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

SECOND SECTION

DECISION

Application no. 16857/12
Hayrettin BEŞTAŞ and Beşir BARAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 17 May 2016 as a Committee composed of:

Nebojša Vučinić, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Milan Blaško, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 30 January 2012,

Having regard to the formal declarations accepting a friendly settlement of the case,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicants, Mr Hayrettin Beştaş and Mr Beşir Baran, are Turkish nationals, who were born in 1952 and 1956 respectively and were detained in Tekirdağ and Istanbul at the time of application. They were represented before the Court by Mr M. Erbil, a lawyer practising in Istanbul.

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

3. On 6 September 2013 the complaint concerning the length of applicants' detentions was communicated to the Government and the remainder of the application declared inadmissible by the President of the Section.

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

5. On 20 February 2009 the applicants were arrested on suspicion of membership of the PKK, an illegal armed organisation.

6. On 23 February 2009 the applicants were brought before the investigating judge at the Istanbul Assize Court, who took their statements and ordered their detention on remand.

7. On 5 March 2009 the Istanbul public prosecutor filed an indictment with the Istanbul Assize Court, accusing the applicants of membership of an illegal armed organisation.

8. On 8 December 2011 the second applicant, Beşir Baran, was released pending trial.

9. On 22 December 2011 the Istanbul Assize Court convicted the applicants.

10. On 11 July 2012 the Court of Cassation quashed that judgment. The case file was accordingly remitted to the Istanbul Assize Court.

11. On 11 December 2012 the Istanbul Assize Court convicted the applicants of membership of an illegal armed organisation and sentenced the first applicant to seven years and six months' and the second applicant to six years and three months' imprisonment.

12. On 24 June 2013 the Court of Cassation upheld the first applicant's sentence and the judgment became final in respect of him. However, it overturned the judgment insofar as it concerned the second applicant.

13. On 26 September 2013 the Istanbul Assize Court further sentenced the second applicant to two years and six months' imprisonment.

14. According the latest information in the case file, the proceedings are still pending before the Court of Cassation.

COMPLAINT

15. Relying on Article 5 § 3 of the Convention, the applicants complained that the length of their detention on remand had been excessive.

THE LAW

A. As to the applicant Mr Hayrettin Beştaş

16. The Government rejected the allegation, submitting that the applicant had failed to exhaust domestic remedies, referring to the possibility of claiming compensation for unlawful detention under Article 141 of the Code on Criminal Procedure ("CCP").

17. The applicant did not comment on the Government's objection.

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

19. In the instant case, the Court notes that the applicant's convictions became final on 24 June 2013. From that date onwards the applicant was entitled to seek compensation under Article 141 of the CPP (see *Şefik Demir,* cited above, § 35), but failed to do so.

20. 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 also, 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.

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

B. As to the applicant Mr Beşir Baran

22. On 27 August 2015 and 24 February 2016 the Court received friendly settlement declarations signed by the second applicant and the respondent Government under which the applicant agreed to waive any further claims against Turkey in respect of the facts giving rise to this application against an undertaking by the Government to pay him 3,250 euros to cover any non-pecuniary damage as well as costs and expenses, which will be converted into local currency at the rate applicable on the date of payment, and will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay this sum within the said three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

23. The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights

as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the said complaints.

24. In view of the above, it is appropriate to strike this part of the application out of the list.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases in respect of the second applicant in accordance with Article 39 of the Convention,

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 9 June 2016.

Milan Blaško
Acting Deputy Registrar

Nebojša Vučinić
President