrested and detained on “reasonable suspicion” of having committed a criminal offence. However, having regard to the reasons given by the national courts, it found that the judicial authorities had extended Mr Demirtaş’s detention on grounds that could not be regarded as “sufficient” to justify its duration.

The Chamber further held, unanimously, that there had been a violation of Article 3 of Protocol No. 1 (right to free elections) to the Convention. Although Mr Demirtaş had retained his status as a member of parliament throughout his term of office, it found that his inability to take part in the activities of the National Assembly as a result of his pre-trial detention had constituted an unjustified interference with the free expression of the opinion of the people and with his right to be elected and to sit in Parliament.

The Chamber also held, by six votes to one, that there had been a violation of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5 § 3. It found that it had been established beyond reasonable doubt that the extensions of Mr Demirtaş’s detention, especially during two crucial campaigns, namely the referendum and the presidential election, had pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society.

Having regard to all the findings it had reached, the Chamber, unanimously, considered it unnecessary to rule separately on either the admissibility or the merits of the complaint under Article 10 (freedom of expression).

The Chamber also found, unanimously, that the respondent State had not breached its obligations under Article 34 (right of individual petition).

Lastly, under Article 46 (binding force and execution of judgments) , the Chamber held, unanimously, that the respondent State was to take all necessary measures to put an end to the applicant’s pre-trial detention.

On 18 March 2019 the Grand Chamber Panel accepted the Government’s and the applicant’s request that the case be referred to the Grand Chamber.

Requests for referral rejected

Judgments in the following 14 cases are now final[2].

Requests for referral submitted by the applicants

E.S. v. Austria (application no. 38450/12), judgment of 25 October 2018

K.G. v. Belgium (no. 52548/15), judgment of 6 November 2018

V.D. v. Croatia (no. 2) (no. 19421/15), judgment of 15 November 2018

A.T. v. Estonia (no. 2) (no. 70465/14), judgment of 13 November 2018

D.L. v. Germany (no. 18297/13), judgment of 22 November 2018

Asma v. Turkey (no. 47933/09), judgment of 20 November 2018

Erduran and Em Export Dış Tic. A.Ş. v. Turkey (nos. 25707/05 and 28614/06), judgment of 20 November 2018

Requests for referral submitted by the Government

Narodni List d.d. v. Croatia (no. 2782/12), judgment of 8 November 2018

Könyv-Tár Kft and Others v. Hungary (no. 21623/13), judgment (merits) of 16 October 2018

Brazzi v. Italy (no. 57278/11), judgment of 27 September 2018

Zhidov and Others v. Russia (nos. 54490/10, 1153/14, 2680/14 and 31636/14), judgment (merits) of 16 October 2018

Visy v. Slovakia (no. 70288/13), judgment of 16 October 2018

Kaboğlu and Oran v. Turkey (nos. 1759/08, 50766/10 and 50782/10), judgment of 30 October 2018

Musa Tarhan v. Turkey (no. 12055/17), judgment of 23 October 2018

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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.

[2] Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.