

Webinar
“Lawfulness of pretrial detention and its alternatives in criminal proceedings”

5 October 2020

10:00 – 16:00 (Turkey)
9:00 – 15:00 (Strasbourg)

Objective: To raise awareness of Turkish judges on the standards of the European Court of Human Rights, Constitutional Court and Court of Cassation in respect of lawfulness of pre-trial detention, reasoned grounds for detention; usage of alternative and more lenient measures to ensure presence of the accused at the trial; procedural safeguards of a detained person and right to compensation for unlawful detention.

Participants: Representatives of the Ministry of Justice, (DGCA, HR Department, DG EU), JAT, UTBA and Turkish Criminal Law Association; peace judges; criminal judges from the appeal courts and high courts.

The working language of the webinar will be **Turkish and English**.

KUDO platform will be used.

Agenda

10:00-10:15 KUDO Connection test

10:15 – 10:30 Brief opening and presentation of the objective of this webinar

Cristian Urse, Head of Ankara Program Office, Council of Europe
Kemal Ertürk, Head of Department, Ministry of Justice DGCA

10:30- 11:20 Panel I

Relevant and sufficient reasons for the pre-trial detention under the case-law of the European Court of Human Rights and Constitutional Court of Turkey

Discussion points- perspectives from the representatives of the European Court of Human Rights and Constitutional Court of Turkey for each of the points, max 7 minutes per point

- *Requirement of “reasonable suspicion that an offence has been committed” under Article 5(1)(c) of the ECHR*
- *Reasoned grounds for the pre-trial detention by prosecutors and judges to avoid arbitrariness and continued and lengthy detention (risk of absconding; risk of administration of justice; risk of reoffending; threat to public order and protection of detainee)*

Discussion

(Moderator Elena Jovanovska Brezoska, Council of Europe)

Speakers:

Yalçın Levent, Lawyer, European Court of Human Rights

Aydın Şimşek, Rapporteur, Turkish Constitutional Court

11:20-12:10 Panel II

Rights of the detained persons while reviewing lawfulness of detention

Discussion points- standards of the European Court of Human Rights and national legal framework and jurisprudence, maximum 5 minutes per point

- Court’s review (oral hearing) of the lawfulness of the pre-trial detention
- Speediness
- Presence of the defendant at the hearing and assistance of lawyer

Discussion

(Moderator Dicle Gözde Koçyiğit, Judge, Ministry of Justice)

Speakers:

Jeremy McBride, Barrister, Monckton Chambers, London and Visiting Professor, Central European University, Budapest
Assoc. Prof. Hasan Sınar, Consultant

12:10 - 14:00 Break

14:00-14:50 Panel III

Rights of the detained persons while reviewing lawfulness of detention – perspective of national practice- challenges and perspectives

Discussion points- national legal framework and jurisprudence, maximum 5 minutes per point and per speaker

- access to file of the defendant
- equality of arms
- right to compensation for unlawful detention

Discussion

(Moderator Konul Gasimova, Council of Europe)

Speakers:

Serkan Cengiz, Lawyer, İzmir Bar Association.

Aydın Şimşek, Rapporteur, Turkish Constitutional Court

14:50- 15:40 Panel IV

Alternatives to detention to secure right to liberty and security of an accused person

Discussion points- international standards and comparative experience and challenges and perspectives concerning the points below. Maximum 7 minutes per speaker

- Obligation to consider/justify alternative measures in line with the case-law of the ECtHR (bail, house arrest; seizure of passport and travel restriction; compulsory residence order) by prosecutors and judges
- Comparative experience in applying alternatives to detention and
- Challenges in applying alternatives to detention in Turkish judicial system and proposals for improvement

Discussion

(Moderator Başak Cansu Boyoğlu, Council of Europe)

Speakers:

CEZA ADALET SİSTEMİNİN GÜÇLENDİRİLMESİ VE AVRUPA İNSAN HAKLARI SÖZLEŞMESİ İHLALLERİNİN ÖNLENMESİ İÇİN YARGI MENSUPLARININ KAPASİTESİNİN ARTIRILMASI ORTAK PROJESİ
STRENGTHENING THE CRIMINAL JUSTICE SYSTEM AND THE CAPACITY OF JUSTICE PROFESSIONALS ON PREVENTION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS VIOLATIONS IN TURKEY

Prof Dirk Van Zyl Smit, Professor of Comparative and International Penal Law of the University of Nottingham

Mustafa Yiğitsoy, Member of 5th Criminal Chamber, Court of Cassation

15:40- 16:00 Conclusions

Dr Elena Jovanovska Brezoska, Project Coordinator, Council of Europe

Kemal Ertürk, Head of Department, Ministry of Justice DGCA

End of webinar