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

SECOND SECTION

DECISION

Application no. 19889/19
Fatih AKÇEŞME
against Turkey

The European Court of Human Rights (Second Section), sitting on 7 June 2022 as a Committee composed of:

Egidijus Kūris, *President,*
Pauliine Koskelo,
Gilberto Felici, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 19889/19) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 29 March 2019 by a Turkish national, Mr Fatih Akçeşme, who was born in 1978 and lives in Ankara ("the applicant") who was represented by Mr N. Ulusoy, a lawyer practising in Ankara;

the decision to give notice of the complaint concerning right of access to a court to the Turkish Government ("the Government"), represented by Mr Hacı Ali Açıkgül, Head of the Human Rights Department of the Ministry of Justice, co-Agent of the Republic of Turkey before the European Court of Human Rights, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

The application concerns the rejection by the Constitutional Court of the applicant's individual appeal as being out of time in an allegedly excessively formalistic manner. The applicant submitted in that connection that his lawyer had missed the regular thirty-day time-limit to lodge an application before the Constitutional Court, which started to run from the date of the notification of the final decision, owing to the fact that he had had a heart

attack. According to the documents submitted by the parties, the final decision in the domestic proceedings was notified to the applicant's lawyer on 19 March 2018. The applicant's lawyer was admitted to hospital on 20 March 2018 and discharged on 23 March 2018. That being so, the individual appeal before the Constitutional Court was lodged on 4 May 2018. In the application form of the Constitutional Court the applicant's lawyer stated that his health issue continued until 22 April 2018. He appended his hospital discharge certificate dated 23 March 2018 as a supporting document.

According to the domestic regulations regarding individual appeal before the Constitutional Court, in the event that the thirty-day time-limit to lodge an application is missed on account of a justifiable excuse, such as *force majeure* or serious illness, an application may still be made within fifteen days after the excuse ceases to exist, provided that supporting documents attesting to the circumstances of the excuse are attached to the application form.

THE COURT'S ASSESSMENT

The applicant complained under Article 6 § 1 of the Convention that he was denied access to the Constitutional Court and that that court had not examined whether his lawyer had had a valid excuse for not complying with the regular thirty-day time-limit.

The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of procedural rules, such as time-limits for filing documents or lodging appeals (see *Kurşun v. Turkey*, no. 22677/10, § 95, 30 October 2018). Furthermore, the Court has no jurisdiction under Article 6 of the Convention to substitute its own findings of fact or law for those of domestic courts, which are in the best position to assess the evidence before them and apply the relevant domestic law.

That being so, it has not been made clear to the Court whether, and to what extent, the domestic regulation providing applicants who have missed the regular thirty-day time-limit to lodge an application before the Constitutional Court with an additional fifteen-day period is applicable also to representatives when they themselves are prevented from making an application within the regular time-limit on account of a justifiable excuse.

Nevertheless, it is not necessary for the Court to give an opinion on this issue, because even assuming that the exception applies to applicants' representatives, the Court notes that the application is manifestly ill-founded for the following reason.

According to the information submitted by the Government, which was not contested by the applicant, the applicant's lawyer provided the Constitutional Court with only his hospital discharge certificate dated 23 March 2018 and submitted no other supporting documents or explanations as to why the health issue which prevented him from lodging the application

within the thirty-day time-limit continued until 22 April 2018, the date indicated by the applicant's lawyer as to when his health issue was resolved.

In these circumstances it cannot be argued that the Constitutional Court was excessively formalistic in rejecting the individual appeal as out of time, given that the application was not lodged within fifteen days of the applicant's lawyer's discharge from hospital.

It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 June 2022.

Hasan Bakırcı Registrar	Egidijus Kūris President