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

SECOND SECTION

DECISION

Application no. 38337/05
Ceylan GÜRBÜZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 21 November 2017 as a Committee composed of:

Ledi Bianku, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 14 May 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ceylan Gürbüz, is a Turkish national, who was born in 1971 and is currently serving his prison sentence.

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

A. The circumstances of the cases

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

1. The first set of *criminal proceedings*

4. On 20 October 2000 the applicant was placed in detention on remand for homicide.

5. On 7 February 2003 the Uşak Assize Court decided to release the applicant.

6. On 6 April 2006 the Uşak Assize Court convicted the applicant and also ordered his detention. On 30 November 2006 the applicant was detained.

7. On 8 October 2007 the Court of Cassation quashed the judgment of 6 April 2006. The case was remitted before the İzmir Assize Court.

8. On 26 March 2009 the applicant was released pending trial.

9. On 8 December 2010 the İzmir Assize Court convicted the applicant and sentenced him to twenty years and three months' imprisonment.

10. On 18 October 2011 the Court of Cassation dismissed the applicant's appeal.

2. The second set of *criminal proceedings*

11. On 23 November 2000 the applicant's detention was ordered *in absentia* on suspicion of homicide of the six persons and attempted homicide of three persons. This order was read out to the applicant on 6 December 2000.

12. On 6 March 2006 the applicant was convicted as charged.

13. On 26 February 2009 the Court of Cassation quashed this judgment.

14. On 29 April 2011 the Uşak Assize Court convicted the applicant and sentenced him to life-time imprisonment.

15. On 20 February 2012 this judgment was upheld by the Court of Cassation.

3. The proceedings before the Human Rights Compensation Commission

16. On 15 March 2013 the applicant applied to the Human Rights Compensation Commission ("Commission") established by Law no. 6384, complaining that the domestic proceedings against him had not been concluded within a reasonable time.

17. On 13 March 2014 the Commission held that the length of the proceedings against the applicant were not compatible with the reasonable time requirement of the 6 § 1 of the Convention and decided to award 9,000 Turkish liras (TRY) to the applicant.

18. In a letter, the applicant's stated that he would not appeal against this decision and thus on 2 June 2014 the Commission's decision became final.

19. According to the documents submitted to the Court the authorities were not able to pay the sum to the applicant as he failed to submit relevant documents. Accordingly, the amount was saved in a secure account of the Ministry of Justice to be subsequently transferred to the applicant.

B. Relevant domestic law

20. A description of the relevant domestic law and practice can be found in *Demir v. Turkey* ((dec.), no. 51770/07, §§ 29-33, 16 October 2012), and *Turgut and others v. Turkey* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013).

COMPLAINTS

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

22. The applicant further complained under Article 6 § 1 of the Convention that the domestic proceedings against him had not been concluded within a reasonable time.

23. Without relying on any article, the applicant also complained that he was asked to pay a part of the electricity bill in prison as well as certain expenses for his transfer from prison to the courthouse.

THE LAW

A. Complaint under Article 5 § 3 of the Convention

24. The Government asked the Court to dismiss this part of the application for non-exhaustion of domestic remedies, referring to the possibility of claiming compensation for unlawful detention under Article 141 of the Code of Criminal Procedure.

25. The applicant did not make any comments on this point.

26. The Court observes that the domestic remedy in application of the Article 141 of the Code of Criminal Procedure with regard to length of detention on remand was examined in the decision *Demir v. Turkey*, (no. 51770/07, 16 October 2012). The Court concluded in that decision that the domestic remedy provided for in Article 141 of the Code of Criminal Procedure had to be exhausted.

27. The Court observes in this connection that the applicant's convictions became final 18 October 2011 and 20 February 2012 respectively. Consequently, from those dates onwards the applicant was entitled to seek compensation under Article 141 of the Code of Criminal Procedure, but he failed to do so.

28. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Complaint under Article 6 § 1 of the Convention

29. The applicant complained about the excessive length of the criminal proceedings.

30. The Government stated that the applicant had applied to the Compensation Commission and that by a decision dated 13 March 2014 he was awarded compensation. The Government therefore argued that this complaint should be declared in admissible.

31. The Court observes at the outset that a new domestic remedy has been established in Turkey after the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). The Court recalls that in its decision in the case of *Turgut and others v. Turkey* ((dec.), no. 4860/09, 26 March 2013), it declared a new application inadmissible on the ground that the applicants had failed to exhaust the domestic remedies as a new domestic remedy had been envisaged. In so doing, the Court in particular considered that this new remedy was, *a priori*, accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

32. On the other hand, the Court reiterates that that an applicant may lose his status as a "victim" of the alleged violation if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it. The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. The appropriateness and sufficiency of redress depend on the nature of the violation complained of by the applicant (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 67 and 70, 2 November 2010).

33. Turning to the present case, the Court observes that, by decision of 13 March 2014, the Commission explicitly acknowledged a violation of the applicant's right under Article 6 § 1 of the Convention holding that the proceedings against him had not been concluded within the reasonable time. The Commission also awarded TRY 9,000 to the applicant in respect of non-pecuniary compensation. The Court further notes that the applicant waived his right to appeal against this decision.

34. In view of the above, the Court accepts that by explicitly recognizing the violation of the applicant's right to trial within a "reasonable time" within the meaning of Article 6 of the Convention and affording him appropriate and sufficient redress, the Commission has remedied the situation in domestic law. The Court thus accepts the Government's argument concerning the loss of the applicant's victim status in respect of this complaint.

35. It follows that the applicant can no longer claim to be a "victim" of the alleged violation of Article 6 § 1 of the Convention within the meaning of Article 34 of the Convention and that this part of the application must be rejected pursuant to Articles 34 and 35 §§ 3 (a) and 4.

C. Remaining Complaints

36. As regards the applicant's remaining complaints, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols in the light of all the material in its possession, and in so far as the matters complained of are within its competence.

37. It follows that this part of the application should be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 December 2017.

Hasan Bakırcı
Deputy Registrar

Ledi Bianku
President