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

SECOND SECTION

DECISION

Application no. 41709/08
Mehmet ALADAĞ
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 June 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Paul Lemmens,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 July 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mehmet Aladağ, is a Turkish national, who was born in 1974 and was detained in Tekirdağ Prison at the time of lodging the application. He was represented before the Court by Mr İ. Akmeşe, a lawyer practising in Istanbul.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 23 February 2006 the applicant was arrested on suspicion of membership of a terrorist organisation and for illegal possession of explosives.

5. On 26 February 2006 the applicant was placed in detention on remand on the order of the investigating judge.

6. On 3 March 2006 the Istanbul Public Prosecutor filed an indictment with the Istanbul Assize Court, charging the applicant with membership of a terrorist organisation and illegal possession of explosives, under Articles 174 and 314 of the Criminal Code (Law no. 5237).

7. Between 15 June 2006 and 8 April 2008 the Istanbul 9th Assize Court held seven hearings. At the end of each hearing the court reviewed the applicant's pre-trial detention. Taking into account the seriousness of the offence with which the applicant had been charged and the state of the evidence, it decided to keep him in detention. The applicant and his lawyer were present at each hearing.

8. After the third hearing, held on 21 December 2006, the applicant filed an objection against the detention order and asked to be released. On 28 December 2006 the Istanbul 10th Assize Court rejected the applicant's request after examining it on the basis of the case file, without holding a hearing. When delivering its decision the Assize court took into account a written opinion filed by the public prosecutor, which was not communicated to the applicant or his lawyer.

9. A sixth hearing was held on 6 December 2007, after which, on 30 January 2008, the Assize court held a hearing to review the applicant's detention. The hearing was held *ex proprio motu*, pursuant to Article 108 of Law no. 5271, and the decision was delivered on the basis of the case file.

10. On 8 April 2008 the Istanbul Assize Court found the applicant guilty as charged and sentenced him to a total of ten years' imprisonment and a fine.

11. On 9 February 2009 the Court of Cassation upheld the first-instance court's judgment without holding a hearing.

COMPLAINTS

12. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention had been excessive. He also submitted that the courts had used identical, stereotyped reasoning when dismissing his applications for release. In that connection, the applicant also relied on Article 6 § 2 of the Convention and argued that his right to the presumption of innocence had been breached.

13. The applicant also alleged under Article 5 § 4 and Article 13 of the Convention that the domestic legal system had not provided any effective remedy whereby he could effectively challenge his continued pre-trial detention.

14. The applicant maintained under Article 5 § 5 that he had no right to compensation under domestic law in respect of his complaints under Article 5 §§ 3 and 4.

15. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had not been completed within a reasonable time.

16. Lastly, the applicant maintained that his right to a fair trial had been breached as the Court of Cassation had not held a hearing during the appeal proceedings.

THE LAW

A. Article 5 § 4 of the Convention

17. Relying on Article 5 § 4 and Article 13 of the Convention, the applicant complained that there had been no effective remedy whereby he could effectively challenge his pre-trial detention. In that connection, he complained that the reviews of his detention had been conducted on the basis of the case file, without a thorough examination, and that in delivering its decisions the appeal courts had taken account of public prosecutors' written opinions, which had not been communicated to him or his representative.

18. The Court considers that the applicant's complaint under Article 13 should be examined from the standpoint of Article 5 § 4 of the Convention, being the *lex specialis* in the matter (see *Doğan and Kalın v. Turkey*, no. 1651/05, § 15, 21 December 2010).

19. The Court notes that Article 5 § 4 of the Convention applies to proceedings before a court following an appeal against a decision extending a person's detention. The applicant filed such an objection pursuant to Article 108 § 2 of the Criminal Procedure Code (Law no. 5271) after the hearing of 21 December 2006. The Assize Court rejected that objection on 28 December 2006. However, the present application was lodged with the Court on 22 July 2008, that is more than six months later. As a result, the applicant's complaint in relation to that review procedure must be rejected for non-compliance with the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

20. Apart from the above –mentioned objection filed by the applicant, there have been seven occasions where the Assize Court reviewed the applicant's continued detention on its own motion. The Court notes that these reviews were conducted automatically every month during the pre-trial stage or at each hearing or every month during the trial stage, pursuant to Article 108 §§ 1 and 3 of Law no. 5271. It is observed that decisions in six of these review procedures were adopted prior to 22 January 2008. Consequently, this part of the application should also be rejected for non-

compliance with the six-month time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

21. As to the review procedure which resulted in the decision of the Assize Court dated 30 January 2008, the Court observes that proceedings by which the prolongation of a detention is examined at the court's own motion, separately and in addition to the proceedings which a detained person is entitled to take, do not fall within the scope of Article 5 § 4 of the Convention (see *Toth v. Austria*, 12 December 1991, §§ 86-87, Series A no. 224; *Knebl v. the Czech Republic*, no. 20157/05, § 76, 28 October 2010; *Altınok v. Turkey*, no. 31610/08, §§ 39-40, 29 November 2011; *Bilal Doğan v. Turkey*, no. 28053/10, § 33, 27 November 2012; *Muammer Karabulut* (dec.), no. 32197/09, §§ 57-59, 17 September 2013; and *Ali Rıza Kaplan v. Turkey*, no. 24597/08, § 25, 13 November 2014). It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 §§ 3 and 4.

B. Article 5 § 5 of the Convention

22. The applicant complained under Article 5 § 5 of the Convention that he had not been provided with effective domestic remedies with regard to his complaints under Article 5 §§ 3 and 4 of the Convention.

23. The Court reiterates that paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (*Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or the Court. Accordingly, the Court cannot consider an applicant's claim based exclusively on Article 5 § 5 unless a breach of Article 5 §§ 1 to 4 has been established directly or in substance, either by the domestic authorities or by the Court itself.

24. It follows that as the applicant's case does not disclose such a breach, his claim under Article 5 § 5 should be rejected for being incompatible *ratione materiae* with the provisions of the Convention.

C. Other complaints

25. The applicant submitted under Article 5 § 3 that the length of his pre-trial detention had exceeded the limit of a "reasonable time" set out in the Convention and that in dismissing his applications for release the courts had used identical, stereotyped reasoning. In that connection, the applicant also relied on Article 6 § 2 of the Convention and argued that his right to the presumption of innocence had been breached. In addition, the applicant

complained under Article 6 § 1 that the criminal proceedings against him had not been completed within a reasonable time and that his right to a fair trial had been breached as the Court of Cassation had not held a hearing during the appeal proceedings.

26. In the light of the material in its possession and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with the Article 35 § 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 July 2017.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President