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

SECOND SECTION

DECISION

Application no. 10702/12
Ömer KABUL
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 June 2017 as a Committee composed of:

Nebojša Vučinić, *President,*
Paul Lemmens,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 December 2011,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ömer Kabul, is a Turkish national, who was born in 1990 and lives in Şırnak.

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 15 May 2009 the applicant was arrested by the police on suspicion of membership of an illegal terrorist organisation.

5. On 16 May 2009 the judge at the Şırnak Magistrates' Court took the applicant's statement and subsequently ordered his pre-trial detention.

6. On 20 November 2009 the Diyarbakır public prosecutor lodged a bill of indictment against the applicant, charging him with membership of a terrorist organisation, and storage and use of explosive materials.

7. During the trial, the Diyarbakır Assize Court prolonged the applicant's detention having regard to the strong suspicion of the suspect's having committed the offences in issue and the fact that the offences in question fell within the categories listed in Article 100 of the Code of Criminal Procedure.

8. On 2 January 2013 the Diyarbakır Assize Court convicted the applicant and sentenced him to seventeen years' imprisonment for membership of a terrorist organisation and storage of explosive materials.

9. According to the information in the case file, the proceedings are currently pending before the Court of Cassation.

COMPLAINT

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

THE LAW

11. The Government maintained that the applicant had not exhausted 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 Turkish 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 *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 that 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.

14. In the present case, the applicant's pre-trial detention started on 15 May 2009 and ended on 2 January 2013, when he was convicted. Accordingly, the applicant's detention, including the period before 23 September 2012, fell within the Constitutional Court's temporal jurisdiction (see *Koçintar v. Turkey* (dec.), no. 77429/12, §§ 15-26 and 39, 1 July 2014, and *Levent Bektaş v. Turkey*, no. 70026/10, §§ 40-42, 16 June 2015).

15. As a result, taking into account the Government's preliminary objection with regard to the applicant's failure to make use of the new remedy before the Constitutional Court, 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 6 July 2017.

Hasan Bakırcı	Nebojša Vučinić
Deputy Registrar	President