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

SECOND SECTION

DECISION

Application no. 55657/09
Ahmet ÇELEBİ
against Türkiye

The European Court of Human Rights (Second Section), sitting on 25 June 2024 as a Chamber composed of:
Arnfinn Bårdsen*, President*,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu,
Gediminas Sagatys*, judges*,
and Hasan Bakırcı, *Section Registrar,*
Having regard to the above application lodged on 18 September 2009,
Having regard to the decision of 10 December 2019,
Having regard to the submissions made by the parties,
Having deliberated, decides as follows:

# THE FACTS

1. The applicant, Mr Ahmet Çelebi, is a Turkish national, who was born in 1966 and lives in Aydın. He is represented before the Court by Mr S. Cengiz, a lawyer practising in İzmir.

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

## A. Background of the application and the Court's decision of 10 December 2019

3. On 18 September 2009 the applicant lodged an application with the Court, complaining, under Article 6 § 1 of the Convention, that the domestic courts had rejected his additional compensation claim against his former

employer for bodily injuries as belated in disregard of the fact that his injuries had progressed over time and were discovered after the time-limit had expired.

4. The applicant's complaint concerning the alleged violation of his right of access to a court was communicated to the Government.

5. After having failed to reach a friendly settlement, by a letter of 19 September 2019, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention. The applicant objected, noting that he was not satisfied with the terms of the unilateral declaration.

6. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, which was consistent with the amounts awarded in similar cases, and the existence of clear and extensive case-law regarding the subject, the Court considered that continuing the examination of the application was no longer justified (Article 37 § 1 (c)). It was also satisfied that respect for human rights as defined in the Convention and the Protocols thereto did not require it to continue the examination of the application (Article 37 § 1 *in fine*). Thus, while emphasising that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008), the Court decided to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention (see for details *Çelebi v. Turkey*, Committee decision, no. 55657/09, 10 December 2019).

## B. Subsequent proceedings before the domestic courts for the reopening of civil proceedings

7. On 3 February 2020 the applicant asked the Istanbul Labour Court ("the Labour Court") to reopen the civil proceedings against his former employer on the basis of the Court's above-mentioned decision.

8. On 24 September 2020 the Labour Court rejected the applicant's request, noting that Court's strike-out decisions could not be a basis for the reopening of proceedings within the meaning of Section 375 of the Civil Code and that, in any event, the Court could only determine whether domestic proceedings exceeded a reasonable time and not review the nature of a time-limitation or its particular application in a case.

9. In an appeal lodged on 15 October 2020 the applicant submitted that there was a clear legal basis for the reopening of civil proceedings concerning his compensation claim on account of the fact that the Government's unilateral declaration had expressly recognised the violation of Article 6 § 1.

It had therefore been incumbent on the Labour Court to reopen the proceedings and examine anew his compensation claim which had been rejected for non-compliance with the time-limit in the original proceedings.

10. In a decision of 30 September 2021, the Istanbul Regional Civil Court upheld the appeal, observing that the Labour Court had to grant the applicant's request for the reopening of the proceedings, and examine the case on the merits by collecting the necessary evidence for the determination of his claim. The Istanbul Regional Civil Court therefore remitted the case to the Labour Court for re-examination in accordance with its ruling.

11. Following remittal, the Labour Court rejected the case on 8 February 2022 after holding a hearing in the presence of the parties, and by noting that the strike-out decision of the Court based on the unilateral declaration in the applicant's case did not require the reopening of the proceedings. In the Labour Court's view, the applicant's purpose in seeking the reopening of the proceedings was to obtain compensation but that portion of the claim had already been refused on the basis of time-limits set out in the Code of Obligations in the original proceedings. The Labour Court went on to add that time-limits, which existed in all legal systems in one form or another, could not be conceived as a hindrance to the right of access to a court. The running of a time-limit could be a basis for violation of the reasonable time requirement under Article 6 of the Convention, but even in such a scenario, the reopening of proceedings would not be necessary. According to the domestic court's reasoning, only procedural flaws such as inequality between parties or restrictions on the rights of defence could be a basis for the reopening of proceedings – which was not the case in the applicant's situation.

12. The applicant's subsequent appeal to the Istanbul Regional Civil Court was dismissed on 11 November 2022.

13. The applicant lodged an individual appeal before the Constitutional Court, alleging a violation of his rights under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

14. At the time of the parties' latest submissions to the Court, the proceedings were still pending before the Constitutional Court.

