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

SECOND SECTION

DECISION

Application no. 47622/10
Ercan ARICAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 September 2017 as a Committee composed of:

Julia Laffranque, *President,*
Paul Lemmens,
Valeriu Griţco, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 July 2010,

Having regard to the observations submitted by the respondent Government.

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ercan Arıcan, is a Turkish national, who was born in 1965 and was detained in Denizli Prison at the time of lodging the application.

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 30 October 2000 a prison riot broke out in Uşak prison where the applicant was serving his prison sentence. During the three-day long incident, as a result of the clashes between opposing groups, six detainees were killed and twenty-three detainees were injured.

5. On 27 November 2001 the applicant was brought before the investigating judge who ordered his pre-trial detention on suspicion of murder and attempted murder.

6. On 30 October 2001 the public prosecutor filed an indictment with the Uşak Assize Court and charged the applicant, along with thirty-one other persons, with six counts of murder and attempted murder.

7. On 29 April 2011 the Uşak Assize Court found the applicant guilty as charged and sentenced him to a total of one hundred and eighty six years' imprisonment. The court also ordered the applicant's continued detention.

8. The applicant appealed. On 23 February 2012 the Court of Cassation upheld the judgment by rectifying the final sentence to life imprisonment.

COMPLAINT

9. The applicant complained under Article 5 § 3 the Convention that the length of his pre-trial detention had been excessive.

THE LAW

10. The applicant contended under Article 5 § 3 of the Convention that the length of his detention on remand had been unreasonably long.

11. The Government asked the Court to reject the application for non-exhaustion of domestic remedies. In this connection, they referred to the possibility of claiming compensation for unlawful detention under Article 141 of the Code on Criminal Procedure ("CCP").

12. The applicant did not submit observations in reply.

13. The Court observes that the domestic remedy provided by Article 141 of the CCP with regard to length of detention on remand was examined in the case of *Demir v. Turkey* ((dec.), no. 51770/07, §§ 17-35, 16 October 2012), where the Court held that that remedy had to be exhausted by the applicants whose convictions became final.

14. In the instant case, the Court notes that the applicant's conviction became final on 23 February 2012. From that date onwards the applicant was entitled to seek compensation under Article 141 of the CCP (see *Demir*, cited above, § 35), but he failed to do so.

15. The Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *İçyer v. Turkey* (dec.), no. 18888/02, § 72, ECHR 2006‑I). The Court has previously departed from this rule in cases concerning the above-mentioned remedy in respect of the length of detention, which became applicable after the final decision on the criminal proceedings (see, among others, *Tutal and*

Others v. Turkey (dec.), 11929/12, 28 January 2014). The Court takes the view that the exception should be applied in the present case as well.

16. As a result, taking into account the Government's objection, the Court concludes that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Hasan Bakırcı
Deputy Registrar

Julia Laffranque
President