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

SECOND SECTION

DECISION

Applications nos. 2386/24 and 2596/24
Davut CEBECİ against Türkiye
and Ali Suat ASLANTEKİN against Türkiye

The European Court of Human Rights (Second Section), sitting on 18 June 2024 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applications concern the length of the civil and criminal proceedings brought against the applicants.

A. The Circumstances of the Case

1. Application no. 2386/24

2. On 17 February 2009 a company lodged an action against the first applicant, claiming its receivables stemming from a financial lease contract.

3. On 2 December 2020 the Istanbul Civil Court of Commerce partially allowed the action.

4. On 4 November 2021 the Istanbul Regional Court of Appeal partially allowed the first applicant's appeal and delivered a fresh judgment regarding the award to be paid to the company.

5. On 14 June 2023 the Court of Cassation quashed that latter judgment.

6. On 20 December 2023 the Court of Appeal delivered a new and final judgment, once again rectifying the award payable.

2. Application no. 2596/24

7. On an unspecified date in 2012 a criminal investigation was initiated against the second applicant on suspicion of fraud, abuse of office and embezzlement.

8. On 3 June 2016 the Çüngüş Public Prosecutor's Office issued an indictment, charging the second applicant with abuse of office.

9. On 6 June 2020 the Diyarbakir Assize Court acquitted the second applicant of the charge concerned.

10. On 3 February 2021 the Diyarbakir Regional Court of Appeal quashed the judgment.

11. On 13 January 2022 the Assize Court once again acquitted the second applicant.

12. On 28 June 2022 the Court of Appeal rejected the appeal of the Treasury, which later appealed against that decision before the Court of Cassation.

13. On 27 March 2023 the second applicant filed an individual application with the Constitutional Court, complaining of a violation of his right to a fair trial on account of the excessive length of the proceedings.

14. On 5 December 2023 the Constitutional Court struck the second applicant's application out of its list of cases, referring to its previous leading decision wherein it had found that there were no valid reasons to continue the examination of the complaints concerning the excessive length of proceedings (see paragraph 20 below).

15. The criminal proceedings against the second applicant are still pending before the Court of Cassation.

B. The Relevant Domestic Law and Practice

1. Relevant domestic law at the time of introduction of the applications

16. Law no. 6384 on the Settlement, by Means of Compensation, of Certain Applications Lodged with the European Court of Human Rights, which entered into force on 19 January 2013, set up a Compensation Commission to provide for the settlement of applications lodged with the Court concerning the length of judicial proceedings and non-enforcement or delayed enforcement of judicial decisions. A detailed description of Law no. 6384, at the time of its entry into force, may be found in *Turgut and Others v. Turkey* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013).

17. The competence *ratione materiae* and *temporis* of the Compensation Commission was later extended on several occasions (see *Yıldız and Yanak*

v. Turkey (dec.), no. 44013/07, §§ 9-17, 27 May 2014). The latest extension of its competence *ratione temporis* on 5 April 2023 allowed for an application to the Commission for all applications concerning the excessive length of proceedings pending before the Constitutional Court by 9 March 2023 (see *Gökçe v. Türkiye* (dec.) [Committee], no. 33876/23, §§ 10-11, 21 November 2023).

2. Case-law of the Constitutional Court

18. In its pilot decision in the case of *Nevriye Kuruç* (no. 2021/58970, 5 July 2022) the Constitutional Court found that there was a systemic problem with regard to the excessive length of proceedings and that that problem could only be resolved by means of establishing an effective remedy to be exhausted prior to filing an individual application with the Constitutional Court.

19. By a decision of 27 April 2023 in the case of *Veysi Ado* (no. 2022/100837), delivered following the most recent extension of the Compensation Commission's competence *ratione temporis* (see paragraph 17 above), the Constitutional Court found that the Commission was accessible, had the capacity to offer a reasonable prospect of success and to provide sufficient redress (see *Gökçe*, cited above, §§ 12-14).

20. On 25 July 2023 the Constitutional Court delivered a decision in the case of *Keser Altıntaş* (2023/18536), holding, by a majority, that the application be struck out of its list of cases, as there were no grounds justifying the continuation of its examination. In doing so, the Constitutional Court referred to its findings in the pilot decision of *Nevriye Kuruç*, stating that, although it had found that the most appropriate solution to the systemic problem with regard to the excessive length of proceedings would be to establish a permanent remedy applicable prior to individual applications, the latest amendments provided for the extension *ratione temporis* of the Commission's competence only for a limited period. In that respect, it noted that these amendments allowed for applications submitted to the Constitutional Court until 9 March 2023 to be referred to the Commission, but did not provide any mechanism for applications lodged after that date. Finding that the pilot judgment had not been complied with, and with reference to the Court's judgment in *Burmych and Others v. Ukraine* ((striking out) [GC], nos. 46852/13 et al., 12 October 2017), the Constitutional Court concluded that the examination of such cases undermined the functioning of the individual application mechanism and hindered its assessment of substantial legal issues. It further stated that in view of the subsidiary nature of the individual application mechanism, it would be able to examine similar complaints after an effective prior mechanism was established in line with its pilot decision. The decision was published on 10 October 2023.

21. Subsequently, the Constitutional Court delivered other decisions, striking out cases concerning the length of proceedings which had been lodged with it after 9 March 2023.

3. Developments following the introduction of the applications

22. On 12 March 2024 certain amendments were made to Law no. 6384 with the entry into force of Law no. 7499 which also modified the former's name to Law no. 6384 on the Duties and Working Principles and Procedures of the Compensation Commission. The relevant provisions of the Law now read as follows:

"Article 2

...