## RELEVANT LEGAL FRAMEWORK

### A. Civil Code of Procedure

15. Section 375 of the Code of Civil Procedure of 12 January 2011 ("the CCP") reads as follows:

> "1. The reopening of proceedings may be requested for the following reasons:
>
> (...)

(i) a final judgment by the European Court of Human Rights to the effect that the [final domestic] decision was in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms or its additional protocols or a decision [by the European Court of Human Rights] striking off an application out of its list of cases following a friendly settlement or a unilateral declaration."

## B. Constitutional Court

16. In their observations the Government cited a judgment and a decision delivered by the Constitutional Court in support of their argument that an individual appeal before the Constitutional Court constituted an effective remedy capable of providing redress in respect of the applicant's grievances in the present case. The judgment cited by the Government concerned an applicant's compensation claim against the Ministry of Interior before an administrative court following the Court's judgment where it found a violation of the substantive limb of Article 3 on account of the serious injury suffered by the applicant caused by unjustified use of force by the police (see *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, 16 July 2013). The administrative courts dismissed the case considering that the authorities had not been at fault for the applicant's injury. Following an individual appeal by the applicant, the Constitutional Court, in a decision of 5 November 2020 found a violation of Article 13 in conjunction with Article 3 of the Convention, noting that the administrative courts' examination of the case had been in stark contrast with the Court's findings and that Article 46 of the Convention required national authorities, including the courts, to recognise the binding force of the Court's judgments and implement measures necessary to give it full effect. With that finding the Constitutional Court remitted the case to the administrative court for a retrial.

The decision cited by the Government concerned an applicant's request before a criminal court - following the finding of a violation of Article 2 by the Court (see *Makbule Kaymaz and Others v. Turkey*, no. 651/10, 25 February 2014) - to reopen the criminal proceedings against police officers who had been acquitted in relation to the deaths of the applicant's husband and son. The applicant made an individual appeal with the Constitutional Court, after the criminal courts refused her request, and complained, *inter alia*, of a violation of Article 2 of the Convention. In its decision of 17 April 2019, the Constitutional Court declared the application as manifestly ill-founded, noting firstly that the criminal code of procedure did not recognise the finding of a violation by the Court as a ground to reopen criminal proceedings to the detriment of an alleged perpetrator. Secondly, the Constitutional Court noted that the Court had not indicated any general or individual measures apart from the payment of just satisfaction in the applicant's case. In such circumstances, the Constitutional Court concluded that the reopening of the criminal proceedings against the alleged perpetrators

could not be considered as a necessary form of redress for the violation found by the Court.

# THE LAW

17. By a letter of 4 October 2021, the applicant requested the Court to restore the application to the list of cases as provided for in Article 37 § 2 of the Convention which reads as follows:

> "The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

## A. The parties' submissions

18. The applicant submitted that despite the Government's undertaking, in their unilateral declaration, that the reopening of proceedings as set out in Article 375 of the Civil Code would provide redress in respect of his Convention complaint, the domestic courts had refused to reopen the proceedings. In his subsequent submissions, the applicant informed the Court that he had appealed against the domestic court's decision but that he considered that there was a real risk that this remedy, even if it led to the reopening of the proceedings, would not result in him securing the payment of his pecuniary claim related to the work-place accident as he did not know whether his former employer still existed. He therefore considered that the Court should restore the application to the list of cases and examine the merits of his claim and award him just satisfaction, in particular his pecuniary claim.

19. The Government submitted that there existed no exceptional circumstances justifying the restoration of the application to the Court's list of cases. In the first place, they noted that the proceedings were still ongoing before the domestic courts; notably before the Constitutional Court, in the context of an individual appeal; therefore, the restoration request was premature. Drawing from the case-law examples of that court, the Government considered that the Constitutional Court was also empowered to examine grievances in the context of reopening requests following the Court's decision striking an application out of its list of cases on the basis of a friendly settlement or a unilateral declaration. Secondly, the Government emphasised that the obligation to reopen the case did not guarantee a favourable outcome regarding the merits of the dispute and that should the applicant's claims be dismissed by the courts on the merits, this would not mean that the Government had failed to comply with their undertakings in the unilateral declaration.

