



Grand Chamber hearing on the pre-trial detention of Selahattin Demirtaş

The European Court of Human Rights is holding a **Grand Chamber**¹ hearing today **Wednesday 18 September 2019 at 9.15 a.m.** in the case of **Selahattin Demirtaş v. Turkey (no. 2)** (application no. 14305/17).

The case 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.

A recording of the hearing will be available from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

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 prison 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 Justice and Development Party (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

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.

system of self-governance and 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 Republican People's Party (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 93 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 31 criminal investigations into the applicant into 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. Mr Demirtaş was taken on the same day before the second justice of the peace of Diyarbakır who ordered that he be placed in pre-trial detention.

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. The Ankara Assize Court ordered Mr Demirtaş's release on 2 September 2019. The criminal proceedings are currently ongoing before the same court.

On 17 November 2016 Mr Demirtaş lodged an individual application with the Constitutional Court, which was rejected. Two other applications before that court are still pending.

Procedure

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), the applicant complains that his initial pre-trial detention and its continuation were arbitrary; he complains that the judicial decisions on his pre-trial detention 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), 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, 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).

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.

The Commissioner for Human Rights of the Council of Europe exercised her right to take part in the proceedings and submitted written observations. The Inter-Parliamentary Union and two other

non-governmental organisations acting jointly, Article 19 and Human Rights Watch, were granted leave to intervene in the written proceedings as third parties.

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
Angelika **Nußberger** (Germany),
Vincent A. **De Gaetano** (Malta),
Ksenija **Turković** (Croatia),
Helen **Keller** (Switzerland),
André **Potocki** (France),
Aleš **Pejchal** (the Czech Republic)
Krzysztof **Wojtyczek** (Poland),
Egidijus **Kūris** (Lithuania),
Mārtiņš **Mits** (Latvia),
Armen **Harutyunyan** (Armenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Alena **Poláčková** (Slovakia),
Tim **Eicke** (the United Kingdom),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Saadet **Yuksel** (Turkey), *judges*,
Pauliine **Koskelo** (Finland),
Yonko **Grozev** (Bulgaria),
Péter **Paczolay** (Hungary), *substitute judges*,

and also Roderick **Liddell**, *Registrar*.

Representatives of the parties

Government

Hacı Ali **Açıkgül**, *Co-Agent, Head of the Department of Human, Rights at the Ministry of Justice*,
Mehmet Ali **Tuncel** and Betül Nas **Gülol**, *Rapporteur Judges, Ministry of Justice*,
İbrahim Hakkı **Beyazit**, Abdulhaluk **Kurnaz**, and Stefan **Talmon**, *Advisers*;

Applicant

Kerem **Altıparmak**, Ramazan **Demir**, Mahsuni **Karaman**, and Benan **Molu**, *Counsel*,
Başak **Çalı**, Aygül **Demirtaş Gökalp**, and Sertaç **Buluttekin**, *Advisers*.

Third parties

For the Office of the Commissioner for Human Rights:

Dunja **Mijatović**, *Commissioner for Human Rights*,
Giancarlo **Cardinale**, *Deputy to the Director*,
Hasan **Bermek**, *Adviser to the Commissioner*.

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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.