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

SECOND SECTION

DECISION

Application no. 21311/12
Mehmet Hulusi GÜLŞEN
against Turkey

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

Julia Laffranque, *President,*
Paul Lemmens,
Valeriu Griţco, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to the above application lodged on 29 February 2012,

Having regard to the declaration submitted by the respondent Government on 14 June 2017 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 Mehmet Hulusi Gülşen, is a Turkish national, who was born in 1960 and lives in İzmir. He was represented before the Court by Mr T. Yurdakul, Mr M. Yurdakul and Mr R. K. Webb, lawyers practising in İzmir.

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

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

4. On 2 May 2011 the applicant was arrested on suspicion of collusive tendering and founding an organisation to commit crime.

5. On 6 May 2011 he was brought before a judge at the İzmir Assize Court who ordered his detention on remand. The applicant objected to this decision. On 17 May 2011 the İzmir Assize Court dismissed this objection.

6. On 6 June 2011 the applicant's release request was rejected. On 23 June 2011 the İzmir Assize Court dismissed the applicant's objection on the basis of the case file, and having regard to the nature of the offence and the state of the evidence.

7. The applicant's further requests for release were rejected by decisions dated 5 July 2011, 15 July 2011 and 5 August 2011.

8. On 26 August 2011 and 30 September 2011 the İzmir Assize Court prolonged the applicant's detention *ex officio*. The applicant objected to these decisions. On 20 September 2011 and 10 October 2011 the appeal courts dismissed his objections without holding an oral hearing.

9. Subsequently, the applicant's requests for release were rejected on 21 October 2011, 4 November 2011, and 26 December 2011 in view of the evidence contained in the case file.

10. On 20 March 2012 the public prosecutor filed an indictment with the İzmir Assize Court.

11. On 22 May 2012 the first hearing was held and the Assize Court ordered the applicant's release.

12. On 12 September 2013 the trial court acquitted the applicant. According to information received by the Registry, the case is still pending before the Court of Cassation.

COMPLAINT

13. Relying on Article 5 § 4 of the Convention, the applicant complained about the lack of adversarial proceedings in review of the lawfulness of his detention.

THE LAW

14. After the failure of attempts to reach a friendly settlement, by a letter of 14 June 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by 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 Republic of Turkey hereby wishes to express by way of unilateral declaration its acknowledgement that the applicant's rights to liberty and security did not meet the standards enshrined in Article 5 of the Convention.
>
> I declare that the Government accordingly offer to pay applicant EUR 650 (six hundred and fifty euros) to cover any and all pecuniary and non-pecuniary

damages and EUR 150 (one hundred fifty) to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants.

The Government therefore invites the court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

These sums will be converted into local currency at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases/ in the event of failure to pay this sum within said three-month period, the Government undertakes 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."

15. The Court has not received a response from the applicant which accepts the terms of unilateral declaration.

16. 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".

17. 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.

18. 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).

19. The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaints about the lack of an oral hearing in proceedings to challenge the lawfulness of a detention (see, for example, *Karaosmanoğlu and Özden v. Turkey*, no. 4807/08, §§ 63-65, 17 June 2014).

20. 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)).

21. 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*).

22. The Court considers that these amounts should be converted into currency of the respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

23. 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).

24. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 § 4 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

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

Done in English and notified in writing on 30 November 2017.

Hasan Bakırcı
Deputy Registrar

Julia Laffranque
President