## B. The Court's assessment

20. Even after it accepts a unilateral declaration and decides to strike an application (or part thereof) out of its list of cases, the Court reserves the right to restore that application (or part of the application, as appropriate) to its list as provided for in Article 37 § 2 of the Convention and Rule 43 § 5 (former Rule 44 § 5) of the Rules of Court. It is therefore not an uncommon practice for the Court to indicate specifically, at the end of its strike-out decision, that it may decide to restore the application (or part thereof) to its list of cases in the event of a failure by the Government to comply with the terms of their unilateral declaration as accepted by the Court (see, for example, *Canbek v. Turkey* (dec.), no. 5286/10, 13 January 2015; *Schulz v. Germany* (dec.), no. 4800/12, 31 March 2015; *Bonomo and Others v. Italy* (dec.), nos. 17634/11 and 164 other applications, 9 April 2015; and *Union of Jehovah's Witnesses and Others v. Georgia* (dec.), no. 72874/01, 21 April 2015). However, the Court has rarely restored a case to its list of cases following a strike-out decision made in the light of a unilateral declaration (see, for example, *Aleksentseva and Others v. Russia*, nos. 75025/01 and 28 others, decisions of 4 September 2003, 23 March 2006, and judgment of 17 January 2008, §§ 14-17 and *Willems and Gorjon v. Belgium*, nos. 74209/16 and 3 others, decision of 13 March 2018 and judgment of 21 September 2021).

21. It follows that a Government's unilateral declaration may be submitted twice to the Court's scrutiny. Firstly, before the decision is taken, to strike a case out of its list of cases. Secondly, after the strike-out decision the Court may be called upon to supervise the implementation of the Government's undertakings and to examine whether there are any "exceptional circumstances" (Rule 43 § 5 of the Rules of Court) which justify the restoration of the application (or part thereof) to its list of cases (see, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 69, 5 July 2016).

22. Moreover, in supervising the implementation of the Government's undertakings the Court has the power to interpret the terms of both the unilateral declaration and its own strike-out decision (ibid., § 70).

23. Turning to the present case, the Court begins by noting that the applicant's complaint, that had been communicated to the Government, did not concern the length of proceedings but the alleged violation of the applicant's right of access to a court on account of the interpretation of a time-limit in the proceedings, before the civil courts, regarding his compensation claim against his former employer. In their unilateral declaration the Government acknowledged the violation of Article 6 and referred to the possibility for the applicant to request the reopening of the impugned proceedings on the basis of Article 375 § 1 (i) of the Civil Code (see *Çelebi*, cited above, § 6). The Court decided to strike the application out of its list of cases by having regard, *inter alia*, to its clear and extensive

case-law on the topic of right of access to a court (ibid., §§ 11-13 with reference to *Eşim v. Turkey*, no. 59601/09, §§ 16-27, 17 September 2013). It goes without saying that the Court's striking out decision did not amount to a judgment finding a violation of the Convention (see, *mutatis mutandis*, *Willems and Gorjon*, cited above, § 61). The Court did not examine the admissibility, let alone the merits of the applicant's complaint. It is nonetheless important to underscore that, in a spirit of shared responsibility on the part of States and the Court, to ensure respect for Convention rights, applicants are entitled to expect the national authorities, including the courts, to draw fair-mindedly the conclusions that follow from a unilateral declaration by the Government acknowledging a violation of Article 6 and giving rise to a decision of the Court taking note of it (see, *mutatis mutandis*, *Boutaffala v. Belgium*, no. 20762/19, § 51, 28 June 2022).

24. This means that the terms of the Government's unilateral declaration, read together with the Court's striking out decision in the present case, imposes a duty on domestic courts to examine the reopening request in a manner that gives effect to the Government's commitments and the Court's case-law.

25. In this respect while the Court has no competence to order the reopening of domestic proceedings, it has, however, observed, many times, that when someone has been the victim of proceedings entailing a breach of Article 6 of the Convention, a reopening of those proceedings, if requested, is in principle an appropriate way of redressing the breach (see, *inter alia*, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 89, ECHR 2009 and *Aviakompaniya A.T.I., ZAT v. Ukraine*, no. 1006/07, § 35, 5 October 2017 with further references). This is also the case where a violation of the right of access to a court has been found (see *Eşim*, cited above, § 30).

26. The Court finds no reason to hold otherwise in the circumstances of the present case, where the violation of Article 6 has been acknowledged by the Government, and where the aim pursued by the applicant, in his individual application, was the reopening of the civil proceedings with a view to influencing the outcome of his compensation case (see, *mutatis mutandis*, *Romić and Others v. Croatia*, nos. 22238/13 and 6 others, § 83, 14 May 2020).

27. The Court further reiterates that in deciding whether to accept a unilateral declaration submitted by the Government, it has first and foremost regard to whether domestic law provides the same assured access to a procedure allowing for the examination of the question of reopening domestic proceedings on the basis of this Court's decision approving a unilateral declaration as would a Court judgment finding a violation of the Convention (see *Aviakompaniya A.T.I., ZAT*, § 33 and *Romić and Others*, §§ 85-86, both cited above; *Hakimi v. Belgium*, no. 665/08, § 29, 29 June 2010; and, *Dridi v. Germany*, no. 35778/11, § 25, 26 July 2018).

