



## Arbitrary detention of an 8-year-old child in a police station

In today's **Chamber judgment**<sup>1</sup> in the case of **Tarak and Depe v. Turkey** (application no. 70472/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights.

The case concerned the detention of an eight-year-old child, Birtan Sinan Depe. He was taken to a police station following a search carried out at the home of neighbour to whom his mother had entrusted him. He was detained alone in the station for at least one day.

The Court found, in particular, that Birtan Sinan Depe's position had been characterised by his very young age and the fact that he had been unaccompanied after his arrival at the police station. He had been left to his own devices in the police premises and had been in a vulnerable situation.

For that reason the Court held that the detention had not had any legitimate purpose under Article 5 § 1 of the Convention and that he had been deprived of his liberty in an arbitrary manner.

### Principal facts

The applicants, Yasemin Tarak and her son Birtan Sinan Depe, are Turkish nationals who were born in 1967 and 1993 respectively. They live in Istanbul (Turkey).

In October 2001 the police carried out a search at the home of C.Ö. – a neighbour to whom Ms Tarak had entrusted her son in her absence – as part of an investigation into a burglary that had occurred on the same day. According to Ms Tarak, the police officers took her son, then aged eight, to a police station. Ms Tarak then looked for her son in two other police stations, but without success.

Two days later Ms Tarak was arrested on suspicion of involvement in the burglary and escorted to the Beyoğlu police station, where she found her son asleep on a desk. The child remained with her until she was brought before the prosecutor later the same day.

A few days later Ms Tarak complained to the prosecutor's office. She alleged that her son had been taken into police custody, where he had been struck and threatened by police officers who asked him to reveal his mother's whereabouts. She also requested a medical examination for her son, indicating that the detention had had a harmful effect on the child's psychological health.

In November 2004 criminal proceedings were brought against several police officers for acting in excess of their powers. In December 2009 the court decided to discontinue the proceedings on the grounds that prosecution was time-barred. The Court of Cassation upheld that decision.

### Complaints, procedure and composition of the Court

Relying in particular on Article 5 (right to liberty and security), Birtan Sinan Depe submitted that he had been unlawfully deprived of his liberty, which had had a negative impact on his mental health.

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](http://www.coe.int/t/dghl/monitoring/execution).

The application was lodged with the European Court of Human Rights on 20 September 2012.

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

Robert Spano (Iceland), *President*,  
Paul Lemmens (Belgium),  
Işıl Karakaş (Turkey),  
Valeriu Griţco (the Republic of Moldova),  
Stéphanie Mourou-Vikström (Monaco),  
Arnfinn Bårdsen (Norway),  
Darian Pavli (Albania),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 5 (right to liberty and security)

The Court noted, firstly, that the events had occurred in the period from the night of 26-27 October until 28 October 2001; that C.Ö. had been released after providing a statement and had not been obliged to spend the night in the police station; that Birtan Sinan Depe had been detained in a room in the police station; and that the applicants' lawyer in the domestic proceedings had also given evidence concerning the child's presence at the police station.

Secondly, there was nothing in the case file to suggest that the child had left the police station before 28 October 2001. In addition, the Government had not submitted any document or witness statement indicating, for example, that Birtan Sinan Depe had been transferred within a reasonable time after arrival at the police station to a children's home or similar structure.

Without dwelling on whether or not this had represented formal police custody, the Court concluded that the child, aged eight at the time, had been taken to the police station by police officers and detained there alone, at least from 27 to 28 October 2001, when his mother had arrived.

His position was characterised by his very young age and the fact that he had been unaccompanied after his arrival at the police station. He had thus been left to himself in the police premises and had been in a vulnerable situation. In those circumstances, the Court considered that it was not necessary to assess whether he had been kept in closed and guarded premises from which any unauthorised exit was prohibited, since he could not have been expected to leave the police station alone. This detention had not had any legitimate purpose under Article 5 § 1 and had therefore been arbitrary. It followed that there had been a violation of Article 5 § 1 of the Convention.

### Other articles

The Court dismissed the applicants' other complaints as manifestly ill-founded.

### Just satisfaction (Article 41)

The Court held that Turkey was to pay Birtan Sinan Depe 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 300 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.