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

SECOND SECTION

DECISION

Application no. 2261/11
Mehmet Tevfik DİŞÇİ against Turkey
and 3 other applications
(see appended table)

The European Court of Human Rights (Second Section), sitting on 7 September 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Valeriu Griţco,
Jon Fridrik Kjølbro, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

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 list of applicants is set out in the appended table. The Turkish Government ("the Government") were represented by their Agent.

2. The applicants' complaints under Article 5 § 3 of the Convention concerning the excessive length of pre-trial detention were communicated to the Government. In application no. 53351/11, the applicant also raised another complaint under the Article 5 § 5 of the Convention.

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

4. On various dates, the applicants were placed in pre-trial detentions on suspicion of having committed a crime. Subsequently, criminal proceedings were initiated against them. However, there is no further information in the case files about the outcome of the proceedings. The relevant details of the applications appear in the table below.

THE LAW

A. Joinder of the applications

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

B. Complaints under Article 5 § 3 of the Convention (excessive length of pre-trial detention)

6. The Government rejected the allegations, submitting that the applicants had failed to exhaust domestic remedies, referring to the possibility of claiming compensation for unlawful detention under Article 141 § 1 (d) of the Code on Criminal Procedure ("CCP").

7. The Court observes that the domestic remedy in application of Article 141 § 1 (d) of the CCP with regard to length of detention on remand was examined in the cases of *Demir v. Turkey*, ((dec.), no. 51770/07, §§ 17-35, 16 October 2012), and *A.Ş. v. Turkey* (no. 58271/10, § 85-95, 13 September 2016).

8. In the case of *Demir* (cited above) the Court held that, that remedy had to be exhausted by the applicants whose convictions became final. It further ruled in its judgment of *A.Ş.* (cited above, § 92) that as of June 2015 the domestic remedy provided for in Article 141 § 1 (d) of the CCP had to be exhausted by the applicants even before the proceedings became final.

9. In the instant cases, the Court notes that the applicants' detentions ended on 28 January 2011, 4 January 2011, 18 October 2011 and 7 December 2011 respectively. There is no further information whether the proceedings against the applicants are still pending or have become final. However, the Court observes that the applicants were entitled, in both situations, to seek compensation under Article 141 § 1 (d) of the CCP, but they failed to do so.

10. 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.), no. 11929/12, 28 January 2014). The Court takes the view that the exception should be applied in the present applications as well.

11. As a result, taking into account the Government's preliminary objection with regard to the applicants' failure to seek compensation pursuant to article 141 of the CCP, the Court concludes that the applications must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies as concerns the complaints under Article 5 § 3 of the Convention.

C. Remaining complaint

12. In application no. 53351/11, the applicant also complained under Article 5 § 5 of the Convention that he had been denied the right to compensation for the violation of his right under Article 5 § 3 the Convention.

13. The Court reiterates that paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (*Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court. Accordingly, the Court cannot consider an applicant's claim based exclusively on Article 5 § 5 unless a breach of Article 5 §§ 1 to 4 has been established directly or in substance, either by the domestic authorities or by the Court itself.

14. It follows that as the applicant's case does not disclose such a breach, his claim under Article 5 § 5 should be rejected for being incompatible *ratione materiae* with the provisions 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 28 September 2017.

Liv Tigerstedt
Acting Deputy Registrar

Nebojša Vučinić
President

APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth/Date of registration	Representative name and location	Period of detention	Length of detention	Other complaints under well-established case-law
1.	2261/11 18/01/2011	**Mehmet Tevfik Dişci** 14/01/1967		01/02/2006 to 09/06/2008 08/11/2010 to 28/01/2011	2 years, 4 months and 9 days 2 months and 21 days	
2.	53351/11 01/07/2011	**Habip Çiftçi** 10/03/1973	Çekiç Gündüz Hacer Istanbul	10/11/2008 to 04/01/2011	2 years, 1 month and 26 days	Art. 5 (5) - lack of, or inadequate, compensation for unlawful arrest or detention - to be communicated in conjunction with article 5 (3).
3.	16031/12 16/01/2012	**Orhan Karaaslan** 05/04/1981	Erbil Mehmet Istanbul	26/08/2009 to 18/10/2011	2 years, 1 month and 23 days	
4.	44546/12 03/05/2012	**Alaattin Turan** 20/05/1996	Çalışcı Adem Istanbul	05/07/2010 to 07/12/2011	1 year, 5 months and 3 days	