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

SECOND SECTION

DECISION

Application no. 42906/11
Ercan ERMİŞ
against Turkey

The European Court of Human Rights (Second Section), sitting on 15 March 2016 as a Committee composed of:

Paul Lemmens, *President,*
Ksenija Turković,
Jon Fridrik Kjølbro, *judges,*

and Abel Campos, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 February 2011,

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. 42906/11) 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 Ercan Ermiş ("the applicant"), on 15 February 2011.

2. The applicant, Mr Ercan Ermiş, is a Turkish national, who was born in 1982 and is currently detained in Istanbul. The Turkish Government ("the Government") are represented by their Agent.

3. On 6 September 2013 the complaint concerning the length of applicant's detention was communicated to the Government and the remainder of the application declared inadmissible by the President of the Section.

THE FACTS

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

5. On 6 June 2007 the applicant was arrested by police officers and taken into custody. On 7 June 2007 the investigating judge questioned the applicant and ordered his pre-trial detention.

6. On 27 December 2007 the public prosecutor filed a bill of indictment with the Istanbul Assize Court accusing the applicant of murder, injuring someone as a result of firing a weapon and causing damage to property. Subsequently the criminal proceedings commenced before the Istanbul Assize Court.

7. On 16 September 2008 the first hearing was held. Throughout the trial, the court prolonged the applicant's detention taking into consideration the nature of the offence, the state of the evidence, the existence of suspicion that he might abscond or go into hiding, some of the accused persons' confessions of guilt and the fact that the offences in question were listed in Article 100 of the Code of Criminal Procedure.

8. On 8 February 2013 the applicant was convicted by the Istanbul Assize Court.

9. According to the documents in the case file, the proceedings brought against the applicant are currently pending before the Court of Cassation.

COMPLAINT

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

THE LAW

11. The Government maintained that the applicant had not exhausted the domestic remedies, as he was still in detention on remand on 23 September 2012 and should have applied to the Constitutional Court.

12. Having examined the main aspects of the new remedy before the Constitutional Court, the Court 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 (see *Hasan Uzun v. Turkey*, (dec.), no. 10755/13, §§ 68-71, 30 April 2013).

13. The Court further notes that, the Constitutional Court's jurisdiction *ratione temporis* had begun on 23 September 2012 and it was clear from the judgments already delivered that it accepted an extension of its jurisdiction *ratione temporis* to situations involving a continuing violation which had begun before the introduction of the right of individual application and had carried on after that date (see, *Koçintar v. Turkey* (dec.), no. 77429/12, §§ 15-26, 39, 1 July 2014; *Levent Bektaş v. Turkey*, no. 70026/10, §§ 40-42, 16 June 2015).

14. In the present case, the applicant's detention started on 6 June 2007 and ended on 8 February 2013 with his conviction by the trial court. Accordingly, the applicant's detention, even in the period before 23 September 2012, came within the Constitutional Court's temporal jurisdiction.

15. 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 remainder of the application inadmissible.

Done in English and notified in writing on 7 April 2016.

Abel Campos
Deputy Registrar

Paul Lemmens
President