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

SECOND SECTION

DECISION

Application no. 7030/10
Zafer Sinan ERDOĞAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 November 2020 as a Committee composed of:

Aleš Pejchal, *President,*
Egidijus Kūris,
Carlo Ranzoni, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 January 2010,

Having regard to the declaration submitted by the respondent Government on 6 April 2020 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Zafer Sinan Erdoğan, is a Turkish national, who was born in 1967 and lives in Mersin. He was represented before the Court by Mr M. Yatmaz, a lawyer practising in Adana.

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

3. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that he had been denied his right to a lawyer when making statements to the police. Relying on Article 6 § 1 of the Convention, the applicant further alleged that the domestic courts based their judgment on the statements he had made in the absence of a lawyer and allegedly under duress. Lastly, the applicant further complained that he had been subjected to ill-treatment during his arrest, contrary to Article 3 of the Convention.

4. The above complaints had been communicated to the Government.

THE LAW

A. As regards the complaints under Article 6 §§ 1 and 3 (c) of the Convention

5. After the failure of attempts to reach a friendly settlement, by a letter of 6 April 2020 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government of Turkey acknowledge that in the present case there has been a violation of the applicant's rights under Articles 6 §§ 1 and 3 of the Convention in the light of the well-established case-law of the Court.
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> The Government also recalls that Law no. 4928 on 15 July 2003 repealed the provision concerning the systemic restriction on the right of access to a lawyer.
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> The Government further emphasises that Article 311 § 1 (f) of the Code on Criminal Procedure, as amended by Law no. 7145 of 31 July 2018, now requires reopening of criminal proceedings in cases where the European Court of Human Rights decides to strike an application out of its list of cases following a friendly settlement or a unilateral declaration. The Government considers that the aforementioned remedy is capable of providing redress in respect of the applicant's complaints under Article 6 of the Convention.
>
> The Government thus offer to pay the applicant Zafer Sinan ERDOĞAN, EUR 500 (five hundred euros) to cover any pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant with a view to resolving the above-mentioned case pending before the European Court of Human Rights.
>
> This sum will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case before the European Court of Human Rights."

6. By a letter of 2 June 2020, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the amount offered by the Government did not cover the damages he had suffered.

7. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

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

8. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

9. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

10. The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the validity of the waiver of the right to a lawyer during police custody and the use of evidence obtained in the absence of a lawyer to convict the applicants (see, among others, *Simeonovi v. Bulgaria* [GC], no. 21980/04, 12 May 2017; *Bozkaya v. Turkey*, no. 46661/09, 5 September 2017; *Türk v. Turkey*, no. 22744/07, 5 September 2017; *Hakan Duman v. Turkey*, no. 28439/03, 23 March 2010; *Savaş v. Turkey*, no. 9762/03, 8 December 2009; and *Yunus Aktaş and Others v. Turkey*, no. 24744/03, 20 October 2009).

11. The Court would further like to draw attention to the fact that on 31 July 2018 the Turkish Law No. 7145 entered into force. Articles 4, 17, 18 and 19 of this new law provide for a right to request the reopening of domestic court proceedings or the investigation following the Court's decision to strike out a case on the basis of a friendly settlement or unilateral declaration. According to the Court's case-law and practice, the reopening of the domestic proceedings is the most appropriate way to provide an effective solution to an alleged breach. In this connection, bearing in mind the Court's subsidiary role in protecting the rights and freedoms guaranteed by the Convention and its protocols, it is recalled that it falls in the first place to the national authorities to redress any violation of the Convention.

12. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

13. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, 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*). That decision is without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain

redress (see *Jeronovičs v. Latvia* [GC], no. 44898/10, §§ 116-118, 5 July 2016).

14. Finally, the Court emphasises 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).

15. In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaint.

B. As regards the remaining complaints

16. Relying on Articles 3 and 6 § 1 of the Convention the applicant also complained that he had been ill-treated during his arrest and that the trial court had used his statements, which had allegedly obtained under duress.

17. Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols (see *Oğuz v. Turkey* (dec.), no. 14040/10, § 26, 5 November 2013, and *Yalgın and others v. Turkey* (dec.), no 33370/96, 11 January 2000).

18. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 §§ 1 and 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 26 November 2020.

Hasan Bakırcı	Aleš Pejchal
Deputy Registrar	President