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

SECOND SECTION

DECISION

Application no. 11773/12
Mesut KAR
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 September 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 and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mesut Kar, is a Turkish national, who was born in 1990 and is detained in T type prison in Izmir. The Turkish Government ("the Government") were represented by their Agent.

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

3. On 27 April 2009 the applicant was arrested by the police on suspicion of membership of a terrorist organisation.

4. On 29 April 2009 the Şırnak Magistrates' Court ordered the applicant's pre-trial detention.

5. On 20 November 2009 a bill of indictment was filed with the Diyarbakır Assize Court accusing the applicant of membership of a terrorist organisation.

6. On 19 February 2010 the first hearing was held before Diyarbakır Assize Court.

7. On 2 January 2013 the Diyarbakır Assize Court convicted the applicant as charged and sentenced him to ten years and six months' imprisonment. The assize court also ordered the applicant's continued detention.

COMPLAINT

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

THE LAW

9. 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.

10. 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 *Hasan Uzun v. Turkey*, (dec.), no. 10755/13, §§ 68-71, 30 April 2013).

11. 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 commenced 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, and *Levent Bektaş v. Turkey*, no. 70026/10, §§ 40-42, 16 June 2015).

12. In the present case the applicant's pre-trial detention commenced on 27 April 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.

13. 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 28 September 2017.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President