28. In this connection, the Court notes that on 25 July 2018 the Turkish Parliament adopted Law no. 7145 which introduced amendments to the Codes of Criminal, Civil and Administrative Procedure providing for a right to request the re-opening of domestic court proceedings following the Court's decision to strike out a case on the basis of a friendly settlement or unilateral declaration. Since the entry into force of this law on 31 July 2018, the Court has delivered numerous decisions, striking applications against Türkiye out of its list of cases, on the basis of friendly settlements or unilateral declarations, with the consideration that the remedy set out in law no. 7145 would lead to the reopening of proceedings with a sufficient degree of certainty (see for example, *Özdemir v. Turkey*, Committee Decision, no. 49523/11, 5 March 2020 in the case of civil proceedings; *Akmeşe and Eğitim Sen v. Turkey*, Committee Decision, no. 2575/08, § 13, 22 October 2019 in the case of administrative proceedings; and *Arpaç v. Turkey*, Committee Decision, no. 53105/09, § 15, 19 March 2019 in the case of criminal proceedings). The availability of this remedy, provided that it is confirmed in practice by domestic courts, demonstrates a Contracting State's commitment to the Convention and the Court's case-law (see, *mutatis mutandis*, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 58, ECHR 2015). This is not to say that any refusal to reopen a case by a domestic court following a Court's decision to strike-out an application out of its list of cases on the basis of a unilateral declaration would mean that the Government failed to comply with the terms of their unilateral declaration. It is the task of the domestic courts to grant or refuse the request by evaluating all circumstances of the case, including any considerations relating to the principle of legal certainty and the rights of third parties (see, *mutatis mutandis*, *Deckmyn v. Belgium* (dec.), §§ 43-46, 7 November 2023) .

29. Thus, the question before the Court is to determine the extent of domestic remedies to be exhausted following its decision to strike out an application on the basis of a unilateral declaration when a Government allegedly fails to implement the terms relating to measures other than the payment of compensation. The Court reiterates that it may take the decision to restore a case to its list of cases at any moment if it is satisfied that the circumstances justify such a course (Article 37 § 2 of the Convention and Rule 43 § 5 of the Rules of Court). That being so, in order to determine whether there are exceptional circumstances warranting the case to be restored to its list of cases, the Court may have regard to the existence of available and effective remedies to enforce the obligations contained in a Government's unilateral declaration and determine whether the applicant's failure to avail him or herself of them nevertheless justifies the case being restored.

30. In the Turkish legal system, the Constitutional Court plays an essential role in reviewing the compatibility of domestic courts' decisions with the Convention within the mechanism of individual application (see generally,

*Uzun v. Turkey* (dec.), no. 10755/13, §§ 52-67, 30 April 2013). Moreover, the Constitutional Court forms an integral part of the judiciary within the constitutional structure of Türkiye (see *Şahin Alpay v. Turkey*, no. 16538/17, § 117, 20 March 2018). The case-law examples provided by the Government further demonstrate that the Constitutional Court verifies whether the approach of domestic courts' in rejecting a request for reopening or re-examination of a case following a finding of a violation by this Court is compatible with the conclusions and spirit of the Court's judgment. The Court is aware that the case-law examples submitted by the Government do not pertain to a situation following a Court's striking out decision on the basis of a unilateral declaration. Be that as it may, the existence of mere doubts as to the prospects of success of a particular remedy cannot dispense an applicant from making use of that remedy (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 74 and 84, 25 March 2014). Having regard to its subsidiary role, the Court considers it necessary to afford an opportunity for the Constitutional Court to rule in the present case. Moreover, by applying to the Constitutional Court, the applicant has now created an opportunity for the development of case-law on this matter, which will potentially be beneficial to anyone else in a similar or comparable situation (see *Gherghina v. Romania* [GC] (dec.), no. 42219/07, § 106, 9 July 2015).

31. In these circumstances and bearing in mind the subsidiary character of the mechanism of protection of human rights established by the Convention, the Court is of the view that the restoration request is premature and there appears at this stage no exceptional circumstances which justify the restoration of the application to its list of cases.

For these reasons, the Court, unanimously,

*Decides* to refuse the request to restore the application to the Court's list of cases.

Done in English and notified in writing on 18 July 2024.

| | |
|---|---|
| Hasan Bakırcı<br>Registrar | Arnfinn Bårdsen<br>President |