(3) ... The present law also covers applications with the Commission with a claim.

a) For non-pecuniary compensation on the grounds that criminal investigation or trials or proceedings within the scope of civil and administrative law have not been concluded within a reasonable time,

...

Article 5/A

(1) ... application to the Commission shall be made during the course of the criminal investigation, trial or judicial proceedings, or at the latest within one month starting from the date of learning that these have been concluded by a final decision. Those who cannot apply on time due to a valid reason may apply within fifteen days following the end of that reason, together with documents supporting that reason.

Article 7

...

(4) The decisions of the Commission may be objected to before the Ankara Regional Court of Appeal within fifteen days starting from the notification date.

Provisional Article 3

(1) The Commission will examine [the following], which are within the scope of paragraph 3 (a) of Article 2, upon an application made within three months:

a) Individual applications pending before the Constitutional Court as of the date of entry into force of this Article, [three months] starting from the notification date of the inadmissibility decision due to non-exhaustion of the available remedies;

b) Individual applications struck out by the Constitutional Court for lack of reasons justifying the continuation of the examination, [three months] starting from the date of entry into force of this Article or from the notification of the decision to strike out;

c) Applications lodged with the European Court of Human Rights upon the Constitutional Court's decision to strike out for lack of reasons justifying the continuation of examination, or applications lodged directly with that Court after

10 October 2023, [three months] starting from the notification of the Court's inadmissibility decision based exclusively on non-exhaustion of domestic remedies.

..."

THE COURT'S ASSESSMENT

23. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

24. The applicants complained that the length of the proceedings had not been compatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The first applicant also argued that he had filed his application directly with the Court, as following its decision in the case of *Keser Altıntaş*, the Constitutional Court could no longer be considered to constitute an effective remedy with respect to complaints regarding the excessive length of proceedings.

25. The Court reiterates that, according to its established case-law, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

26. 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 (*Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 87, ECHR 2010).

27. The Court has already found that a compensatory remedy is an appropriate means of redressing a violation of the right to a hearing within a reasonable time that has already occurred (see *Szaxon v. Hungary* (dec.), no. 54421/21, § 21, 21 March 2023, and the cases cited therein).

28. Turning to the present case, the Court notes that following the Court's pilot judgment in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012), in 2013 a new remedy was established in Türkiye with the entry into force of Law no. 6384, namely, a Compensation Commission providing for the settlement, by means of compensation, of applications lodged with the Court concerning, *inter alia*, the length of judicial proceedings. Subsequently, in its decision in the case of *Turgut and Others v. Turkey* (cited above), the Court declared an application inadmissible on the grounds that the applicants had failed to exhaust domestic remedies, that is to

say, the new remedy set forth in Law no. 6384 (which, at that time, was applicable to all applications concerning the excessive length of proceedings and non-execution or partial or delayed execution of domestic judgments lodged with the Court before 23 September 2012, see ibid., § 42). In so doing, the Court considered that that remedy was *a priori* accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings, and that it was justified to make an exception to the general principle according to which exhaustion of domestic remedies must be assessed at the time the application was lodged (ibid., §§ 55-56).

29. The Court considers in view of the latest amendments made to Law no. 6384 on 12 March 2024 – that is, after the applicants had lodged their applications with the Court – that there are no grounds requiring it to reach a different conclusion in the present case. In that respect, it notes that the amended Article 2 of Law no. 6384 now allows for an application to be filed directly with the Compensation Commission for complaints regarding the excessive length of proceedings, in line with the pilot judgment of the Constitutional Court wherein the latter had found that the most appropriate solution to the systemic problem would be to establish such a mechanism (see paragraph 20 above). The Court also notes that according to Provisional Article 3 of Law no. 6384, the new remedy will also be open to those whose individual applications are still pending before the Constitutional Court by 12 March 2024 or struck out by that court, as well as those who have already applied to the Court either directly, without recourse to the Constitutional Court, as is the case with the first applicant, or after the striking out of their cases by the Constitutional Court, such as the second applicant (see paragraph 22 above).

30. Taking account of the time-limits set forth by the amended law to file an application with the Compensation Commission, as well as the fact that its decisions will be subject to judicial review before the Court of Appeal and an eventual individual application before the Constitutional Court, the Court finds that that remedy remains *a priori* accessible. Furthermore, having regard to its previous decision confirming the effectiveness of the remedy before the Compensation Commission (see *Turgut and Others*, cited above, §§ 47-56), it finds that this remedy is capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings. It notes nevertheless that the question regarding the effectiveness of the remedy may be subject to review in the future, depending on the Compensation Commission's capacity to issue decisions in line with the requirements of the Convention (see *Turgut and Others*, cited above, § 57, and the cases cited therein).

31. In view of the foregoing, the Court finds that it is justified also in the present case to make an exception to the general principle according to which exhaustion of domestic remedies must be assessed at the time an application was lodged and that the applicants are required by Article 35 § 1 of the

Convention to avail themselves of the new domestic remedy. It follows that the applications must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 11 July 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President

Appendix

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	2386/24	Cebeci v. Türkiye	08/01/2024	**Davut CEBECİ** 1964 Samsun Turkish	Hasan KURU
2.	2596/24	Aslantekin v. Türkiye	08/01/2024	**Ali Suat ASLANTEKİN** 1964 Diyarbakır Turkish	Ferat KARA