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

SECOND SECTION

DECISION

Application no. 10681/12
Hayati İZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 3 October 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 21 December 2011,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Hayati İz, is a Turkish national, who was born in 1986 and lives in Diyarbakır. He was represented before the Court by Mr B. Doğan, a lawyer practising in Istanbul.

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

A. The circumstances of the case

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

4. On 15 February 2007 the applicant was arrested by the police on suspicion of membership of an illegal armed organisation, and of throwing Molotov cocktails.

5. On 16 February 2007 the Küçükçekmece Magistrates' Court ordered the applicant's pre-trial detention.

6. On 2 April 2007 the Istanbul public prosecutor lodged a bill of indictment against the applicant, charging him with throwing Molotov cocktails and disseminating propaganda in favour of a terrorist organisation.

7. On 13 November 2008 the Istanbul Assize Court convicted the applicant and sentenced him to ten years and five months' imprisonment for membership of an illegal organisation and storage and use of explosive materials.

8. On 3 November 2009 the Court of Cassation quashed the judgment of the first-instance court. The case was accordingly remitted before the first-instance court.

9. On 20 September 2011 the Istanbul Assize Court ordered the applicant's release pending trial.

10. On 22 December 2011 the Istanbul Assize Court once again convicted the applicant as charged.

11. On 16 April 2014 the Court of Cassation upheld the first-instance court's judgment insofar as it concerned the conviction for storage and use of explosive materials and quashed the remaining part.

12. The parties did not inform the Court about the outcome of the criminal proceedings.

B. Relevant domestic law and practice

13. A description of the relevant domestic law and practice can be found in *A.Ş. v. Turkey* (no. 58271/10, §§ 34-35, 13 September 2016).

COMPLAINT

14. The applicant complained under Article 5 § 3 the Convention that the length of his pre-trial detention had been excessive.

THE LAW

15. The Government rejected the allegation, submitting that the applicant had failed to exhaust domestic remedies, referring to the possibility of claiming compensation for unlawful detention under Article 141 § 1 (d) of the Code on Criminal Procedure ("CCP").

16. The applicant did not comment on that argument.

17. The Court observes that the domestic remedy in application of Article 141 § 1 (d) of the CCP with regard to length of detention on remand was examined in the cases of *A.Ş. v. Turkey* (no. 58271/10, §§ 85-95,

13 September 2016) and *Demir v. Turkey*, ((dec.), no. 51770/07, §§ 17-35, 16 October 2012).

18. In the case of *Demir* (citied above) the Court held that that remedy had to be exhausted by the applicants whose convictions became final. It further ruled in its judgment of *A.Ş.* (cited above, § 92) that as of June 2015 the domestic remedy provided for in Article 141 § 1 (d) of the CCP had to be exhausted by the applicants even before the proceedings became final.

19. In the instant case, the Court notes that the applicant's detention ended on 20 September 2011 with his release from detention on remand, yet there is no information whether the proceedings against him are still pending or have become final. However, the Court observes that the applicant was entitled, in both situations, to seek compensation under Article 141 § 1 (d) of the CCP. However, he failed to do so.

20. The Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *İçyer v. Turkey* (dec.), no. 18888/02, § 72, ECHR 2006-I). The Court has previously departed from this rule in cases concerning the above-mentioned remedy in respect of the length of detention, which became applicable after the final decision on the criminal proceedings (see also, among others, *Tutal and Others v. Turkey* (dec.), no. 11929/12, 28 January 2014). The Court takes the view that the exception should be applied in the present case as well.

21. As a result, taking into account the Government's objection, the Court concludes that the application 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 application inadmissible.

Done in English and notified in writing on 26 October 2017.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President