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

SECOND SECTION

DECISION

Application no. 52391/14
Nurettin DAĞTEKİN
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 October 2015 as a Committee composed of:

Ksenija Turković, *President,*
Robert Spano,
Jon Fridrik Kjølbro, *judges,*

and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 July 2014,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Nurettin Dağtekin, is a Turkish national, who was born in 1970 and lives in Malatya. He is the brother and legal guardian of Mr Halit Dağtekin, who was born in 1974. At the time of the events, Mr Halit Dağtekin was serving a prison sentence in Adıyaman Prison.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 30 August 2012 Mr Halit Dağtekin was hospitalised after having been found severely injured in Adıyaman Prison where he was serving his prison sentence. Despite a long treatment in the hospital, he has been heavily disabled since that day. As a result of his injuries, on 2 March 2013 he was released on parole (*denetimli serbestlik*).

4. On 3 October 2012 the applicant lodged a criminal complaint with the Adıyaman Public Prosecutor about the alleged ill-treatment of his brother by prison guards and other prisoners.

5. On 7 January 2013 the Adıyaman Public Prosecutor took a decision of non-prosecution basing his decision on the statements of other prisoners and of Halit Dağtekin himself. In his statement, Halit Dağtekin explained that he

had fallen off his bunk bed as he had lost consciousness. The other prisoners further stated that they had found Halit Dağtekin lying unconscious on the ground near his bunk bed. The prosecutor found it established that Halit Dağtekin had experienced a seizure and had fallen off his bunk bed. It was also established that he had been taken to the hospital immediately and that there was no fault that could be attributed to the prison administration. The decision was communicated to the applicant on 20 February 2013.

6. On 1 October 2013 the applicant filed an objection with the Şanlıurfa Assize Court. On 12 November 2013 the assize court dismissed the case holding that the objection had not been introduced within the time-limit laid down in domestic law. The applicant was informed of this decision on 16 January 2014.

7. On 25 February 2014 the applicant introduced an individual application before the Constitutional Court and alleged that his brother had been subjected to ill-treatment in prison and that there had been no effective investigation into his allegations.

8. On 30 May 2014 the Constitutional Court dismissed the applicant's case, holding that he had failed to introduce his individual application within the thirty-day time-limit foreseen by law.

COMPLAINT

9. The applicant complained that his brother had been ill-treated in detention and that no effective and thorough investigation had been carried out into his allegations.

THE LAW

10. The applicant alleged that his brother had been ill-treated and that there had been no effective investigation in domestic law.

11. The Court recalls at the outset that pursuant to Article 35 § 1 of the Convention it "may only deal with the matter after all domestic remedies have been exhausted". The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Accordingly, this rule requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts (see *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 other cases, §§ 69-70, 25 March 2014). Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have

been made in compliance with the formal requirements and time-limits laid down in domestic law. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Vučković and Others*, cited above, § 72, and the references therein).

12. The Court further points out that, having examined the new remedy before the Constitutional Court, it found that the Turkish Parliament had entrusted that court with powers that enabled it to provide, in principle, direct and speedy redress for violations of the rights and freedoms protected by the Convention, in respect of all decisions that had become final after 23 September 2012, and declared it as a remedy to be used (*Uzun v. Turkey* (dec.), no. 10755/13, 30 April 2013, §§ 68-71). Accordingly, the applicant should avail himself of the new remedy before the Constitutional Court offered by Law no. 6216 (ibidem).

13. In the instant case, the Court observes that the reason for the dismissal of the applicant's objection with the Assize Court and his application before the Constitutional Court was the incompliance with domestic remedies due to his own failure in observing the procedural requirements (see *Nold v. Germany*, no. 27250/02, § 88, 29 June 2006). Indeed, the applicant failed to introduce his objection with the Şanlıurfa Assize Court within the time-limit laid down in the domestic law. Likewise, he failed to lodge his application with the Constitutional Court within thirty days following the notification of the final decision.

14. In view of the foregoing, the Court declares the application inadmissible for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 November 2015.

Abel Campos
Deputy Registrar

Ksenija Turković
President