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

SECOND SECTION

DECISION

Application no. 21903/12
Bekir KILIÇASLAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 June 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 16 March 2012,

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

Having deliberated, decides as follows:

PROCEDURE

1. The case originated in an application (no. 21903/12) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Bekir Kılıçaslan ("the applicant"), on 16 March 2012.

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

3. On 5 June 2013 the complaint concerning the length of the applicant's pre-trial detention was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

5. The applicant, Mr Bekir Kılıçaslan, is a Turkish national, who was born in 1972 and is detained in F type prison in İzmir.

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

7. On 27 April 2009 the applicant was arrested and taken into police custody in Şırnak in the context of an investigation concerning a terrorist organisation.

8. On 30 April 2009 the applicant was detained on remand by the Şırnak Magistrates' Court.

9. On 20 November 2009 a bill of indictment was filed with the Diyarbakır Assize Court accusing the applicant of membership of a terrorist organisation and violation of Law No. 2911 on assembly and demonstrations.

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

COMPLAINTS

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

12. Moreover, the applicant alleged under Article 5 § 4 Convention that there had been no effective remedy provided by the domestic legal system whereby he could effectively challenge his continued pre-trial detention.

THE LAW

A. Article 5 § 3 of the Convention

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

14. 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.

15. The applicant did not comment on the Government's preliminary objection.

16. 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).

17. 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 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).

18. In the present case the applicant's 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.

19. As a result, taking into account the Government's preliminary objection, the Court concludes that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Article 5 § 4 of the Convention

20. Relying on Article 5 § 4 of the Convention, the applicant complained that there had been no effective remedy provided by the domestic legal system whereby he could effectively challenge his continued pre-trial detention.

21. The Court observes that the applicant did not submit any domestic court decision rendered upon his release requests or his objection filed against the court decisions ordering his continued detention. The Court considers therefore that this complaint is unsubstantiated as the applicant failed to demonstrate that he objected to the domestic courts' decisions on his continued detention, which is a condition for the application of Article 5 § 4 of the Convention (see *Altınok v. Turkey*, no. 31610/08, § 39, 29 November 2011).

22. The Court concludes that this part of the application is inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 July 2017.

Hasan Bakırcı
Deputy Registrar

Ledi Bianku
President