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

SECOND SECTION

DECISION

Application no. 45768/12
Sinan ERASLAN
against Türkiye

The European Court of Human Rights (Second Section), sitting on 13 September 2022 as a Committee composed of:
Egidijus Kūris*, President,*
Pauliine Koskelo*,*
Gilberto Felici*, judges,*
and Dorothee von Arnim, *Deputy Section Registrar,*
Having regard to the above application lodged on 7 May 2012,
Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Sinan Eraslan, is a Turkish national, who was born in 1972 and is currently detained in Istanbul.

2. The Turkish Government ("the Government") were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Turkey.

3. On 29 May 2007 the applicant was arrested on suspicion of Internet fraud and on 2 June 2006 he was placed in pre-trial detention for Internet fraud and establishing a criminal organisation.

4. On 8 February 2008 the Istanbul public prosecutor filed a bill of indictment against the applicant, along with fifty-four other persons, accusing him of leading a criminal organisation; illegal access to information systems and theft via the use of information systems (forty-three counts); bank card fraud (five counts); forgery of official documents (seven counts); and production of a false debit card or credit card (fourteen counts).

5. On 30 December 2008 the Üsküdar Criminal Court of First Instance found the applicant guilty of the majority of the charges and sentenced him to a term of imprisonment.

6. On 2 November 2011 the Court of Cassation partly quashed and partly upheld the trial court's judgment.

7. On 7 May 2012 the applicant lodged an application with the Court.

8. On 2 May 2016 the applicant applied for the reopening of the criminal proceedings in so far as they concerned his convictions which had been upheld by the Court of Cassation on 2 November 2011, and his request was granted on 25 August 2016. According to the information submitted by the Government, those proceedings are still pending before the domestic courts.

9. Meanwhile, the proceedings concerning the part of the applicant's conviction which had been quashed by the Court of Cassation were resumed before the Istanbul Anadolu Criminal Court of First Instance and on 29 April 2016 the applicant was found guilty of those charges. On 16 May 2019 the Court of Cassation upheld the convictions. On 6 August 2019 the applicant lodged an individual application with the Constitutional Court, which was declared inadmissible by that court on 7 January 2021.

10. On 24 October 2019 the Court decided to give the Government notice of the applicant's complaints relating to his unjustified absence from the hearings and the alleged failure to grant him adequate time and facilities to prepare his defence.

11. On 13 April 2020 the Government submitted to the Registry of the Court their observations on the admissibility and merits of the application, wherein they informed the Court, *inter alia*, that the criminal proceedings forming the basis of the present application had been reopened following the applicant's application for a retrial and that they were pending before the domestic courts. On 21 April 2020 those observations were forwarded to the applicant, who was invited to submit observations in reply by 2 September 2020. However, no observations were filed on behalf of the applicant within that time-limit.

12. Subsequently, the Court received a letter dated 16 February 2021 from the applicant's legal guardian, wherein he briefly explained that three decisions authorising the interception of telephone conversations had not contained any reasons. The last letter received from the applicant was dated 28 October 2021, wherein he asked the Court to correspond with him instead of his legal guardian.

THE LAW

13. The applicant complained that the criminal proceedings against him had breached Article 6 of the Convention on account of his unjustified absence from the hearings and the alleged failure to grant him adequate time and facilities to prepare his defence.

14. The Government raised three different preliminary objections, based on non-exhaustion of domestic remedies, lack of victim status and abuse of the right of individual application, and invited the Court to declare the

application inadmissible on any one of those grounds. As regards the last ground, the Government submitted that the applicant had failed to keep the Court informed of the developments in his case, in particular the reopening of the criminal proceedings against him, a fact which was crucial for the accurate examination of the application, and invited the Court to declare the application inadmissible.

15. The Court observes that the present application is limited to the criminal proceedings concerning the applicant's conviction as upheld by the Court of Cassation on 2 November 2011, that being the final domestic decision against which he lodged his application on 7 May 2012.

16. It is not necessary to examine the Government's preliminary objections, as the case is in any event inadmissible, for the following reasons.

17. Rules 44C § 1 and 47 § 7 of the Rules of Court read as follows:

Rule 44C

"1. Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate."

Rule 47

"7. Applicants shall keep the Court informed ... of all circumstances relevant to the application."

18. The Court further reiterates that whenever an applicant omits, contrary to Rule 44C § 1, to divulge relevant information of his or her own motion, depending on the particular circumstances of the case, the Court may draw such inferences as it deems appropriate, including striking the application out under either of the three sub-paragraphs of Article 37 § 1 of the Convention (see *Belošević v. Croatia* (dec.), no. 57242/13, § 48, 3 December 2019).

19. It is clear from Article 37 § 1 (c) of the Convention that the Court enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on this basis, it being understood, however, that such grounds must relate to the particular circumstances of each case (see, *mutatis mutandis, Atmaca v. Germany* (dec.), no. 45293/06, 6 March 2012, with further references).

20. The Court therefore finds it appropriate to first ascertain whether the fact which the applicant omitted from his application and which the Government brought to its attention, namely the reopening of the criminal proceedings on 25 August 2016, may lead it to conclude that it is no longer justified to continue the examination of the application, and that the case may consequently be struck out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, the relevant part of which reads as follows:

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

...

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

21. The Court notes that the present application concerns the alleged unfairness of the criminal proceedings conducted before the Üsküdar Criminal Court of First Instance, which ended with final effect with the Court of Cassation's decision on 2 November 2011. However, according to the information supplied by the Government, on 2 May 2016 the applicant lodged an application for the reopening of those criminal proceedings and it was granted on 25 August 2016, with the result that the proceedings are now pending before the Istanbul Anadolu Criminal Court of First Instance (compare *Kovačić and Others v. Slovenia* [GC], nos. 44574/98 and 2 others, § 267, 3 October 2008). The Court learned of this information for the first time in the Government's observations dated 13 April 2020.

22. In the Court's view, the reopening of the criminal proceedings against the applicant is not only "relevant information" within the meaning of Rule 44C, but it also relates to the very core of the case in that it may have a decisive impact on the Court's assessment of the admissibility and the merits of his application. Nevertheless, the applicant did not advance any reason, let alone a plausible one, for his serious omission to inform the Court of this crucial information. Nor has he submitted any proper observations concerning the admissibility and merits of the present application since 24 October 2019, the date on which notice of the application was given to the Government.

23. At this juncture, the Court is led to conclude that the appropriate inference to be drawn from Rule 44C § 1 *in fine* is that it is no longer justified to continue the examination of the present application.

24. Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the right to have adequate time and facilities to prepare one's defence under Article 6 § 3 (b) and the right to be present and to effectively defend oneself under Article 6 §§ 1 and 3 (c) of the Convention, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

25. Accordingly, it is appropriate to strike the application out of the list under Article 37 § 1 (c) of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 6 October 2022.

Dorothee von Arnim Deputy Registrar	Egidijus Kūris President