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

SECOND SECTION

DECISION

Application no. 18386/07
Aydın DAĞLI
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 9 April 2007,

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

Having deliberated, decides as follows:

PROCEDURE

1. The case originated in an application (no. 18386/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Aydın Dağlı ("the applicant"), on 9 April 2007.

2. The applicant was born in 1975 and is detained in Diyarbakır. The Turkish Government ("the Government") are represented by their Agent.

THE FACTS

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

4. On 6 September 2001 the applicant was arrested and placed in custody on suspicion of attempt to overthrow the constitutional order.

5. On 14 September 2001 the judge on duty at the Diyarbakır State Security Court ordered the applicant's pre-trial detention having regard to the state of the evidence and the nature of the offence in issue.

6. On an unspecified date, a bill of indictment was filed with the Diyarbakır State Security Court. Following the abolition of the State Security Courts by Law no. 30 June 2004, the Diyarbakır Assize Court resumed the hearing of the case.

7. On 3 April 2007 the applicant was convicted as charged and sentenced to life imprisonment under Article 146 § 1 of the Criminal Code.

8. On 6 February 2008 this decision was upheld by the Court of Cassation and became final.

COMPLAINT

9. The applicant complained under Article 5 § 3 of the Convention about the length of his detention on remand.

THE LAW

10. The Government maintained that the applicant had not exhausted domestic remedies: as the first-instance court's judgment against him had become final, the applicant should have sought compensation before the domestic courts pursuant to Article 141 of the Code on Criminal Procedure.

11. The Court recalls that in its decision in the case of *Şefik Demir v. Turkey* (no 51770/07, §§ 17-35, 16 October 2012), it declared the applicant's complaint under Article 5 § 3 of the Convention inadmissible for non-exhaustion of domestic remedies.

12. In the instant case, the Court observes that the applicant's detention on remand ended on 3 April 2007 with his conviction by the Diyarbakır Assize Court. On 6 February 2008 this decision became final with the Court of Cassation's decision (see paragraph 8 above). From that date onwards, the applicant could have sought compensation pursuant to Article 141 of the Code of Criminal Procedure (see *Şefik Demir,* cited above, § 35), but he failed to do so.

13. 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.

14. As a result, taking into account the Government's preliminary 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.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Milan Blaško
Acting Deputy Registrar

Nebojša Vučinić
President